



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



In the matter of: )  
)  
) ISCR Case No. 12-04147  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2013

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. By signing a statement of intent to abstain from future drug use and disassociating himself from his drug-using associates, Applicant has mitigated the security concerns raised by his marijuana use. Also, his voluntary disclosure of his past drug use eliminates the misconduct as a potential source of exploitation. Clearance is granted.

**Statement of the Case**

Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns about Applicant’s drug involvement.<sup>1</sup> DOD adjudicators were unable

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge to determine whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on November 6, 2012. At the hearing convened on December 13, 2012, I admitted Government's Exhibits (GE) 1 and 2 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, I left the record open for the Applicant to submit post-hearing documentation. He timely submitted AE F through I. I received the transcript (Tr.) on December 21, 2012.

### **Findings of Fact**

Applicant, 50, has been employed by a federal contractor on a part-time basis since July 2011. When he initially began his job as a role player training U.S. troops and civilians deploying to Afghanistan, he worked two to three days a week. Because of downsizing, his work has since dwindled to two to three days each month. Twice divorced, Applicant has two children, ages 12 and 14, from his most recent marriage, which ended in 2003. He also has an adult son from his first marriage.<sup>2</sup>

Applicant retired from the U.S Army in 2005, achieving the rank of sergeant first class (E-7). He held a security clearance for the duration of his 21-year career without incident. Between 1997 and 2001, Applicant served as the non-commissioned officer in charge (NCOIC) of various functions for a military intelligence battalion. He served tours of duty during Desert Shield, Desert Storm, and the Bosnia conflict. In the course of his military career, Applicant was routinely evaluated as being among the best for overall performance and potential. He received over 31 medals, service ribbons, and badges in addition to dozens of letters, certificates, plaques, and commander's coins. In the years since his retirement, Applicant has worked sporadically. He has spent five of the last eight years unemployed. Since 2009, he has worked intermittently for another government agency. When not working, Applicant devotes himself to the maintenance of his home and raising his children.<sup>3</sup>

In December 2011, Applicant's employer sponsored his application for a security clearance. While it is not necessary for his position as a role player, having the clearance makes him eligible for higher paying jobs with his employer. On his security clearance application, Applicant disclosed a 1980 possession of marijuana charge. He also disclosed three occasions of marijuana use in March 2008, June 2009, and August 2011. During his background investigation, Applicant voluntarily reported an additional incident of marijuana use in December 2011, after he submitted his security clearance application. On these occasions, Applicant did not purchase the drug, but used the marijuana offered to him in social settings. Since his last use, Applicant has

---

<sup>2</sup> Tr. 40; GE 1-2.

<sup>3</sup> Tr. 21-23, 39; GE 2; AE C-E, G,H.

disassociated himself from friends that use marijuana. Applicant did not use marijuana during his military career or while he held a security clearance.<sup>4</sup>

Applicant has taken responsibility for his unlawful conduct. He acknowledges that he made bad decisions when he used marijuana on those four occasions. Applicant disclosed his drug use knowing that doing so could negatively impact his security clearance application and compromise his ability to secure a higher paying job. In January 2013, Applicant executed a statement of intent with automatic revocation of his security clearance for any future illegal drug use.<sup>5</sup>

### **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 used in evaluating an Applicant's eligibility for access to classified information.

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." 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 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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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).

---

<sup>4</sup> Tr. 31-32, 37-38; GE 1-2; AE F; Answer.

<sup>5</sup> Tr. 32-33; GE F; Answer.

## Analysis

### 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>6</sup> Applicant engaged in disqualifying conduct when he used marijuana on four occasions between March 2008 and December 2011.<sup>7</sup> His 1980 charge for possession of marijuana occurred 33 years ago, when he was 18 years old. I have considered it, but conclude it has little weight in evaluating his current suitability.

There is no bright-line rule dictating the period of abstinence required for a finding that the conduct is not recent.<sup>8</sup> Relying on other factors in addition to the simple passage of time,<sup>9</sup> the record supports a finding that Applicant’s drug use is unlikely to recur.<sup>10</sup> He did not have an active security clearance at any time he used marijuana. His use was limited to social settings and is not indicative of a pattern of abuse or addiction. Applicant acknowledges his poor judgment and resulting misconduct. Throughout the adjudicative process he has shown remorse and regret for his behavior. Furthermore, he has demonstrated the intent not to use drugs in the future.<sup>11</sup> He has disassociated himself from his drug-using associates and contacts, and he has signed a statement of intent with automatic revocation of his security clearance for any future violation.

### Whole-Person Concept

I have no doubts or reservations about Applicant’s current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The purpose of the security clearance adjudication is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the personal is an acceptable security risk.”<sup>12</sup> Here, Applicant’s four instances of misconduct must be weighed against his 21 years of military service. Applicant has demonstrated an understanding of the responsibility attendant to the protection of classified information and his fiduciary

---

<sup>6</sup> AG ¶ 24.

<sup>7</sup> See AG ¶ 25(a).

<sup>8</sup> See ISCR Case No. 05-03941 (App. Bd. Aug. 2, 2007); See also ISCR Case No. 98-0611 (App. Bd. Nov. 1, 1999)(The Appeal Board when viewed in conjunction with other factors, the administrative judge did not err in applying the relevant mitigating condition where the applicant used marijuana nine months before the record closed).

<sup>9</sup> See *Id.*

<sup>10</sup> AG ¶ 26(a).

<sup>11</sup> AG ¶ 26(b).

<sup>12</sup> AG ¶ 2(a).

relationship with the Government when given access to classified information. Applicant self-reported negative information without concern for his own interests. He placed the needs of protecting national security above his own, even though having a security clearance may improve his financial well-being.

A finding that Applicant has mitigated the security concerns raised by his conduct in no way diminishes the seriousness of his illegal conduct. However, it is not the purpose of a security clearance case to punish or sanction a person for their past actions. Rather, it is a predictive risk assessment based on the past conduct. Applicant has taken responsibility for his misconduct and has made appropriate changes to reduce the likelihood of recurrence. Most important, his voluntary disclosure of negative information eliminates the conduct as a potential source of exploitation.

### **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 – 1.b:	For Applicant

### **Conclusion**

In light of the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

---

Nichole L. Noel  
Administrative Judge