



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02488
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: Elaine L. Fitch, Esq.

11/07/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by his past drug involvement. After graduating from college over two years ago, he stopped using illegal drugs. He presented sufficient evidence, including a good employment and academic record, as well as personal and environmental changes, to conclude that it is unlikely he will be involved with illegal drugs in the future. His past conduct no longer raises concerns about his ability and willingness to follow rules and regulations regarding the proper handling of classified information. Clearance is granted.

**History of the Case**

On October 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the drug involvement and criminal conduct guidelines.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On April 11, 2016, Department Counsel was ready to proceed and forwarded the case for assignment to an administrative judge to schedule a hearing in the matter. On August 12, 2016, I was assigned the case and, after coordinating with the parties, scheduled the hearing for September 29, 2016.<sup>2</sup> The hearing was convened as scheduled, and the exhibits offered by both sides were admitted in evidence without objection.<sup>3</sup> Applicant elected to testify. No other witnesses were called by either side. The hearing transcript (Tr.) was received on October 11, 2016.

### **Findings of Fact**

Applicant, who is in his early twenties, is employed as an engineer for a defense contractor. In connection with his current employment, Applicant submitted a security clearance application (SCA) in 2014. Applicant voluntarily disclosed on the SCA his experimentation and involvement with illegal drugs, primarily marijuana, while in high school and college.

Applicant graduated from high school in 2010. He worked part-time while going to school, including at a warehouse during his senior year of high school. He excelled academically and was accepted by one of the top schools in the country. He graduated from college in 2014, with degrees in electrical engineering and computer science. He was heavily involved in community activities while in high school and college, including volunteering with Habitat for Humanity building homes for low-income families in a distressed urban U.S. community.

Applicant admits that he started experimenting with illegal drugs in high school and continued to use drugs, though on a less frequent basis, throughout college. While in high school, Applicant would generally be the one tasked with purchasing the marijuana for himself and his friends. He would charge his friends and make some extra money in the process. He credibly testified that he last used any illegal drugs shortly before graduating from college in May 2014.

After graduating from college, Applicant received several job offers, a mix of private employers and federal contractors. He chose to begin his professional career for his current employer, in part, because he wants to put his talents to work for the national defense and is considering joining the U.S. military. His performance appraisals reflect that he has consistently met or exceeded job requirements and goals. (Ax. B) His current supervisor, an officer in the U.S. military, and a former roommate submitted reference letters attesting to Applicant's reliability, trustworthiness, and overall good character (Ax. C) Applicant's supervisor notes that Applicant has "performed exceptional work" and "stepped up to get results during schedule crunches." (Ax. C)

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<sup>2</sup> Correspondence with the parties, the notice of hearing, and case management order are attached as Hearing Exhibits (Hx.) I – III, respectively.

<sup>3</sup> Government exhibits (Gx.) 1 and Applicant's exhibits (Ax.) A and B were admitted at hearing. I subsequently marked the three reference letters that Applicant submitted with his Answer as Ax. C.

Applicant grew up and went to high school in State A, attended college in State B, and now resides, works, and is attending graduate school in State C. He anticipates receiving a master's degree in 2019. He plays on his company's softball team, and his current group of friends primarily consists of coworkers and others who work for the federal government, either as direct employees or as cleared government contractors. He no longer regularly associates with those he used drugs with in high school or college. In addition to disclosing his past drug involvement on his SCA and discussing the matter fully at hearing, Applicant told his parents about his past drug involvement. He credibly testified that he will not use or have any other involvement with illegal drugs in the future on condition of automatic revocation of his security clearance. (Tr. 40)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline H, Drug Involvement**

The security concern regarding illegal drug involvement is set forth at AG ¶ 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.

Applicant's past use of marijuana and other drugs, as well as his more extensive involvement with marijuana in high school, raise the drug involvement security concern. The record evidence also establishes the following disqualifying conditions:

AG ¶ 25(a): any drug abuse;<sup>4</sup> and

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant's last use of marijuana occurred more than two years ago, before he graduated from college and began his professional career. He chose to work for a federal contractor, knowing full well that such employment is incompatible with his past lifestyle. In the past 30-plus months, Applicant has amassed a good employment record, started graduate school, and made other changes in his personal life demonstrating a clear break from his past. When visiting family in State A, Applicant has found himself in circumstances where he suspected others were possibly using illegal drugs. He immediately removed himself from the environment and otherwise acted as expected of cleared individuals.

Additionally, Applicant has been candid about his past drug involvement from the outset of the security clearance process. He also told his parents about his past drug involvement. Through these voluntary disclosures, Applicant not only demonstrated the honesty and trustworthiness demanded of cleared contractors, but also removed this matter as a potential source of vulnerability. In short, Applicant established that his past involvement with illegal drugs is unlikely to be repeated and he can be entrusted with classified information. In reaching this favorable conclusion, I considered the whole-person factors at AG ¶ 2(a) and the following mitigating conditions:

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<sup>4</sup> The Directive defines "drug abuse" as the "illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." See AG ¶ 24(b).

AG ¶ 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; and

AG ¶ 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; [or] (4) a signed statement of intent with automatic revocation of clearance for any violation.

## **Guideline J, Criminal Conduct**

The security concern regarding criminal conduct is explained at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant's past illegal drug involvement raises the criminal conduct security concern. See AG ¶ 16(c). However, for similar reasons explained under Guideline G, Applicant's past conduct no longer raises a concern about applicant's current judgment, reliability, trustworthiness, and ability to follow rules and regulations. See AG ¶¶ 17(c), 17(e), 17(g).

A security clearance determination is not intended to punish a person for past conduct. Instead, an administrative judge examines a person's past conduct and present circumstances to make a predictive judgment about how they might handle their security obligations and responsibilities in the future.<sup>5</sup> Here, Applicant mitigated the concerns raised by his past conduct. Since graduating from college, Applicant has matured greatly, as well as made changes to his environment and those with whom he associates. This record evidence of change and reform, coupled with Applicant's honesty during the security clearance process, leaves me with no questions or doubts about his ability and willingness to follow rules and regulations regarding the proper handling and safeguarding of classified information.

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<sup>5</sup> ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).

### **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 (Drug Involvement)	FOR APPLICANT
Subparagraphs 1.a – 1.g:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct)	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

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Francisco Mendez  
Administrative Judge