



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



In the matter of: )  
)  
) ISCR Case No. 15-05075  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Catie E. Young, Esq.

March 22, 2018

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On January 18, 2017, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline H.<sup>1</sup> (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

On February 28, 2017, Applicant submitted a written reply to the SOR (RSOR), and requested a hearing before an administrative judge. The case was assigned to me on April 3, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

of hearing on April 19, 2017, setting the hearing for June 7, 2017. The hearing was convened as scheduled on that date.

At the hearing, the Government offered Exhibits 1 and 2, which were admitted without objection. Applicant testified on his own behalf and presented documents, which were identified and entered into evidence without objection as Exhibits A through G. DOHA received the transcript of the hearing (Tr) on June 14, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 52 years old. He has never been married, and he has no children. He has received both a Master's degree and a Bachelor's degree in Electrical Engineering. Applicant is employed by a defense contractor as a Principal Systems Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector.

#### **(Guideline H - Drug Involvement)**

The SOR lists one allegations (1.a.) under Adjudicative Guideline H.

1.a. The SOR alleges that Applicant used marijuana from approximately May 2011 to May 2013, after he was granted a security clearance. Applicant admitted this allegation in his RSOR, writing that his use occurred on two occasions, once in 2011, and once in 2013. Applicant gave further explanation in his RSOR of his marijuana use, which he explained future during his testimony.

At the hearing, Applicant testified that he first received a security clearance in 2000, when he was employed by the defense contractor for which he previously worked from 1996 to 2016. On Applicant's most recent Electronic Questionnaires for Investigations Processing (e-QIP) he revealed that he had used marijuana on November 2011 and on May 2013. (Tr at 21-24.)

The first use was during the Thanksgiving weekend in 2011. Applicant was with a friend, who offered Applicant some of the marijuana that the friend had received by way of a medical prescription. Applicant testified that he took one inhalation of the marijuana and he did feel an effect, but he used no further marijuana on that occasion. (Tr at 24-26.)

The second usage occurred in May 2013 during a Memorial Day vacation with some friends. After a meal with friends, some of them were sitting around a fire pit and he was offered marijuana. Applicant testified that he again took only one inhalation of the marijuana from which he felt some effect. Applicant further testified that since this

second marijuana usage in 2013, he has not used any marijuana or any other illegal substance, and he does not intend to use any illegal substance in the future. Applicant's has also never purchased marijuana. (Tr at 26-28, 41.) Applicant has taken two drug tests, and they have both resulted in a negative finding. (Exhibit A.) He also signed a statement of intent agreeing that if he used an illegal drug in the future, he would be subject to an immediate revocation of his security clearance. (Exhibit B.)

Applicant testified that his only other use of marijuana was many years earlier when he was a sophomore in college. He stopped using at that time because school was more important and he did not see much benefit in it. (Tr at 38-39.)

Applicant further testified that he never appeared at work under the influence of any illegal drug, any he does not associate with any person or persons who use any illegal drug, including the persons with whom he used marijuana in the past. Further he stated that he has never been arrested or charged with any illegal drug related offenses. Applicant explained that he has had colon cancer that was diagnosed in 2015, for which he received surgery and chemotherapy. This has caused him to do a lot of soul searching, and as a result, he is extremely diligent to live a healthy life, including eating well, exercising, getting sufficient sleep and abstaining from consuming alcohol and any illegal substance, including marijuana. Finally, Applicant conceded that he was aware that he was not allowed to use any illegal drug while holding a security clearance, and he called it a mistake that was completely out of character and would never happen again. (Tr at 28-37, 40, 51.)

## **Mitigation**

In addition to the results of the drug testing and the letter of intent, referred to above (Exhibits A and B), Applicant submitted seven positive and laudatory character letters (Exhibit C); five awards and certificates Applicant has earned (Exhibit D); Applicant's salary reviews of several of his years of employment with his previous employer; and copies of the degrees he has earned. (Exhibit G.)

## **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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 (EO) 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**

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (a) any substance misuse;

(c) Illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana on two occasions while holding a DoD security clearance, and the Government presented sufficient information to support the factual allegations under SOR ¶ 25. (a), (b), and (f).

I have also considered Applicant only used marijuana two times while holding a security clearance that he has held since 2000, and the most recent was in 2013, more than 4 years ago. Both incidents only consisted of one inhalation. Also, Applicant testified credibly and powerfully that he will never use marijuana or any other illegal substance again, and he exhibited sincere remorse for his past usage. He also offered into evidence his letter of intent never to use illegal substances again. Finally, I considered Applicant's very positive letters of recommendation, and his strong employment history.

(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) the individual acknowledges his or her drug involvement and substance misuse. . . and has established a pattern of abstinence . . .

Because of these reasons, I find that mitigating factors ¶ 26. (a) and (b) are applicable and controlling in this case. I therefore find Guideline H 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis.

Overall, the record evidence leaves me with no significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement security concerns under the whole-person concept.

### **Formal Findings**

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a.:	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