



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



In the matter of: )  
)  
) ISCR Case No. 15-04350  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Catie E. Young, Esquire

February 14, 2017

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 24 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E 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 for SORs issued after September 1, 2006.

Applicant, through counsel, replied to the SOR (RSOR) in writing on April 20, 2016, and requested that his case be decided by a hearing before an Administrative Judge. I received the case assignment on May 31, 2016. DOHA issued a notice of hearing on June 16, 2016, and I convened the hearing as scheduled on July 19, 2016.

At the hearing, the Government offered Exhibits 1 through 3, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits A through H, which were also received without objection. Two additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on July

27, 2016. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the other witnesses, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 26 years old. He is unmarried, and he has no children. Applicant received a Bachelor of Science degree in Mechanical Engineering in 2013. Applicant has been employed since September 21, 2014, as an engineer by a defense contractor, and he seeks a DoD security clearance in connection with employment in the defense sector. (Tr at 35-37.)

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

The SOR lists five allegations concerning drug usage and purchase (1.a. through 1.e.) under Adjudicative Guideline H. The allegations will be discussed in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant, "used marijuana with varying frequency, from November 2008 through at least January 2016." Applicant admitted this allegation in his RSOR, and while tracing the history of his marijuana usage, he wrote, "The majority of my drug involvement was when I attended [my college] and early in my career. . . my last use was on January 18, 2016, and I have no intention to ever use marijuana or any other illegal drug in the future." Finally, he wrote, "Admittedly, my past drug use and continued usage after submitting my security clearance application is an unfortunate lapse of judgment, which has left me extremely remorseful."

At the hearing, Applicant confirmed that he began using marijuana in 2008 while he was in college, primarily to fit in with college classmates. While in college, he used marijuana two or three times a week until 2013, when he graduated. He said there was period of eight months after he left college, from January 2014 through August 2014, when he stopped using drugs because he was working for a company for which he was subject to drug testing. He began using marijuana again in August 2014 and he continued using it on a regular basis "a few nights a week" until January 2016. (Tr at 38-46.)

Applicant also continued using marijuana after he began working for his present employer, even after he signed and acknowledged that it was a drug-free workplace. He testified that he continued using marijuana even after he began his employment and after applying for a security clearance because he was afraid that he might not have enough in common with his friends, and he would be alone. Finally, Applicant testified that his last marijuana usage was six months before the date of the hearing, and his

lifestyle is now drug free. (Tr at 46-48,65-66.) Applicant did confirm, "I would say that it was hard giving up marijuana and it's hard to redevelop your life. But I'm very proud that I am struggling." (Tr at 82.)

1.b. The SOR alleges that Applicant, "purchased marijuana with varying frequency and sold marijuana on at least two occasions." Applicant admitted this allegation in his RSOR, and he wrote that he purchased small quantities of marijuana throughout his years attending college, either from friends or friends of friends. He also sold less than half an ounce of marijuana on two occasions. Finally he reiterated that he no longer smokes marijuana. Applicant testified that he last purchased marijuana in January 2016. (Tr at 53.)

1.c. The SOR alleges that Applicant, "used Adderall without a prescription, with varying frequency, from January 2009 through at least June 2014." Applicant admitted this allegation in his RSOR, and wrote that he was offered and used Adderall as a study aid to help focus and cram for tests. He also wrote, "I have not used any amphetamines since graduating [from his university], nor do I have any desire to use these drugs in the future." Applicant testified that he used Adderall less than 20 times, and he last used Adderall without a prescription in June 2014. (Tr at 53-56.)

1.d. The SOR alleges that Applicant, "purchased and used hallucinogenic mushrooms in May 2010." Applicant admitted this allegation in his RSOR, and he wrote that he had used the drug one time at the "Sun God Festival, which was a music festival put on by [his college] every year." He also wrote, "I have not used mushrooms since May 2010, and have no intention to use this drug in the future."

1.e. The SOR alleges that Applicant, "purchased and used ecstasy in May 2011." Applicant admitted this allegation in his RSOR, and he wrote that he had used the drug one time at the "Sun God Festival." He also wrote, "I have not used ecstasy since May 2011, and have no intention to use this drug in the future."

## **Guideline E- Personal Conduct**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. Applicant executed an Electronic Questionnaires for Investigations Processing (e-QIP) on October 13, 2014. (Exhibit 1.) The SOR alleges that Applicant falsified material facts in response to a question under "Section 23 - Illegal Use of Drugs," by falsely alleging that he had smoked marijuana from November 2008 through June 2013 when in actuality he continued to smoke marijuana through at least January 2016. Applicant admitted this allegation in his RSOR, writing that this was the first time he had gone through the security clearance process, and "I was scared that if I was truthful about the duration of my marijuana usage I would be automatically denied." He wrote that when he met with an investigator regarding the clearance process, and was asked about his drug usage, he "corrected my initial concealment." Also, when he was

asked about his future drug usage, he told the investigator he planned to stop smoking marijuana, “when I get my clearance.”

At the hearing, Applicant conceded that he knowingly falsified his answer with the intent to mislead the Government because, “I knew the truth would bury me.” (Tr at 67-68.) Applicant also admitted that he did not reveal to his employer that he used drugs after he started working there because he was afraid he would lose his job. (Tr at 72-73.) Applicant also conceded that he did not identify to the investigator that he had lied on his security clearance application. (Tr at 80.)

## **Mitigation**

Applicant submitted a number of documents in mitigation. These included, but were not limited to the following: the results of a drug test taken on April 8, 2016 (Exhibit A); a statement of intent of Applicant that he does not intend to use drugs in the future (Exhibit B); performance evaluations of Applicant for 2014 and 2015 (Exhibit C); eight extremely complimentary character letters written on behalf of Applicant (Exhibit D); and his degree, certificates, and honors and awards received by Applicant. (Exhibit E, F.)

As stated above, two additional witnesses testified on behalf of Applicant. They both have known Applicant for two years from his current employment. They both spoke in laudatory and positive terms about Applicant. (Tr at 17-34, 91-111.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised 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 AG ¶ 2(a) describing the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 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. AG ¶ 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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 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 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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant’s improper and illegal drug abuse, specifically the use of marijuana as recently as January 2016, including while he was working for his current employer since September 21, 2014, is of great concern, especially in light of his continued desire to have access to the nation’s secrets. Applicant’s overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement disqualifying conditions ¶ 25(a) “any drug abuse;” and (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.”

I did consider Applicant’s testimony and his written statement that he intends to abstain from using marijuana or any illegal drug in the future. However, the recency of his drug usage, and the fact that Applicant continued his drug use even after he began working for his current employer, despite knowing it violated his company’s policy, are

extremely troubling at this point. I also considered that Applicant was not honest about his drug use when he completed his e-QIP. I therefore conclude that no mitigating condition is applicable under ¶ 26.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded against Applicant.

### **Guideline E - Personal Conduct**

With respect to Personal Conduct, the Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he "failed to provide truthful and candid answers during the security clearance process." The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Because Applicant provided to the Government false and less than complete relevant information that was requested on a security clearance questionnaire, I find that Applicant's conduct supports disqualifying condition ¶ 16(a); "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications . . . determine security clearance eligibility or trustworthiness . . . ."

By Applicant's own admission his conduct in failing to be completely candid as to his drug usage because of the fear that he may not receive a security clearance if he was honest was a knowing and wilful attempt to mislead the Government. While he finally did reveal his drug usage to a Government investigator it was not until after he was questioned about his drug usage. Therefore, I do not find that any mitigating condition is applicable under ¶ 17. I, therefore, resolve Guideline E against Applicant.

### **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. 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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the disqualifying conditions are applicable and controlling, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

### **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:	AGAINST APPLICANT
Subparagraph 1.a.-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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.

Martin H. Mogul  
Administrative Judge