



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



In the matter of: )  
)  
) ISCR Case No. 15-04661  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant: Leon J. Schachter, Esquire

February 3, 2017

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 5, 2016, 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 for SORs issued after September 1, 2006.

Applicant, through counsel, replied to the SOR (RSOR) in writing on March 8, 2016, and he requested that his case be decided by a hearing before an Administrative Judge. I received the case assignment on April 19, 2016. DOHA issued a notice of hearing on May 4, 2016, and I convened the hearing as scheduled on June 21, 2016.

At the hearing, the Government offered Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits A through P, which were also received without objection. Three additional witnesses testified on behalf of Applicant. The record was kept open until July 8, 2016, to allow

Applicant to submit additional evidence. Three letters that were timely received have been identified and entered into evidence without objection as Exhibits Q, R, and S. DOHA received the transcript of the hearing (Tr) on June 29, 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 granted.

### **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 24 years old. He is unmarried, and he has no children. Applicant received a Bachelor of Science degree in Mechanical Engineering and Aerospace Engineering in 2014. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with employment in the defense sector. (Tr at 35-36.)

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

The SOR lists seven allegations concerning drug usage and purchase (1.a. through 1.g.) 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 approximately 40 times between June 2010 and January 2014." Applicant admitted this allegation in his RSOR.

At the hearing, Applicant confirmed that he used marijuana approximately 40 times from June 2010 to January 2014, so about once a month for 42 months. (Tr at 54.) He used the marijuana in his hometown, and at the two houses in which he was living while he was in college. (Tr at 56.)

1.b. The SOR alleges that Applicant, "used cocaine approximately 15 times between February 2013 and June 2014." Applicant admitted this allegation in his RSOR.

During his testimony, Applicant confirmed the amount and frequency of his usage as alleged in the SOR. His cocaine usage occurred at his college house. (Tr at 55-56.)

1.c. The SOR alleges that Applicant, "used MDMA approximately 3 times between December 2013 and July 2014." Applicant admitted this allegation in his RSOR.

Applicant also confirmed his MDMA or ecstasy usage on three occasions, at his college house or at a music festival. (Tr at 56-57.)

1.d. The SOR alleges that Applicant, “used Adderall without a prescription with varying frequency between June 2011 and October 2014.” Applicant admitted this allegation in his RSOR.

Applicant also testified that he used Adderall without a prescription. (Tr at 57-58.) He stated that he had previously been prescribed Adderall to help him focus while taking tests, but he did not want to continue having to go to a doctor to get a prescription, and his health insurance would not pay for the prescription, so he got the Adderall from a friend. (Tr at 62-63.)

1.e. The SOR alleges that Applicant, “used Xanax without a prescription approximately 3 times between May 2014 and June 2014.” Applicant admitted this allegation in his RSOR.

Applicant also testified that he used Xanax without a prescription on three occasions at his college house. (Tr at 57.)

1.f. The SOR alleges that Applicant, “purchased marijuana, cocaine, MDMA, Adderall, and Xanax from approximately June 2010 to October 2014.” Applicant admitted in part and denied in part this allegation in his RSOR.

He did not have an estimate as to the amount he spent for the purchase of drugs, but he did testify that it was just through available funds, and it did not cause him any financial problems. (Tr at 69.)

1.g. The SOR alleges that Applicant, “continues to associate with friends who use illegal drugs.” Applicant denied this allegation in his RSOR.

Applicant testified that most of his usage of illegal drugs, or drugs without a prescription, occurred while he was a student. He did use Adderall without a prescription and MDMA one time while he was an intern at his present employer, before he became a full-time employee. He was still a student at this time. (Tr at 65-66, 70.) Applicant confirmed that around October 2014, during his fifth year in college, he stopped using all drugs. (Tr at 21-22.)

## **Mitigation**

Applicant submitted a signed letter, dated June 5, 2016, in which he wrote that he has no future intent to use any illegal controlled substance or abuse prescription drugs in the future, and he willingly will submit to random drug testing and to unqualified revocation of his security clearance in the event of any future drug usage. (Exhibit A.)

Applicant also talked about some of the activities in which he is engaged that are not compatible with his drug usage. These include rock climbing, running, and other forms of exercise. Applicant submitted evidence showing he has engaged in a 4 mile walk/run and also that he has joined a gym. Applicant also averred that he has made new friends during his fitness activities who do not, to his knowledge, abuse illegal

drugs. (Tr at 27-32, Exhibits D, E.) Exhibit F establishes that Applicant was a volunteer for one day at a food bank.

As reviewed above, three witnesses testified on Applicant's behalf. Two of the witnesses were co-workers and the third was a longtime friend. All of the witnesses believe that Applicant will not be using any illegal drugs in the future. (Tr at 77-92.) The witnesses also submitted character letters as well. (Exhibits N, O, P.) Several other positive and laudatory character letters were also submitted on Applicant's behalf. (Exhibits G, H, L.)

A Biopsychosocial Assessment, prepared by a Licensed Social Worker (LSW), was offered into evidence. (Exhibit M.) This person opined "that although [Applicant] is two years out of college, he is sincere in his avowal to not engage in the use of mood or mind-altering substances in his life again." There was some concern that this LSW did not know, or refer to in her report, the full extent of Applicant's drug use history. However, upon careful review I find that the report was quite complete and thorough, specifically in paragraph nine of her report, Substance Abuse History, where most of Applicant's drug history was discussed.

During Applicant's testimony he conceded that his parents were not fully aware of his previous drug usage. After the hearing, he submitted letters, dated June 30, 2016, and signed by both of Applicant's parents, in which they acknowledged that they are aware of the allegations in the SOR regarding Applicant's drug history. They further wrote that while they are disappointed by his previous conduct, they do believe he has matured and they believe very highly in him. (Exhibit B.)

### **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 approximately 40 times and as recently as October 2014, while he was working for his current employer as an intern, 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 ¶ 25(a) “any drug abuse;” and (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.”

However, I find credible his testimony and his written statement that he intends to abstain from using marijuana or any illegal drug in the future. I also considered that Applicant stopped using any illegal drug before he became a full-time employee of his current employer.

Therefore, I conclude that ¶ 26(a) is applicable since “the behavior . . . was so infrequent” and “happened under such circumstances that it is unlikely to recur.” Also, ¶ 26(b) “a demonstrated intent not to abuse any drugs in the future,” including (3) “an appropriate period of abstinence;” and (4) “a signed statement of intent with automatic revocation of clearance for any violation,” is applicable and mitigating.

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 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 for 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 mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions or 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 mitigated the security concerns.

## **Formal Findings**

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant

## **Conclusion**

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

Martin H. Mogul  
Administrative Judge