



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 11-13385
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

12/19/2012

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on August 25, 2011. On September 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on September 1, 2006.

On October 1, 2012, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on November 1, 2012. The FORM was forwarded to Applicant on that same date. Applicant received the FORM on November 14, 2012. He had 30 days to submit a response to the FORM. He timely submitted a response. Department Counsel noted no objections to Applicant's response on December 4, 2012. On December 6, 2012, the FORM was forwarded to the Hearing Office and was assigned to me on December 7, 2012. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

In his answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 3)

Applicant is a 33-year-old employee of a Department of Defense contractor who has been employed with the contractor since July 2009. This is his first time applying for a security clearance. He received his bachelor's degree in December 2001. He married in June 2011 and has no children. (Item 4)

### **Guideline H – Drug Involvement**

Applicant admits marijuana and cocaine use with varying frequency between August 2004 and June 2011. He listed his illegal marijuana and cocaine use in response to sections 23(a) and 23(c) on his security clearance application which he certified on August 25, 2011. He noted, "Current use is social and occurs no more than a few times annually." (Item 4, section 23)

On September 11, 2011, Applicant was interviewed by an investigator conducting his background investigation. The investigator prepared a summary of the interview. (Item 5) On October 29, 2012, Applicant signed a stipulation agreeing that the information provided in the summary of the interview was accurate. (Item 6) During the background investigation interview, Applicant indicated that between August 2004 and August 2008, he smoked marijuana on average of one to two times a week and used cocaine at least twice a month. He would use at his home or at the homes of friends. Between 2008 and 2011, Applicant used marijuana twice a month and cocaine about once a month. In 2011, he used marijuana on at least two occasions, once in June 2011 and one time before June 2011, on a date that he cannot remember. He used cocaine in 2011 about three to four times - once in April 2011, and about two to three occasions on earlier unrecalled dates. Applicant uses illegal drugs to be social. His friends provide the drugs. He has never bought or sold illegal drugs. (Item 5)

During his background investigation interview on September 11, 2011, Applicant told the investigator that his illegal drug use did not result in any negative effects on his employment or relationships. He has never been recommended for or attended drug treatment. His future intent regarding illegal marijuana and cocaine use is to gradually reduce his use to nothing, but he may use it intermittently if his friends offer drugs in the future. (Item 5)

In his response to the SOR, Applicant states that he no longer uses illegal drugs. He takes great pride in his work within the government contracting industry. While he acknowledges that his past drug use was not ideal and gives a bad impression, his work, competence, and integrity has not been compromised. He will be able to do his job better if he is granted access to classified information. He is not a security risk. (Item 3)

In his response to the FORM, Applicant reiterates that his illegal drug use never caused him any problems. He has never been recommended for drug treatment and

has never been diagnosed as a drug abuser or drug dependent. He has had no legal problems related to his illegal drug use. He has not used illegal drugs since his marriage in June 2011. Applicant states that he voluntarily reported his illegal drug use on his security clearance forms. He does not intend to use illegal drugs in the future. He dated his wife for eight years before getting married. They are interested in starting a family and illegal drug use is not consistent with the responsibilities of raising children. While he still associates with his friends who use illegal drugs, he has told them that he will no longer use illegal drugs. He believes that their use is also decreasing with increased age and responsibilities. He is willing to sign a statement of intent to refrain from using illegal drugs with the acknowledgment that his security clearance will be automatically revoked for any subsequent violation. (Response to FORM)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Guideline H, Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶24:

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.

Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (E.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant’s case.

AG ¶25(a) (any drug abuse); and

AG ¶25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

Applicant used marijuana and cocaine on numerous occasions from August 2004 to June 2011. He used illegal drugs to be social. He still socializes with his friends who used illegal drugs with him. AG ¶25(a) applies. AG ¶25(c) also applies because Applicant possessed illegal drugs on occasion.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation; and

AG ¶26(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

None of the mitigating conditions apply. AG ¶ 26(a) does not apply because Applicant has a long history of illegal drug use. While he claims not to have used illegal drugs since June 2011, and states that he will not abuse illegal drugs in the future, his assertions are given less credit because he told the investigator conducting his background investigation in September 2011 that his intent was to gradually curb his illegal drug use to nothing, but he may use illegal drugs if his friends offer drugs in the future. He still socializes with his friends who provided him illegal drugs. He did not express his intent to refrain from illegal drug use until after the SOR was issued. Based on his past history, Applicant's reliability, trustworthiness, and judgment remain questionable.

AG ¶ 26(b) does not apply for the reasons mentioned in the above paragraph. Although Applicant claims to have abstained from illegal drugs for a year and a half, this is not a sufficient period of abstinence based on his long history of illegal drug use. He did not present a signed statement of intent acknowledging that his clearance will be automatically revoked for any violation. No evidence was presented that would raise AG ¶ 26(d). Applicant has not met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's work as a contractor for the Department of Defense since July 2009. I considered Applicant's history of illegal drug use and his statement to the investigator in September 2011 indicating he may use illegal drugs again if his friends offer illegal drugs to him. I considered that he has not disassociated himself from his drug-using friends. His illegal drug use began after his college years. He was a regular recreational user of cocaine and marijuana over a seven-year period. His drug use occurred during his early years of professional employment including during his few years as an employee of a Department of Defense contractor. While Applicant was truthful on his security clearance questionnaire about his use of illegal drugs, he has not provided sufficient information to mitigate his lengthy history of illegal drug use. Applicant's actions raise serious concerns about his judgment, trustworthiness, and reliability. Applicant has not met his burden to overcome those concerns.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge