



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01787
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin Dorsey, Esquire, Department Counsel  
For Applicant: *Pro se*<sup>1</sup>

02/17/2017

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant admitted having shared marijuana in social settings with her former boyfriend and other friends on ten or fewer occasions in her life, including three or four times between October 2005 and January 2011 while she held a security clearance. She terminated her relationship with that boyfriend after resolving to stop drug abuse. She lives an active and healthy lifestyle and regrets having succumbed to pressure to share marijuana in the past. Resulting security concerns were fully mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on November 5, 2012.<sup>2</sup> On October 27, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security

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<sup>1</sup> In the letter forwarding Applicant's response to the File of Relevant Material (FORM), dated April 11, 2016, she stated that Jason M. Pelt, Esquire, assisted her with preparation of that response. (AE A.)

<sup>2</sup> Item 3.

concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct).<sup>3</sup> 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on November 21, 2015, and requested that her case be decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the written record, without a hearing.<sup>4</sup> Department Counsel submitted the Government's File of Relevant Materials (FORM)<sup>5</sup> on March 11, 2016. A complete copy of the FORM was provided to Applicant, and she was provided an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of the FORM on March 21, 2016. She submitted a response, dated April 11, 2016, in which she made no objection to any contents of the FORM. Department Counsel offered no objection to Applicant's response, which is admitted into the record as Exhibit (AE) A. DOHA assigned the case to me on November 1, 2016.

### **Findings of Fact**

Applicant is a 33-year-old employee of a defense contractor, where she has worked since December 2004, except for a year and a half in 2007 and 2008 when she lived and worked in another state. She has held a security clearance since January 2005, in connection with her employment. She graduated from high school in 2002, and has never served in the military. She has never married and has a 10-year-old daughter. (Item 3; Item 6; AE A.)

Applicant admitted all of the factual allegations set forth in SOR, which were based on her disclosure of that same information in Items 3 through 5. (Item 2.) Applicant's admissions, and accompanying explanations, are incorporated in the following findings.

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3 Item 1.

4 Item 2.

5 Department Counsel submitted six Items in support of the SOR allegations. Item 4 is the summary of an unsworn interview of Applicant prepared by an OPM investigator. Applicant was assisted by counsel in preparing her response to the FORM. She offered no objection to the admissibility of Item 4, which contains no adverse information that was not already disclosed by her in other admissible Items. Accordingly, Item 4 is admitted into evidence and will be considered.

On her first security clearance application, dated October 4, 2005, Applicant admitted that she had used marijuana five times between January 2000 and January 2004. (Item 5.) Applicant also shared marijuana with her former boyfriend and two other friends on three or four occasions between 2005 and January 2011, after she had been granted a security clearance. She said that the use took place in the home she shared with the boyfriend, who was a more frequent marijuana user. He usually did not use it in her presence, but during each of the occasions when she used it, she inhaled its smoke one time through a bowl that was being passed around the group at their home. She did not purchase the drug, or have any other involvement with it. She knew that smoking it was illegal and incompatible with the eligibility requirements for a security clearance, so she decided never to do so again after the last incident in January 2011. Shortly thereafter her relationship with that boyfriend began deteriorating, in part due to arguments about his continuing marijuana use. They broke up in 2014, and have not spoken since. (Item 2; Item 3; Item 4; AE A.)

Applicant currently lives a clean and active lifestyle, including participation in sporting and community activities with a police officer, a firefighter, an employee of the Defense Intelligence Agency, a state government employee, and her daughter. She refused to follow advice from her former boyfriend and other friends, who encouraged her to lie about her drug involvement on her 2012 SF-86. She said:

I was adamant that I had to tell the truth, which I did. I am embarrassed and mad and upset with myself that I have anything to admit to. I am smarter, wiser, stronger than the person who used, knowing it was wrong. My most important takeaway from this experience is that in the future, when my daughter is older, I can use myself as an example on the importance of honesty and leading a drug-free lifestyle. I hope to encourage her to make good decisions throughout her life. (AE A.)

Applicant submitted numerous letters and emails from people who have known her in her personal and professional capacities for many years. They uniformly praised her exceptional work performance and outstanding character. Her performance evaluations from 2010 through 2014 reported that she either routinely exceeded corporate/client standards and job expectations, or substantially and consistently exceeded them throughout that period. (Item 2.)

### **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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 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.

## **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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the evidence in this case are:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Applicant admittedly used marijuana that was passed around by a group of her friends on three or four occasions between 2005 and January 2011. She had been granted a security clearance in 2005 that remained in effect. She had also used marijuana about five times during her teenage years. These facts support application of the foregoing DCs, shifting the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate the security concerns. The facts in this case support application of two of them:

- (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 abuse of marijuana was casual and occasional, in social settings with friends who were partaking. She voluntarily chose to stop such activity because she realized that it was inconsistent with her employment obligations, goals, and standards of behavior. Her use was removed in time and place from any work-related security concerns. Her honest admission of this error in judgment is the only evidence that it took place, and supports the credibility of her declared intention not to repeat such conduct. The drug abuse ended more than six years ago, and her compelling good-character evidence indicates that drug abuse is unlikely to recur. Substantial mitigation under AG ¶ 26(a) was accordingly established.

Applicant is employed full time in a demanding professional position. She no longer engages in the personal relationships or activities where peer pressure to use drugs might exist. She has been abstinent since January 2011, and declared her intent

not to abuse drugs in the future. This evidence also establishes significant and persuasive mitigation under AG ¶ 26(b).

### **Guideline E, Personal Conduct**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16. Department Counsel argued that the evidence established the following DC (FORM at 2-3.):

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The only allegation under Guideline E made direct reference to Applicant's admitted drug involvement that was alleged under, and fully covered under the provisions of, Guideline H. The DOHA Appeal Board, however, has interpreted the language of AG ¶ 16(d) broadly, so as not to exclude consideration of unreliable or untrustworthy behavior under Guideline E even though the conduct also falls squarely under another guideline. I have considered this aspect of the case and find that, other than Applicant's admission of very minor drug abuse, there is no "available information" in this record that would support a whole-person assessment of any of the adverse characteristics cited in AG ¶ 19(d). Accordingly, my analysis under Guideline H applies equally to any Guideline E concerns.

I considered the applicability of one other DC under AG ¶ 16, even though Department Counsel did not assert that the evidence supported it:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's use of marijuana while holding a security clearance potentially made her vulnerable to exploitation or duress because it could have affected her professional

standing. She obviated this potential by freely disclosing her minor drug abuse, which ended more than six years ago. Any former security concerns under this DC were accordingly eliminated under the terms of AG ¶ 17(e).<sup>6</sup>

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, according to all record character evidence, with a consistent professional history of dedicated service to the United States. She accepted accountability for her earlier exercise of bad judgment in choosing to use marijuana on less than ten occasions, all of which occurred more than six years ago, and expressed her resolve to avoid similar conduct in the future. Her actions and lifestyle changes have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of security concerns unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

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<sup>6</sup> "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress".

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge