



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



In the matter of:

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) ISCR Case No. 15-02232  
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Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant: *Pro se*

November 2, 2016

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 25, 2014. On December 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 26, 2016. He answered the SOR in writing on February 7, 2016, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on April 19, 2016. DOHA issued a notice of hearing on May 3, 2016, and I convened the hearing as scheduled on May 24, 2016. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified on his own behalf, but

submitted no exhibits. DOHA received the transcript of the hearing (TR) on June 2, 2016. I granted Applicant's request to keep the record open until June 24, 2016, to submit additional matters. He submitted Applicant's Exhibit A. The record closed on June 24, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR, with explanations.

### **Guideline H - Drug Involvement**

Applicant is a 26 year old "Federal Contractor." (GX 1 at pages 5 and 14.) He has worked for his current employer since November of 2013. (GX 1 at page 14.)

1.a~1.e. Applicant used marijuana, mostly on weekends, for a period of ten years, from 2005 to 2015. (TR at page 18 line 5 to page 20 line 14, and at page 22 line 4 to page 23 line 22.) He used it after his Personal Subject Interview of September 2014, and after his Answers to Interrogatories of October 2015. (GXs 2 and 3.) He ceased its usage just prior to the issuance of the SOR.

From 2008~2012 was Applicant's heaviest usage, when he is estimated to have used marijuana more than 600 times. (TR at page 18 lines 5~18.) He also purchased the drug on numerous occasions. (TR at page 18 line 19 to page 19 line 7.)

In 2009, Applicant was terminated from his employment after failing a drug screening on his first day of work. (TR at page 14 line 23 to page 17 line 2.)

Applicant also used and purchased hallucinogens, such as mushrooms and LSD, with varying frequency from November of 2008 to December of 2011. (TR at page 21 line 3 to page 22 line 3.) He used cocaine twice, once in August of 2009, and again in September of 2010. (TR at page 20 line 15 to page 21 line 2.) Finally, Applicant intentionally misused the prescription drug Tramadol, which was prescribed to another person, from November of 2012 to March of 2013. (TR at page 25 lines 14~25.)

### **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 useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the 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. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

Section 7 of Executive Order 10865 provides that adverse 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**

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), "*any drug abuse*" may be disqualifying. Applicant used marijuana more than 600 times, Tramadol without a prescription, hallucinogens, and cocaine twice. In addition, "*testing positive for illegal drug use*," and "*illegal drug . . . purchase*" under Subparagraphs 25(b) and 25(c) may be disqualifying. Here, Applicant tested positive for illegal drug usage in 2009, and purchased both marijuana and hallucinogens on numerous occasions.

I find no countervailing mitigating condition that is applicable here. Applicant used various illegal substances for a period of ten years, and only ceased said usage just prior to the issuance of the SOR.

### **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. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement.

### **Formal Findings**

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

Paragraph 1, Guideline H:                      AGAINST APPLICANT

Subparagraphs 1.a.~1.e.:                      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.

Richard A. Cefola  
Administrative Judge