



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09997
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2012

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant abused marijuana and LSD during his freshman year of college. He has not used any controlled substance since August 2011. Clearance is granted.

On July 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges a security concern under Guideline H (drug involvement). Applicant submitted a response to the SOR that was received by DOHA on September 10, 2012, in which he admitted both allegations. Applicant requested a decision based on the written record without a hearing. On September 28, 2012, Department Counsel requested a hearing pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of DoD Directive 5220.6.

The case was assigned to me on October 22, 2012. A notice of hearing was issued on November 7, 2012, scheduling the hearing for November 27, 2012. The hearing was conducted as scheduled. The Government submitted two documentary exhibits that were

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

marked as Government Exhibits (GE) 1 and 2 and admitted into the record without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant Exhibits (AE) 1 and 2 and admitted into the record without objection. The transcript was received on December 3, 2012.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 20-year-old young man who is attending college full time. He graduated from high school in May 2010. He resided in a dormitory during his first year of college. He has resided with his 25-year-old sister, a graduate student at the same university, since May 2011. They reside in a condominium their parents purchased for their use. Applicant is attending college on a full scholarship funded by the state where he resides. He was an "A" student in high school, and he has maintained a 3.5 grade point average while in college.

Applicant is employed in a student work-study program in a science department at the university he attends. The branch head of the laboratory in which Applicant works wrote a very favorable endorsement on behalf of Applicant's application for a security clearance. He has found Applicant to be a talented and hard-working member of the laboratory. Applicant has been an integral member of a team of developers and engineers working on a project for the U.S. Army.

Applicant's parents are both college graduates working as computer consultants. Applicant traveled with his family to a number of foreign locations on vacations when he was younger. During his senior year of high school he traveled with a church group to a Caribbean destination to perform mission work. He was active in school and church activities while attending high school, including being a member of his high school science olympiad team. Applicant is an Eagle Scout. He is majoring in computer engineering. He is a member of a college social fraternity, and he is involved with his university's student radio station.

From August 2010 until August 2011, Applicant used marijuana from two to five times a week, primarily on weekends. He used LSD three times between September 2010 and April 2011. The drugs were provided to Applicant by another student who Applicant met at school. The drugs were purchased by that other student and used at the house where that student resided. The drugs were used in a social setting in which Applicant would bring food, drink, or video games to the other student's house to share with other students who might also be visiting. The student who provided the drugs graduated in December 2011, and Applicant does not have any continuing contact with that person.

Applicant no longer associates directly with people who abuse drugs; however, he attended a party during the summer of 2012 at which people were using drugs.

Applicant fully disclosed his use of controlled substances in the security clearance application he submitted in May 2011. When he was interviewed in June 2011, Applicant claimed the drugs had no effect on his behavior and they did not contribute to any personal problems in his personal or professional life. He stated at that time that he did not intend to stop using the drugs.

Applicant testified he used marijuana and LSD out of curiosity about the effects they would have on his brain. He also testified that as he began his third year of college in August 2011, he found himself taking more difficult courses and realized immediately that the workload was different and that he would not be able to handle his course work and use marijuana.

Applicant submitted a negative drug screen completed on November 21, 2012. He avers he will not abuse drugs in the future because he knows he can lose his scholarship and potential employment opportunities upon graduation. He is aware that when he enters the workforce he may be subject to drug testing and believes it is in his best interest to not abuse drugs so he can be successful after he graduates from college. His parents are unaware of his drug use and he does not want them to know about it because they would neither understand nor accept why he wanted to experiment with drugs.

### **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline H (drug involvement) with its disqualifying and mitigating conditions is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

## Analysis

### Guideline H, Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG 24

Applicant used marijuana and LSD in social settings during his first year of college. Disqualifying Condition (DC) 25(a): *any drug abuse* applies. Applicant expressed an intent to continue using controlled substances during an interview in June 2011; however, he has since renounced that intent and discontinued the use of any controlled substance. Thus, DC 25(h): *expressed intent to continue illegal drug use . . .* does not apply.

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<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

Applicant is an intelligent young man who has proven himself to be a trusted, respected, and integral member of the science laboratory where he is employed at the university he attends. He is and has been an active member of many worthwhile organizations during his young life, including earning the Eagle Scout rating. Applicant is well aware of the potential consequences of continued use of illegal controlled substances, including the loss of his scholarship, the loss of his parents' respect, and diminished career possibilities following his college graduation. He sincerely averred he will not abuse controlled substances in the future and his motivations make it highly probable that he will comply with his promise to remain drug free.

Considering Applicant's young age, the activities he has engaged in and continues to engage in, the circumstances under which he abused controlled substances, and the motivation he has to not abuse controlled substances in the future, I am satisfied Mitigating Condition (MC) 26(a): *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment* applies.

Applicant no longer associates with the individual who provided him with controlled substances. While he attended a party this past summer at which some people were using drugs, he no longer associates with people who abuse drugs. Applicant's credible affirmation that he will not abuse controlled substances in the future, buttressed by his 16 months of abstinence, entitle him to application of MC 26(b): *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; . . . (3) an appropriate period of abstinence . . . .*

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concern caused by his drug involvement. He has overcome the case against him and satisfied his burden of persuasion. Guideline H is decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	For Applicant
Subparagraphs 1.a and 1.b:	For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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Henry Lazzaro  
Administrative Judge

