



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



In the matter of: )  
)  
) ISCR Case No. 12-02939  
)  
Applicant for Security Clearance )

**Appearances**

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

01/11/2013  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On July 11, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. DoD acted under Executive Order (EO) 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 by the DoD on September 1, 2006.

Applicant answered the SOR on August 1, 2012, and requested a hearing. The case was assigned to me on October 15, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2012, and the hearing

was convened as scheduled on December 6, 2012. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) II. Applicant testified and offered exhibits (AE) A and B, which were admitted without objection. Applicant's exhibit index was marked as HE I. The record was kept open for Applicant to submit additional evidence. He submitted AE C in a timely fashion and it was admitted without objection. DOHA received the hearing transcript (Tr.) on December 19, 2011.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted both allegations under Guideline H. After a thorough and careful review of the evidence submitted, I make the following findings of fact.

Applicant is 44 years old. He is single, has never been married, and has no children. He has a bachelor's and a master's degree. Since May 2000, he has worked for a defense contractor. He is a key management person for his company. He has no military service and has never held a security clearance in the past.<sup>1</sup>

Applicant's admitted conduct raised in the SOR includes using and purchasing marijuana on numerous occasions from October 1983 to November 2011. (See SOR ¶¶ 1.a – 1.b).

Applicant began using marijuana when he was in high school at the age of 14 or 15. He has used it on a regular basis for over 28 years, up through November 2011. His high school use was about once a month during different social settings. In college, his marijuana use increased to about two to three times per month. After college and before he began working for his current employer in 2000, he used marijuana as frequently as five times a month. From 2002 to 2005, while working for his current employer, he used marijuana about three times per month. From 2006, when he began progressing up the company ladder, he decreased his marijuana use to about one time a month. In 2011 he used marijuana about four times before his last use in November. He testified his last use was in November 2011, but he stated in his security clearance application, completed in January 2012, that his last use was in May 2011. Applicant purchased marijuana on numerous occasions through the same time period for his own personal use. He never resold the purchased marijuana. He stated that he continued to use marijuana through the years even after receiving his advanced degree and being promoted by his company because he felt it relaxed him.<sup>2</sup>

Applicant testified that he now lives a healthy lifestyle. This lifestyle includes his involvement with yoga where he has become an instructor. He was still using marijuana when he began studying yoga. Recently, he decided that using marijuana was not

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<sup>1</sup> Tr. at 27-28; GE 1.

<sup>2</sup> Tr. at 30-38; GE 2.

consistent with his yoga meditation and therefore stopped using it. He has not been diagnosed as a marijuana abuser or dependent. He has not sought out or received any drug treatment or counseling. He does not associate with anyone who uses marijuana. He signed a written letter of intent not to use any illegal drugs in the future upon penalty of automatic revocation of his security clearance. He is supported by his company president who believes he uses good judgment on projects and is highly regarded by their customers. He also believes Applicant is trustworthy.<sup>3</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, 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, and has the ultimate burden of persuasion to obtain 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>3</sup> Tr. at 20-21; 26-27; GE 2; AE A, C.

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).

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and considered the following relevant:

- (a) any drug abuse; and
- (c) illegal drug purchases.

I find Applicant used and purchased marijuana on numerous occasions over a twenty-eight year period of time. Both disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26, and considered the following relevant:

- (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; and
- (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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant’s use of drugs was on numerous occasions and recent (last use November 2011). Applicant has a twenty-eight year history of drug use, and his short period of abstinence is insufficient to demonstrate his intent not to use in the future.

Applicant is not a young individual experimenting with drugs for the first time. He made a conscious lifestyle choice for almost thirty years to use marijuana, despite its illegality. He claims he has changed his lifestyle and no longer associates with drug using friends, and he submitted a letter of intent to not use illegal drugs in the future. He has not convinced me that these recent actions overcome almost 30 years of continued marijuana use. Moreover, his repeated acts of breaking the law by smoking marijuana casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply, and AG ¶ 26(b) partially applies.

### **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 the 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 statement of intent and his favorable character evidence. However, the frequency and recency of his illegal marijuana use cannot currently be overcome by positive character evidence. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement.

### **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
Subparagraphs 1.a-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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Robert E. Coacher  
Administrative Judge