



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 12-00163
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
01/30/2013

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On August 13, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) enumerating 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response, Applicant admitted all four allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 12, 2012. The parties agreed to a hearing date of November 8, 2012. A notice to that effect was issued on October 19, 2012. I convened the hearing as scheduled.

Applicant gave testimony and offered two documents, which were accepted without objection as exhibits (Exs.) A-B. The Government presented two documents, which were accepted without objection as Exs. 1-2. Applicant was given until November 19, 2012, to present any additional materials. On November 19, 2012, Applicant forwarded to the Government three additional documents. The transcript (Tr.) of the proceeding was received on November 27, 2012. On December 4, 2012, the Government forwarded Applicant's three post-hearing submissions to me without objection. They were accepted into the record as Exs. C-E and the record was closed. Based on a thorough review of the testimony, submissions, and exhibits, I find

Applicant met his burden of mitigating security concerns related to drug involvement. Clearance is granted.

### **Findings of Fact**

Applicant is a 25-year-old who has worked for the same defense contractor for the past three-and-a-half years. He was recently promoted to the position of Financial Analyst II. He has served his present employer since graduating from college with bachelor's degrees in both entrepreneurship and finance. He is single. From the beginning, Applicant has been candid about his high school and collegiate drug use.

In 2003, while in 10<sup>th</sup> grade, Applicant tried marijuana and alcohol. He again used marijuana and alcohol in the autumn of 2003, during his junior year. As an upperclassman, Applicant's use of alcohol increased to about twice a month, and he began using marijuana more frequently during the autumn semester. He ceased using marijuana for about a year because a girlfriend objected to his using the substance. After they broke up, he returned to using marijuana on occasion until high school graduation. His use at the time was erratic. He noted, "it could be some weekends consecutively or maybe once a month [during] other time periods."<sup>1</sup> His use of marijuana, as well as the other proscribed drugs noted in the SOR, was always social. He occasionally bought the drug. He would continue using marijuana until May 2011.

Immediately after graduating from high school in May 2005, Applicant enrolled in a local college's summer program. That summer, he tried hallucinogenic mushrooms at the suggestion of a peer. Although he found the substance uninteresting, he tried it three more times before quitting its use in April 2009, around the time he graduated from college.

In the interim, in 2006, Applicant tested positive for THC on an initial screening test administered by a friend's father's construction business, where Applicant had sought summer employment. No adverse repercussions ensued because Applicant abandoned his plans for summer employment and moved to another area shortly thereafter.<sup>2</sup> In January 2007, Applicant tried cocaine, a substance he used about five times in total before ceasing its use in September 2010.

Applicant never had any particular interest in hallucinogenic mushrooms or cocaine. With both drugs, he tried them out of curiosity and because his college friends were using them. His lack of interest led to his cessation of those drugs.

Applicant quit using marijuana in May 2011, however, under different circumstances. At the time, he had been out of college for two years. During the previous two years, he had left his collegiate routines and started living on his own. His

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<sup>1</sup> Tr. 18.

<sup>2</sup> Tr. 19-20.

contact with his collegiate peers became “very minimal.”<sup>3</sup> He developed a new routine centered on his job, his music, and developing a post-collegiate social life in new environs. Over time, his work responsibilities grew and he began spending more time with his music. He grew to love his work, which is in his chosen field. Working with his employer gave him the opportunity to apply his studies, expand his knowledge base, and travel. He is dedicated to both his job and his employer.

When his employer asked him to apply for a security clearance, Applicant carefully considered its significance and the requirements. After reviewing the materials, Applicant understood that his continued use of marijuana could adversely affect his career. He weighed the importance of his waning use of marijuana against the potentially adverse effects on his future and his career presented by his continued use of the drug. “I was going through the e-QIP form and drug use came up. I knew I wanted to tell the truth and I [sic] at that point decided it wasn’t worth smoking marijuana and decided I was going to quit and not smoke it anymore.”<sup>4</sup> Realizing he had outgrown marijuana use, he ceased using it.

Applicant experienced no withdrawal symptoms after quitting marijuana in May 2009. He does not regret putting his career and his future ahead of immature pleasures. He has not been tempted to use drugs again. He found quitting marijuana to be easy, a fact he attributes to the dramatic changes in his life and lifestyle over the past two years, having grown from immature collegian and recent graduate to burgeoning young professional capable of making responsible choices.<sup>5</sup> He was quick to recognize that he had outgrown the marijuana habit.<sup>6</sup> He is contrite about his past drug use. To the best of his knowledge, he does not knowingly associate with those who use drugs. It is his intent to remain drug-free. He submitted a notarized statement of intent not to use drugs in the future. He conveyed his intent during the hearing to have the notarized statement fulfill the function of a statement of intent as contemplated under ¶ AG 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*).<sup>7</sup>

To demonstrate that he does not “have time to do drugs anymore” even if he wanted to do so, Applicant cites to recent changes in his life.<sup>8</sup> He has been undertaking more difficult assignments over the past two years, culminating in his recent promotion to the level of Financial Analyst II, a position that often requires late nights and weekend work hours. In his free time, Applicant is a musician and songwriter who, with

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<sup>3</sup> Tr. 22. To the best of Applicant’s knowledge, his former peers no longer use drugs

<sup>4</sup> Tr. 21, 40-41.

<sup>5</sup> Tr. 46-47. Applicant attributes his 2009-2011 marijuana use to the habit he developed in college. Changes in his lifestyle and the opportunity to get a security clearance helped motivate him out of his former routine.

<sup>6</sup> Tr. 49.

<sup>7</sup> Tr. 54-55.

<sup>8</sup> Tr. 23.

his band, recently released their first CD through a major internet music source. He now focuses his energy on his health and his lifestyle, regularly working out and watching his diet. He currently lives with his parents, who know of Applicant's past drug use. Now in his mid-20s, he is looking into local residential housing in anticipation of a future home purchase.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>9</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>10</sup>

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 the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

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<sup>9</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>10</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>12</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.<sup>13</sup> “Drugs” are defined as mood and behavior altering substances and include 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 inhalants and other substances.<sup>14</sup> “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.<sup>15</sup>

Applicant admits using marijuana, cocaine, and hallucinogenic mushrooms. He also admits he tested positive for marijuana in 2006 during a pre-employment screening. In addition, he admits that he purchased drugs on occasion. Such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*) and 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Applicant first became involved with drugs in his teens. He used them at various times and in varying amounts from about 2003 or 2004, when Applicant was in 10<sup>th</sup> grade, until May 2011, about two years after he completed his undergraduate degree. Today, Applicant is 25 years old. He has been drug-free for 21 months, demonstrating nearly two years abstinence.

I conclude that Applicant successfully completed an appropriate period of abstinence and demonstrated his ability to refrain from future drug use. Although 21 months is a brief period of time when compared to nearly eight years of drug use, that drug use was intermittent and there is no indication that Applicant was dependent or

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> AG ¶ 24.

<sup>14</sup> *Id.* at ¶ 24(a)(1-2).

<sup>15</sup> *Id.* at ¶ 24(b).

addicted to any illegal drugs. Moreover, 21 months is a significant amount of time in the life of a 25-year-old. Unlike briefer periods of abstinence in the past, such as his foregoing marijuana during a teenage romance, Applicant's cessation now is based on an adult decision, free from adolescent peer pressure or youthful curiosity. His decision was based on weighing accumulated habits against current personal priorities, realistically assessing his future goals in terms of his education and motivation, and his ability to make mature choices that would help achieve those goals.

Furthermore, given Applicant's sincere expressions of genuine satisfaction with regard to his present situation, it is hard to believe he would ever jeopardize either his current job or career path. In addition, he has moved and does not knowingly associate with those who use drugs. As well, he has submitted a statement of intent not to use drugs in the future, which, in light of his testimony at the hearing, was executed with the intent to comply with the terms of AG ¶ 26(b)(4). Given these considerations, I find that Drug Involvement Mitigating Conditions AG ¶ 26(b)(1) (*disassociation from drug-using associates and contacts*), AG ¶ 26(b)(2) (*changing or avoiding the environment where drugs were used*), AG ¶ 26(b)(3) (*an appropriate period of abstinence*), and AG ¶ 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the whole-person factors. Multiple facts speak in Applicant's favor. He is highly credible and well-educated. He is earnestly seeking to move forward with his life and career. He has been candid about his past drug use from the beginning. Applicant acknowledges the illegality of his past conduct and has not tried to minimize his past experiences with drugs. Indeed, he has demonstrated genuine contrition over his past abuse of illegal drugs.

Applicant's passing experiences with mushrooms and cocaine ended in 2009 and 2010, respectively. His abuse of those controlled substances was relatively minimal, as compared to his use of marijuana. Applicant's use of marijuana continued until April 2011 as a vestige of his collegiate experience. Despite the onset of maturity that came with college graduation, Applicant continued using the drug occasionally for about two years after college. With maturity came the personal and professional realization that he had to make certain choices about his life in order to follow his newly chosen career path. In April 2011, he made the choice to forego immature habits and earnestly pursue his personal and professional goals. That choice included giving up marijuana permanently.

Since quitting marijuana, Applicant has avoided those who use that substance. Instead of experiencing the languid influences of marijuana, he leads a highly active and busy life. As his professional responsibilities have increased, he has personally flourished at work. His musical hobby has yielded unexpected successes. He enjoys a new level of health and energy through his new fitness regimen. He has changed his circle of friends. Applicant had no difficulty quitting illegal drugs, and there is no indication that he would jeopardize his current lifestyle or job by using marijuana or any other controlled substance again. Indeed, his commitment to his work and his employer is of such a degree that its continuance appears to guarantee that Applicant will maturely comport his behavior in all aspects of his life. Given the foregoing, and in light of Applicant's highly credible testimony and demeanor, I have no concerns that Applicant will again resort to the abuse of marijuana or any other illegal drugs. Consequently, I find that drug involvement security concerns are mitigated. Clearance is granted.

### **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-d: For Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge