



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-03894

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/08/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana sporadically between 1996 and 2014. While he now claims no future intent to use illegal drugs, he told an investigator that he likes using marijuana and will resume using marijuana after he retires. Applicant's apparent abstinence from illegal drugs for the past three years is not sufficient to mitigate the security concerns raised by a history of illegal drug use for much of the past 18 years. His request to be eligible for access to classified information is denied.

**Statement of the Case**

On August 19, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. During his background investigation, Applicant was interviewed on November 10, 2014, by a government investigator. After reviewing the completed background investigation, Department of

Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

On March 24, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline H (Drug Involvement).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On May 12, 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 May 20, 2016, and was advised he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM. The record closed after Applicant did not object or submit additional information by the June 19, 2016 deadline. The case was assigned to me on April 7, 2017.

### **Findings of Fact**

Applicant is a 51-year-old employee of a defense contractor. He has held his current job since August 2014 after a 19-month period of unemployment. Before then, he worked for a federal contractor for 13 years. He has a college degree he earned in 1999, and he has been working in the construction industry or related fields for most of his career. <sup>4</sup> (FORM, Item 5)

Under Guideline H, the Government alleged that Applicant used marijuana between September 1996 and March 2014 (SOR 1.a). This allegation was based on disclosures Applicant made in his e-QIP and in the summary of the November 2014 interview. Applicant admitted the SOR allegation, indicating also that he currently (as of the date of his Answer) does not use marijuana and has no future intent to use marijuana. However, during Applicant's November 2014 interview, Applicant stated that he intends to smoke marijuana again after he retires because he enjoys it. Applicant used marijuana with friends in social settings. He still associates with persons who use marijuana. (FORM, Items 1, 4 - 6)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</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 new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

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

<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. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 - 6).

<sup>4</sup> There is no indication in this case file that Applicant held a security clearance during that employment.

<sup>5</sup> Directive. 6.3.

(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.

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>6</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>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</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>9</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>10</sup>

## **Analysis**

### **Drug Involvement**

Available information supports the SOR allegation. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 24 as follows:

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 25(a) (*any drug abuse (see above definition)*); and 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*). I have also considered the following AG ¶ 26 mitigating conditions:

(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) dissociation 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.

Involvement with illegal drugs is incompatible with DOD's drug-free workplace policies. Its use and possession are still violations of federal law. Applicant did not establish that he will not engage in such conduct in the future. There is no indication in this record that Applicant has used marijuana since March 2014. But he used marijuana whenever it suited him for most of the past 18 years, and he still associates with persons who use marijuana. Further, he stated that he likes using marijuana and may use it again in the future. This information precludes application of any of the Guideline H mitigating conditions. The record as a whole is not sufficient to resolve the doubts raised by the Government's information about Applicant's drug use.

In addition to my evaluation of the facts and 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 has not produced sufficient information to resolve doubts about his suitability stemming from his drug use. Because protection of the national interest is the principal focus 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

Subparagraph 1.a:             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.

MATTHEW E. MALONE  
Administrative Judge