



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-02194

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

12/14/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant resumed using marijuana in 2008 after more than 20 years of abstinence. He used marijuana until 2012 while holding a security clearance granted in 2007. Applicant did not present any information that would mitigate the security concerns about his illegal drug use. His request for continued eligibility for a security clearance is denied.

**Statement of the Case**

On November 20, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, adjudicators from Department of Defense (DOD) could not determine that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information.<sup>1</sup>

On December 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under the adjudicative guideline regarding

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<sup>1</sup> Required by Executive Order 10865, as amended, and by the Directive.

illegal drug involvement (Guideline H).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing.

On March 22, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on April 6, 2016, and timely submitted additional information in response thereto. The case was assigned to me on November 4, 2016.

### **Findings of Fact**

Under Guideline H, the Government alleged that Applicant used marijuana between 1976 and 1984 (SOR 1.a); and that he purchased and used marijuana between January 2008 and February 2012 while holding a security clearance (SOR 1.b). In response to the SOR, Applicant admitted both allegations and provided an explanatory statement. (FORM, Items 1 and 2) In addition to the facts established by Applicant's admission, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor, where he has worked since February 2000. Applicant has held a top secret security clearance since at least 2007. He has been twice married – from 1982 to 1984 and from 1988 to 2011. Both marriages ended in divorce. (FORM, Item 3)

In his current application for clearance, Applicant disclosed he used marijuana between 1976, while he was still in high school, and 1984. He also disclosed that he resumed using marijuana in 2007 and used the drug about once or twice monthly until February 2012. He also disclosed that he bought small amounts of marijuana for personal use. (FORM, Item 3)

As part of his current background investigation, Applicant was interviewed by a Government investigator in June 2013. He stated he started using marijuana again, in part, because his second marriage was deteriorating. He averred during the interview, as well as in response to SOR and FORM, that he stopped using marijuana because it was not worth losing his job and because it is illegal. (Response to FORM; FORM, Item 4)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the adjudicative guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

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<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included four exhibits (Items 1 - 4) proffered in support of the Government's case.

<sup>4</sup> Directive. 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## **Analysis**

### **Drug Involvement**

Applicant illegally used a controlled substance for nearly five years until 2012. He had previously used marijuana in 1984, but resumed using and purchasing the drug after 23 years. His more recent illegal drug use began at or near the time he was granted a top secret security clearance. He did so with full knowledge that such conduct might jeopardize his security clearance, and that it was against the law. This information reasonably raises a security concern that is stated at AG ¶ 24 as follows:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

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

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(1) 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 (2) inhalants and other similar substances;

More specifically, available information requires application of the following AG ¶ 25 disqualifying conditions:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(g) any illegal drug use after being granted a security clearance.

In response to the SOR and the FORM, Applicant did not present information that would support any of the mitigating conditions listed at AG ¶ 26. He claims he will not use marijuana in the future and argues that abstinence for four years is sufficient. I disagree. Applicant was willing to resume his drug use at the age of 49 after last using marijuana when he was in his mid-20s. Further, he decided to resume his drug involvement while holding a security clearance. He knew or should have known such conduct was unacceptable within the industrial security program. On balance, Applicant did not mitigate the security concerns established by the Government's information.

In addition to my evaluation of the facts and my application of the appropriate adjudicative factors under Guideline H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant's use of marijuana, despite clear and consistent policies against such conduct, raises doubts about his judgment, reliability, and willingness to follow rules and regulations in the protection of sensitive information. Because the protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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 available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge