



# Applicant for Security Clearance

March 28, 2018

At the hearing, the Government offered Exhibits 1 through 3, 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 L. One additional witness testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on June 16, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the witness, 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 25 years old. He is married, and he has no biological children, but one stepdaughter. He is a high school graduate. Applicant served in the United States Navy from 2009 to 2013, and he received an Honorable Discharge. Applicant is employed by a defense contractor as a Linux Systems Administrator, and he seeks a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists four allegations (1.a. through 1.d.) under Adjudicative Guideline H.

1.a. The SOR alleges that Applicant used marijuana with varying frequency from approximately June 2006 to June 2008. Applicant admitted this allegation in his RSOR. He wrote that he experimented with marijuana use when he was 16 or 17 years of age, while he was living in Vietnam. He described two occasions when he used the marijuana. He further wrote that he has not consumed marijuana in almost 10 year, nor does he knowingly associate with any individual who does use it.

At the hearing, Applicant testified that he used marijuana on two occasions, once in in about 2006 when he was living with his family in Vietnam, and once in the United States in 2008, when he was about 16 or 17. Upon further examination, Applicant remembered on additional use in 2007. Applicant credibly testified that he has not used marijuana since 2008, and he has no intention to use it in the future. (Tr at 44-48, 65.) Applicant also submitted a signed written statement, indicating his intent to never use any illegal drugs in the future, subject to immediate revocation of his security clearance. (Exhibit A.)

1.b. The SOR alleges that Applicant used Oxycodone one time in February 2011, after he was granted a security clearance. Applicant admitted this allegation in his RSOR. He wrote that he used it one time without a prescription for a previous injury. Applicant further wrote that he has not used any prescription medication without a proper prescription since that time in 2011.

At the hearing, Applicant testified that he was granted a security clearance when he was 18, in 2009, shortly after he joined the Navy. He has retained his clearance since that time. (Tr at 35-36.) Applicant testified that while he was in the Navy, he injured his knee after physical training and he asked a friend if he had something to help him with the pain. The friend gave him one Oxycodone pill which he took. Thereafter, Applicant never took another Oxycodone pill without a prescription. He intends to never use a prescription drug in the future if it is not prescribed. (Tr at 52-55.)

1.c. The SOR alleges that Applicant used Spice with varying frequency from July 2012 to October 2012, after he was granted a security clearance. Applicant admitted this allegation in his RSOR. He wrote that he used Spice on two occasions in 2012. He contended that he was never aware that the use of Spice was prohibited while he was in the Navy, and he did not learn that it was prohibited until long after he left the Navy in 2013. Since 2013, he has not been associated with the individuals with whom he used the Spice.

At the hearing, Applicant testified that since his friend purchased the Spice at a tobacco store, he was not aware that it was illegal. Applicant did not like the effect of the Spice on him, and he has never used it since 2012. (Tr at 56-58.)

1.d. The SOR alleges that Applicant purchased marijuana one time in approximately March 2007. Applicant admitted this allegation in his RSOR. He wrote that he purchased the marijuana on one occasion when he was 16 and living in Vietnam. He added that this was nearly 10 years ago, and he still regrets the decision to purchase the marijuana.

At the hearing Applicant testified that he and his friends spent about \$10 for the marijuana that they purchased on that one occasion. (Tr at 45.)

Applicant testified that his last use of any illegal substance was in 2012, and he has no intention of using any illegal substance in the future. (Tr at 59.) He explained that he did not believe he was violating the rules regarding holding a security clearance when he used the Oxycodone and Spice, since he used the Oxycodone one time to help him with an injured knee, and he did not even know that the Spice was illegal. He testified that he now recognizes how important it is to only take legally prescribed prescription medication for injuries and to make certain if a substance is illegal, and not use it if it is illegal. (Tr at 59-60.)

## **Guideline E - Personal Conduct**

The SOR lists three allegations (2.a. through 2.c.) regarding Personal Conduct, under Adjudicative Guideline E.

2.a. The SOR alleges that Applicant deliberately falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that he executed on October 22, 2009. He was asked questions regarding his use of any illegal drugs within the last seven years and he answered "No." He failed to identify the usage of marijuana

as alleged in 1.a., above, which he did identify on his 2014 e-QIP. Applicant admitted this allegation in his RSOR. He wrote that he was advised by his Navy recruiter to be less than candid regarding his previous marijuana usage.

Applicant testified that when he first met the Navy recruiter about enlisting in the Navy, Applicant informed the recruiter that he had previously used marijuana. Applicant claimed that the recruiter informed Applicant that it would be in Applicant's best interest to not disclose the information about his marijuana usage. Applicant stated that, based on the recruiter's advice, he did not disclose his past marijuana use on his e-QIP. After Applicant was separated from the Navy in 2012. When he completed a second e-QIP in 2014, he decided that he should include his previous marijuana usage, which he did. When he was subsequently interviewed by a government investigator about his previous drug usage, Applicant testified that he was completely honest, and he would continue to be in the future. (Tr at 38- 43.)

2.b. The SOR alleges that Applicant deliberately falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that he executed on October 22, 2009. He was asked questions regarding his illegal possession, purchase, manufacture, trafficking, production, transfer, shipping, receiving, handling or sale of any controlled substance within the last seven years and he answered "No." He failed to identify the purchase of marijuana as alleged in 1.d., above, which he did identify on his 2014 e-QIP. Applicant admitted this allegation in his RSOR. He wrote that he was advised by his Navy recruiter to be less than candid regarding his one-time marijuana purchase.

2.c. The SOR alleges that Applicant's conduct as alleged in paragraph 1, above, also constitutes personal conduct concerns.

## **Mitigation**

Applicant submitted several documents in mitigation. These included but were not limited to: the results of a drug test prior to his beginning his current employment, confirming he was not under the influence of any illegal drug (Exhibit B); five positive and laudatory character letters (Exhibit E); Applicant's DD Form 214 (Exhibit H); and awards and certificates Applicant has earned (Exhibit I). Finally, a friend and co-worker of Applicant testified that except for what he was told by Applicant, he has never personally seen or been aware of Applicant's using any illegal substance. (Tr at 19-30.)

## **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 three occasions before holding a DoD security clearance, and Oxycodone one time and Spice two times, while holding a DoD security clearance. The Government presented sufficient information to support the factual allegations under SOR ¶ 25. (a), (c), and (f).

I have also considered all of the mitigating conditions under Drug Involvement AG ¶ 26, and the following are potentially applicable:

- (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 . . .

Applicant only used marijuana three times before holding a security clearance and he has not used any illegal substance while holding a security clearance since 2012, more than 5 years ago. He also testified credibly that he intends to never use any illegal substance in the future and to never use a prescribed medication without a proper prescription, 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 other mitigating documents. 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.

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

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Appellant failed to disclose his drug usage and purchase on his 2009 e-QIP. The Government presented sufficient information to support the factual allegations under disqualifying condition AG ¶ 16(a). However Applicant did list all of his drug use on his 2014 e-QIP. Also, I find that Applicant's explanation that he was instructed by his Navy recruiter to be less than candid is credible, based on previous information about certain military recruiters' practices, and I do not believe that Applicant's primary goal was to mislead the Government. Therefore, I find mitigating condition AG ¶ 17(b), "the . . . concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes" is applicable in this case. Guideline E is found for Appellant.

### **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 Guidelines H and E 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 and Personal Conduct 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.-1.d.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.-2.c.:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge