



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 15-00263
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan J. Olmos, Esquire, Department Counsel  
For Applicant: Eric N. Eisen, Esquire

01/12/2017

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant's clearance.

On 28 August 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 19 October 2016, and I convened a hearing 1 December 2016. DOHA received the transcript (Tr.) 13 December 2016, and the record closed.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibit (GE) 1, and Applicant exhibits (AE) A-C.

<sup>2</sup>DoD acted 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 1 September 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations. He is a 38-year-old systems engineer employed by a defense contractor since September 2015. He held a similar position from February 2014 to September 2015. He has not previously held a clearance.

Between July 1994 and July 2013, Applicant used marijuana and hashish at varying frequencies (SOR 1.a-1.b). Between July 1994 and April 2013, he purchased user amounts of marijuana (SOR 1.c). Applicant fully disclosed his drug history on his August 2014 clearance application (GE 1).

Applicant began using marijuana in 1994, while in high school. He continued to use marijuana while in high school, during college,<sup>3</sup> through his first post-graduate job, an internship, throughout graduate school,<sup>4</sup> and during his post-doctoral fellowship (GE 1). In July 2013, facing his first real foray into the working world and his impending October 2013 wedding, Applicant made a conscious decision to 1) permanently discontinue illegal drug use, 2) end his contacts with his drug-using associates, and 3) avoid locations where drugs were likely to be used. He made this choice out of concerns for his health, family, and livelihood. He has used no illegal drugs since October 2013. He married, and he and his wife eventually moved to a new city to start their careers. They recently bought a house (Tr. 14).

Applicant has no ongoing contact with any of the people with whom he used illegal drugs. His work references—including current and former supervisors—(AE A), and his wife and mother (AE B) consider him honest and trustworthy. He has signed the statement of intent contemplated by the Directive (AE C).

## **Policies**

The adjudicative guidelines (AG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against an applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government

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<sup>3</sup>Applicant obtained his undergraduate degree in June 2000.

<sup>4</sup>Applicant obtained his master's degree in April 2009; he obtained his doctorate in December 2012.

must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does, it establishes a baseline case against granting a clearance. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, an applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>5</sup>

### **Analysis**

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's extensive illegal drug abuse between July 1994 and July 2013.<sup>6</sup> However, Applicant mitigated the security concerns. Despite the extent of Applicant's illegal drug involvement, that drug history encompasses periods when Applicant was in educational environments, his first exploratory jobs after college, and times when he was involved in music scenes where drug use was tolerated. However, after he obtained his doctorate and completed his post-doctoral degree, he decided that drug use was incompatible with the career and lifestyle he was embarking upon. He has used no illegal drugs since July 2013.

Drug involvement mitigating conditions give substantial support to Applicant. His illegal drug abuse was frequent, and covered an extensive period. However, his last illegal drug use was July 2013, over three years ago, in a different time and environment.<sup>7</sup> The issue is not so much the 19 years that he used marijuana recreationally, but the clear-eyed decision he made as he approached an adult commitment to marriage and embarked on his adult career. Further, he demonstrated intent to not abuse drugs in the future by abstaining altogether for more than three years, disassociating himself from drug using contacts and avoiding the environments where he used drugs with friends, and executing the statement of intent contemplated

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<sup>5</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup>¶25 (a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

<sup>7</sup>¶ 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 [Emphasis supplied];

by the Directive.<sup>8</sup> I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

### **Formal Findings**

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a-c: For Applicant

### **Conclusion**

Under 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 granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>8</sup>¶ 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; (4) a signed statement of intent with automatic revocation of clearance for any violation;