



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



In the matter of: )  
)  
) ISCR Case No. 17-01272  
)  
Applicant for Security Clearance )

**Appearances**

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

08/07/2018  
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**Decision**  
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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns that arose out of her infrequent marijuana and prescription drug use from January 2005 through August 2014. Applicant has matured and does not intend to use any illegal drugs in the future. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 28, 2016, Applicant submitted her most recent Electronic Questionnaire for Investigations Processing (e-QIP). On June 6, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H for drug involvement and substance misuse. 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, effective September 1, 2006.

Applicant answered the SOR on August 10, 2017, and requested a hearing before an administrative judge in this matter. The case was assigned to me on January 25, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 5, 2018. I convened the hearing as scheduled on March 12, 2018. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on her own behalf, and presented Applicant Exhibits (AE) A through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 20, 2018. The record was left open for the receipt of additional evidence until March 26, 2018. Applicant timely submitted AE H and AE I, which were admitted without objection.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant is a 32-year-old employee of a government contractor. She is unmarried and has no children. From October 2008 to January 2018, she was employed by a government contractor. She was granted a security clearance in January 2009, but did not access classified information until September 2009. She began working for a second government contractor in January 2018. (GE 1; AE D; AE G; Tr. 16-20.)

The SOR alleged that Applicant used marijuana, with varying frequency between January 2005 to at least March 2009, to include marijuana use while possessing a security clearance. She also purchased and used spice in 2009. Additionally, she misused prescription medications in May 2012 and August 2014. Applicant admitted all of the SOR allegations, with clarifications. (Answer.)

Applicant's marijuana use was recreational in nature and occurred six times, over a four-year period. She first tried it on New Year's Day in January 2005. She tried it again on a spring break that year. She was in high school at that time. Her next two uses occurred at her college dorm in 2006 or 2007. The final two times occurred after she graduated from college, at friends' homes. The marijuana was always provided by friends and used socially. She did not purchase it. Applicant also used spice once in

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

early 2009, which was purchased legally from a smoke shop and had not yet become illegal. She has not used marijuana or spice since March 2009. (Answer; Tr. 28-34, 43, 47-49, 66.)

In March 2009, Applicant was arrested and charged with driving under the influence of alcohol (DUI). She had a blood alcohol content of .15%. She was found guilty of DUI and sentenced to five days in jail, summary probation for five years, and fines and fees of \$2,015. Additionally, she was required to attend a drug and alcohol counseling program for six months. That program made a big impact on her life, and she made a conscious decision to change. Her DUI arrest caused her to evaluate her past choices. She decided to turn her life around. At that time, she ended a relationship with a drug-using boyfriend and no longer associates with drug users. (GE 1; GE 3; GE 4; Tr. 35-41.)

Applicant also used prescription drugs not prescribed to her. She used one pill of Vicodin in May 2012, administered by her mother. She had a back injury and her mother was caring for her. Her mother gave her the Vicodin pill to help her sleep. Applicant went to the doctor the next day and obtained prescription medication for her back. (Tr. 49-53.) Applicant also took one Percocet pill in August 2014, which was offered to her by her then boyfriend, because she was suffering from tooth pain over a holiday weekend. (Tr. 53-54.) Applicant now understands that she should seek help from urgent care should she experience unmanageable pain in the future. She will not use prescription drugs that are prescribed to others again. (Tr. 55-56, 67.)

When Applicant completed her first e-QIP in approximately 2009, she did not report her marijuana use. (Tr. 61.) She recognized the "very bad" choice she made in omitting that information. On January 4, 2016, Applicant approached her security officer and voluntarily reported the alleged drug use, which had previously been unreported. (GE 2.) She also fully disclosed her drug use on her 2016 e-QIP. (GE 1.) Applicant recognized the poor judgment of her past illegal drug use. She believes she was naïve and young when she used marijuana and did not report it. She signed a statement of intent demonstrating she would not abuse any drugs in the future. (AE A; Tr. 44-46.) She no longer associates with drug users. (Tr. 35, 40, 46.)

Applicant offered two negative hair follicle drug test results from 2017 and 2018 into evidence, to substantiate her claim that she no longer uses illegal substances. (AE B; AE H.) Applicant is well respected by those who know her, as verified by the seven reference letters entered into evidence. She is known as a dedicated employee that is respectful of privacy, classified information, rules, and regulations. (AE C.) Her performance reviews reflect she is a valued employee. (AE E.) She has been recognized with numerous awards by her former employer. (AE F.)

## 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(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.

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 to obtain 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 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 and Substance Misuse

The security concern relating to the drug involvement and substance misuse guideline is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that 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, both 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. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are raised by the evidence:

(a) any substance misuse; and

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

Applicant used marijuana from 2005 to March 2009, and used prescription drugs that were not prescribed to her once in 2012 and once in 2014. She has held a security clearance since 2000. Therefore, security concerns under AG ¶¶ 25(a), and 25(f) are established.

Applicant's one-time use of spice in 2009 does not raise a security concern under this guideline, because the evidence did not establish that spice was an illegal drug at the time of its use.

The guideline at AG ¶ 26 contains four conditions that could mitigate drug-related security concerns. Two conditions may be 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, provides evidence of actions taken 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.

While Applicant's illegal drug use spanned over a nine-year period, Applicant has made a number of significant changes in her life during the past two-to-four years that demonstrate her serious commitment to abstinence from illegal substances. She recognized that she was wrong to use marijuana and medications prescribed to others. She voluntarily came forward and confessed her drug use to her facility security officer in 2016. She has disassociated herself from drug-using friends and associates. Applicant's drug use occurred largely while she was attending educational institutions. She is now in the work-force and no longer attends school. Thus, she has changed her environment. While the Directive does not define what constitutes "an appropriate period of abstinence" under AG ¶ 26(b)(3), her candor about her illegal drug abuse leads me to accept as credible her assertions of no future intent to use marijuana, or misuse prescription drugs under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. She signed a statement of intent with automatic revocation of clearance for any violation. She has matured and understands that any illegal drug involvement is incompatible with her defense contractor employment. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶¶ 26(a) and 26(b).

### **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(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 pertinent facts and circumstances surrounding this case. Applicant's infrequent but illegal drug use occurred over a long span. She was irresponsible at the time and did not recognize the seriousness of her actions. She has now matured. She has not used illegal substances for more than four years after coming to the revelation that there was no room for illegal substances in her future professional life. Those claims were substantiated by two negative drug tests. Her changes are permanent and the likelihood of recurrence is extremely low. Applicant is respected by those who know her. She has a reputation for professionalism and rule following. Applicant's current reputation for trustworthiness, coupled with her recent candor concerning her past drug use, adds weight to her commitment to abstain from illegal drug use or misuse of prescription drugs. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant should be granted a security clearance.

### **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

### **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.

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Jennifer I. Goldstein  
Administrative Judge