



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00207
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the drug involvement security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 6, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement. The DOD acted under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on August 3, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 31, 2015. The FORM was mailed to Applicant and

he was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He received the FORM on September 29, 2015. He submitted exhibits (AE) A through C 1-12 in response to the FORM. The Government's evidence (Items 1-5) are admitted into evidence without objection.<sup>1</sup> Applicant's exhibits are admitted into evidence without objection. The case was assigned to me on November 10, 2015.

### **Findings of Fact**

Applicant admitted the allegation in his answer to the SOR.<sup>2</sup> That admission is adopted as a finding of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 38 years old. He is divorced and has no children. He has worked for his current employer, a defense contractor, since October 2005. He earned a bachelor's degree in May 2000, a master's degree in May 2008, and a second master's in January 2013. He has never served in the military, but has held a security clearance since 2006.<sup>3</sup>

Applicant's admitted conduct raised in the SOR concerning Guideline H includes using marijuana approximately three times between August 2013 and February 2014. He obtained the marijuana in each instance from a neighbor/friend who gave him the marijuana for his use. He explained his marijuana use during that time frame was related to an emotional and stressful period in his life when he was going through his divorce. He divorced his wife in August 2013. He stated his uses during this time were "in celebration of my divorce, a life changing event that has restored my peace of mind and happiness...." He further stated that he discontinued his use when he realized it no longer contributed to his peace of mind and happiness.<sup>4</sup>

He did not report his use of marijuana to his security manager at the time he used it. He reported it when he completed his security clearance application during his periodic reinvestigation in June 2014. He claims that he "didn't think about it [using marijuana] as being an illegal act and I did not realize it was in conflict with my security

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<sup>1</sup> There is a single Guideline H allegation stated in the SOR. The FORM made reference to a Guideline E allegation that was not listed in the SOR. I verified that there was no Guideline E allegation and this decision is based solely on the single Guideline H allegation at issue.

<sup>2</sup> In AE A, Applicant indicated he did not receive page one of his personal subject interview (Item 3). After reviewing the document, I am satisfied that Applicant was provided the complete personal subject interview, which starts on page two of the document provided. Any information contained on page one did not relate to the personal subject interview.

<sup>3</sup> Item 2.

<sup>4</sup> Items 2-4; AE C 3.

clearance.” He received annual training from his company on the prohibition of using illegal drugs and the reporting requirements for someone who engages in such use.<sup>5</sup>

Applicant provided a written statement of intent not to smoke marijuana in the future. He is also the recipient of a 2012 company award for outstanding contributions to the company, quarterly awards in August 2014 and September 2015 for excellence, and an engineering recognition award in June 2015.<sup>6</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 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, 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

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<sup>5</sup> Items 2-5; AE C 2-6.

<sup>6</sup> AE B, C 8-12.

the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 drug involvement security concern:

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 AG ¶ 25 and found the following relevant:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Appellant illegally used marijuana three times between August 2013 and February 2014 while possessing a security clearance. I find that the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26 and found the following relevant:

- (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; and

- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's admitted marijuana use happened as recently as February 2014. His drug use at his age, education level, and security background is troubling and a cause for concern. I do not find persuasive his ignorance of the impact of using marijuana on his security clearance or his lack of realization that using marijuana was illegal. I also find his reason for use—to celebrate his divorce—demonstrative of poor judgment. He is a highly educated individual who has held a security clearance since 2004 and has participated in annual training, which explains the consequences of illegal drug use, including marijuana, and reporting requirements.<sup>7</sup> These circumstances lead me to conclude that his actions cast doubt on his current reliability, trustworthiness, and his judgment. AG ¶ 26(a) does not apply. Applicant receives partial credit for completing a statement of intent not to smoke marijuana in the future, but there is no evidence that he terminated his friendship with his neighbor who supplied him with marijuana. AG ¶ 26(b) partially applies.

### **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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, including his job-related awards. Applicant engaged in recent drug use that given his age, education level, and security clearance status calls into question his reliability, trustworthiness, and judgment.

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<sup>7</sup> Marijuana remains a controlled substance under schedule I of the Controlled Substance Act. Federal employees who use illegal drugs are not suitable for federal service (See Memorandum of Director of U.S. Office of Personnel Management, Subject: Federal Laws and Policies Prohibiting Marijuana Use, May 26, 2015).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the concerns under Guideline H, drug involvement.

### **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

Subparagraph 1.a: Against Applicant

### **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 continue Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge