



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05385
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

05/11/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On November 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. 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 DOD on September 1, 2006.

On December 13, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 3, 2015. I convened the hearing as scheduled on April 28, 2015. The Government offered

exhibits (GE) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibit (AE) A, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 6, 2015.

### **Findings of Fact**

Applicant admitted the sole allegation in the SOR. I have incorporated his admission into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 29 years old. He holds a bachelor's and a master's degree. He is not married, has no children, and never served in the military. He has worked for his current employer, a federal contractor, since 2007. He was granted a security clearance in approximately 2008.<sup>1</sup>

Applicant admitted that while holding a security clearance from approximately June 2012 until January 2014 he used marijuana once or twice a week. He considered marijuana a social drug, much like alcohol. He did not believe his use of marijuana was more serious than using alcohol. He admitted when he was hired by his employer in 2007, he was required to submit to a drug test. He knew that his employer fosters a drug-free workplace.<sup>2</sup>

At the time he was using marijuana, Applicant was aware it was illegal, but believed it should be legal. He now understands that although he may believe it should be legal, it is not, and its use is contrary to holding a position of trust. He acknowledges his opinion is not what matters, but rather it is the law.<sup>3</sup>

Applicant stated that when he was using marijuana while holding a security clearance, he knew he would not disclose classified information. He stated he never used marijuana while handling classified information. Applicant did not report his drug use to his employer or facility security officer because he did not think it affected his ability to work or hold a clearance. He did not believe his use could be used to blackmail him.<sup>4</sup>

Applicant stated that he started using marijuana socially with friends from college and another group of friends. He got the marijuana from his friends and trusted them that the drug was not laced with anything. He stated he has now distanced himself from friends who use marijuana, but occasionally finds himself in a situation where someone is using marijuana in his presence. When that occurs, he either leaves the place where

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<sup>1</sup> Tr. 18-19.

<sup>2</sup> Tr. 19-20, 23-26, 33-34, 37.

<sup>3</sup> Tr. 19-20, 24-26, 37.

<sup>4</sup> Tr. 20, 24.

marijuana is being used, or asked the person to not use it in his presence. He admitted his roommate used marijuana with him in their house during 2012 to 2014. His friends brought the marijuana to his house, and he occasionally used it there. He stated he will disassociate himself from his roommate or anyone else who uses drugs. However, he has not yet totally done that. He does not mean that he will never speak to them again, but he will not be around them when they use drugs.<sup>5</sup>

Applicant voluntarily reported his drug use when he submitted his security clearance application. He stated he no longer uses marijuana and does not intend to do so in the future. Applicant admitted he had severe lapses in judgment when he used marijuana while holding a security clearance, and will do whatever is necessary to regain the government's trust to include submitting to random drug screenings at his own cost. He provided a letter of intent to refrain from consumption of any illegal substance with the understanding if he should be in violation revocation of a security clearance would be automatic.<sup>6</sup>

Applicant did not consume alcohol while consuming marijuana. He has not sought assistance to determine if he has a substance abuse problem. Applicant does not believe he was addicted to marijuana. He has no desire to use it again.<sup>7</sup>

Applicant admitted that in January 2014 part of his realization that his marijuana use was inappropriate and he should stop using it occurred when he was about to go through the security clearance process, and he realized he would have to admit his use. He believes he is a changed man and his opinions have matured. He understood his actions and has taken responsibility for them by admitting his marijuana use.<sup>8</sup>

### **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. Instead, 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

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<sup>5</sup> Tr. 20-21, 27-36, 39-40.

<sup>6</sup> Tr. 20-23, 34-39; AE A.

<sup>7</sup> Tr. 22, 29, 33.

<sup>8</sup> Tr. 29-30, 37, 41.

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 not drawn 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, 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

AG ¶ 24 expresses the security concern for 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 the following disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

(a) any drug abuse; and

(g) any illegal drug use after being granted a security clearance.

Applicant illegally used marijuana from approximately June 2012 until January 2014, while holding a security clearance. I find the above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. 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;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant submitted to a drug test when he began his employment with a federal contractor in 2007. He was aware that his employer is committed to a drug-free workplace. He obtained a security clearance in 2008. He made a decision in June 2012 to use marijuana, a violation of the law. His use was not a one-time transgression, but rather he repeatedly used marijuana one to two times a week until January 2014. He realized he was required to disclose his drug use during the process to update his security clearance. At the time, he did not think marijuana should be illegal because he believed it is a social drug, much like alcohol. He now understands his opinion is not the legal standard, and his marijuana use is contrary to holding a position of trust.

Applicant's last marijuana use was in January 2014. His use was not infrequent, but rather regular over a 20-month period, each time violating the law and the trust the government placed in him when he was granted a security clearance. There were no unusual circumstances that occurred to mitigate his conduct, which casts doubt on his reliability, trustworthiness, and judgement. AG ¶ 26(a) does not apply.

Applicant made a quasi-commitment to disassociate himself with his friends who use drugs. He used marijuana in his house with his roommate, with whom he still lives. He intends on asking those he knows who use drugs to not do so in his presence, or he intends to leave the place where drugs are being use. He signed a letter of intent to not use illegal drugs in the future with automatic revocation of clearance. AG ¶ 26(b)

applies, but based on all of the facts it is not enough to mitigate the security concerns raised.

Applicant did not provide any evidence that he has been evaluated for substance abuse, that he has completed a drug treatment program, or that he has a favorable prognosis by a qualified medical professional. AG ¶ 26(d) does not apply.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 29 years old. He is an educated professional who has been employed by a federal contractor since 2007. He was entrusted with a security clearance in 2008. He consciously and repeatedly violated that trust by illegally using marijuana one to two times a week over a 20-month period while he held a security clearance. His actions were deliberate and intentional, fully realizing he was violating the law, but not believing it would affect his ability to handle classified information or be a basis for blackmail. Although he stated he is disassociating himself from those who use marijuana, has signed a letter of intent not to use marijuana in the future, and has abstained from use since January 2014, these facts are insufficient to overcome his past history of misconduct. He repeatedly made a decision to violate the law because he did not think, at the time, the law was valid. He stopped his use when he was aware he would have to disclose his conduct during the security clearance process. I am not confident that his actions are unlikely to recur. A longer period of abstinence is

necessary to ensure his conduct does not recur. He had the trust of the United States Government and he intentionally violated that trust.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the drug involvement guideline.

### **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:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge