



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-00947

**Appearances**

For Government: Andre M. Gregorian, Esquire

For Applicant: Alan Edmunds, Esq.

02/14/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On August 31, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).<sup>1</sup> Applicant answered the SOR allegations on October 18, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on May 24, 2017. DOHA issued a notice of hearing that same day, setting the hearing for July 26, 2017. The hearing was convened as scheduled.

The Government offered four documents, accepted without objection as exhibits (Exs.) 1-4, as well as two hearing exhibits that were accepted without objection as HE

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<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after September 1, 2006. Since that time, the AG were amended and are now in effect for any adjudications on or after June 8, 2017. This includes the decision here.

1-2.<sup>2</sup> Applicant offered testimony, three character witnesses, and 13 documents, which were accepted without objection as Exs. A-N. The transcript (Tr.) was received on August 2, 2017, and the record was closed. Based on my review of the documentary evidence, testimony given, and Applicant's demeanor, I find that Applicant mitigated drug involvement and personal conduct security concerns.

### **Findings of Fact**

Applicant is a 35-year-old systems engineer staff member who has worked for the same employer since 2005, the year he earned a bachelor's degree. He presently maintains a security clearance, initially granted in 2006. He works in a drug-free work place and has been subject to drug testing at his place of employment. Applicant married in 2008. The couple has two pre-school children.

In 2000, Applicant, then age 18 and in high school, first tried marijuana. He then used it again in college. During neither period was he a habitual abuser of the drug; his marijuana use was infrequent.<sup>3</sup> (Tr. 39) In 2005, Applicant began his present employment, knowing he was working in a drug-free work-place. In 2005, he applied for a security clearance. He was granted a security clearance in March 2006.

In mid-2012, when he was 29 years of age, Applicant went on a vacation with some male friends and they rented a condominium. One of those present had a license for medical marijuana. (Tr. 38) When marijuana was offered, Applicant consumed the drug once. It was his only use of an illegal drug since college. (Tr. 50) He knew marijuana was illegal and that he could not both use the drug and hold a security clearance. He explained that "[i]t was a mistake. It was . . . an instance where it was available and I - I partook when I shouldn't have." (Tr. 49)

Applicant has not used marijuana since March 2012. Applicant is credibly contrite and committed to not abuse drugs again. (Tr. 41) Subsequent marriage, fatherhood, and maturation have significantly changed his outlook regarding drugs. Applicant no longer associates with those who use marijuana, nor does he frequent venues where drugs might be available. (Tr. 58-59, 61) Should he ever find himself in the presence of drug users, he would leave. (Tr. 62)

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<sup>2</sup> What has been marked and accepted as Ex. 3 was initially offered as Ex. 4. After objection by Applicant, the document proffered originally as Ex. 3 was withdrawn, and the remaining documents renumbered accordingly.

<sup>3</sup> Applicant stated that his frequency of drug use was "very infrequent. It was not even once a year." (Tr. 39) In his lifetime, he believes he used marijuana about five to six times over the 12 years at issue. (Tr. 51) This is not inconsistent with his statement that his past marijuana use "averaged out to once every two years" between 2000-2012. (Tr. 53-54, 64)

To the best of his knowledge, Applicant's wife has never used drugs. She does not condone their use.<sup>4</sup> She would have an "extremely negative" reaction should anyone expose her preschool children to drugs, a fact Applicant cites as an added incentive for him to eschew drugs and those who use them in the future. In addition, Applicant has signed a statement indicating that he is aware that any future drug use would be considered a violation of any security clearance granted and will be grounds for automatic revocation. (Ex. D)

In an SCA completed in 2005, Applicant denied having used illegal drugs in the preceding seven years despite the fact he had recently use marijuana in high school and college (2000-2005). Applicant describes this inaccuracy as an "erroneous mistake." (Tr. 38-39; 45-46) In contrast, when completing a security clearance application (SCA) in September 2015, Applicant disclosed that he had used marijuana in the past, noting that he had abandoned all drug use in 2012.

A senior work peer finds Applicant to be a "trustworthy, straight-up, honest guy." (Tr. 17) He ranks Applicant as a top performer. Applicant's former supervisor described Applicant as a superior employee. Like the rest of Applicant's leadership team, he supports Applicant in this matter. Noting Applicant's marijuana use in 2012 as a "mistake," this witness has no reservations about Applicant's suitability for a security clearance. (Tr. 31) Applicant's college roommate from 2001 to 2003 has never known Applicant to use marijuana. He described Applicant as a trustworthy family man "who's worked very hard in his job to move up." (Tr. 24)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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

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<sup>4</sup> Although Applicant's use of marijuana in 2012 predated the birth of their children, Applicant noted that he has "not heard the end of it" from his wife. (Tr. 61)

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

### **Analysis**

#### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, can raise questions about an individual's reliability and trustworthiness. This is because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Such use also raised questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, Applicant admitted he used marijuana on multiple occasions between 2000 and 2012. One of those instances occurred after he was granted a security clearance in March 2006. This is sufficient to raise AG ¶ 25(a): any substance misuse, and ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position. The Government's substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

- (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, provides evidence of actions to overcome this problem, and has established a pattern of abstinence, including but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's last illegal use of marijuana, an illegal substance, took place nearly six years ago. In the life of this Applicant, in terms of age, maturation, marriage, and fatherhood, sufficient time has passed to deem the event as not being recent. Between 2000 and 2012, he used marijuana about five or six times. I find that his usage was infrequent. At the hearing, Applicant was credible and candid. His character references described the Applicant of today as a mature, trustworthy family man who excels at his work. Applicant has no intention of returning to drugs, or jeopardizing either his marriage or his career. I find AG ¶ 26(a) applies.

Since marrying his wife, who has no apparent tolerance for drugs, and then becoming a father, Applicant's attitude toward drugs has evolved. He no longer associates with those who use drugs, or attends venues where drugs might be present. His focus in life is now exclusively on his career and his family. He provided a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of his national security eligibility. Therefore, AG ¶ 26(b)(1)-(3) apply.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities, and

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified or sensitive information.

Here, Applicant inaccurately answered “No” on his August 2005 SCA in response to a question inquiring whether he had illegally used any controlled substance, for example marijuana, since the age of 16 or in the preceding seven years. In truth, Applicant had used marijuana on about four or five occasions after the age of 16, between 2000 and 2005. He also used marijuana once in 2012, after being granted a security clearance in 2006. Consequently, these two disqualifying conditions apply.

AG ¶ 17 describes conditions that could mitigate security concerns. Potentially applicable in this matter is AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, untrustworthiness, or good judgment.

Here, Applicant exhibited two instances of unreliable conduct reflecting questionable judgment. These include the five or six instances he used marijuana between 2000 and 2012, and which included his singular use of the drug in 2012 after being granted a security clearance. Spread out over a dozen years, his use of marijuana was mainly in his high school and college years. Only a singular incident occurred in this decade, in 2012, while maintaining a security clearance. His drug use in academia could be readily dismissed due to youthful indiscretion from the distant past. This is particularly true given its infrequency.

The 2012 incident, however, is of greater concern. In using marijuana at that time, he breached the trust extended to him by the Government. He also broke the law in using an illegal substance. Since that time, however, Applicant has married, become a father, matured, impressed his work peers, and concentrated on his profession. He is no longer going for “trips with the boys,” but living a mature lifestyle. This singular event is not likely to recur, due to his maturity, his better understanding of what he has to risk with his career, and, perhaps most importantly, the potential wrath of his wife, who has no tolerance for the drug culture crossing paths with herself or her two very young children. The Applicant of today, as he appeared at the hearing and as described by his witnesses, is not a thoughtless man who acts on whim. He is genuinely contrite and sincere in his promise not to use illegal drugs again. Given all these considerations, I find AG ¶ 17(c) applies.

## **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of an applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past drug involvement and personal conduct, I considered his present life, candor, and credible explanations.

Applicant is a 35-year-old systems engineer staff member who has worked for the same employer since 2005. He was granted a security clearance in 2006. He has earned a bachelor's degree. Married in 2008, he has two very young children.

Applicant tried marijuana in high school and in college, up to four or five times in total. He refrained from the drug by 2005, obtained a security clearance in 2006, then lapsed and used the drug again in early 2012. He has no explanation for this relapse except that he was weak while on a vacation with some male friends. Today, he is more mature. He has married a woman who does not use marijuana and has no tolerance for drugs, especially around their two preschool children. Applicant has turned his focus to his family life and his profession. He no longer associates with those who use drugs or attends venues where drugs might be found. The passage of six years has brought considerable maturity. Similarly, his neglect to mention high school and college marijuana use on his 2005 SCA, whether intentional or by mistake, was the result of immature or neglectful behavior exhibited more than a decade ago. This failure is further reduced in severity by his later, volitional, and candid, disclosure of past drug use in 2012. Under these circumstances, I find Applicant has mitigated drug involvement and substance misuse, as well as personal conduct, security concerns. Clearance is granted.

## **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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge