

DATE: November 20, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case: 07-01759
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

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\_\_\_\_\_ Security concerns are raised under the drug involvement and personal conduct guidelines pertaining to Applicant's history of illegal marijuana use, including while holding a security clearance. He did not intentionally falsify his answers to interrogatories provided to the Defense Office of Hearings and Appeals, on June 7, 2007. He has not met his burden to mitigate the other security concern raised under personal conduct and the concerns raised under drug involvement. Clearance is denied.

**STATEMENT OF CASE**

On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

On August 7, 2007, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on September 6, 2007. The FORM was mailed to Applicant on September 12, 2007 and received by him on September 18, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely responded on October 16, 2007. Department Counsel had no objection to Applicant's response. The case was assigned to me on November 2, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant is a 41-year-old production manager employed with a defense contractor since July 1995. He is married and has a nine-year-old son.<sup>2</sup> He admits to the allegations in SOR ¶¶ 1.a, 1.b, 1.c and 2.a, and denies the allegation in SOR ¶ 2.b.<sup>3</sup>

Applicant has a history of illegal drug use. In his answer to the SOR, he admits to using marijuana on a monthly basis from 1985 to 1995.<sup>4</sup> He admits to using marijuana on at least 10 occasions between January 2000 to December 2005. He admits that his use of marijuana between January 2000 to December 2005, occurred after he was granted a Confidential security clearance.<sup>5</sup> In April 1988, he was arrested and charged with possession of marijuana and hashish for sale, and fireworks without a permit. He was convicted of the offense of fireworks without a permit and fined \$980.<sup>6</sup>

On September 8, 2006, Applicant submitted a questionnaire for sensitive positions, Standard Form 86. In response to question 24a which asked Applicant whether he used any illegal drugs within the past seven years, he answered, "Yes" and listed that he used marijuana on an estimated

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup> Item 4.

<sup>3</sup> Item 3.

<sup>4</sup> Item 3 (Aside from his admissions, there is nothing in the record evidence pertaining to his marijuana use from 1985 to 1995).

<sup>5</sup> Item 3.

<sup>6</sup> Item 7.

10 occasions between January 2000 to December 2005.<sup>7</sup> He answered "Yes" in response to question 23B which asked whether he had ever been arrested for, charged with Firearms/Explosives Charge and in response to question 23D which asked whether he had ever been arrested or charged with alcohol or drug offenses. He listed his 1988 arrest and charge for possession of marijuana and fireworks without a permit. He also listed a 1990 reckless driving offense.<sup>8</sup>

On June 7, 2007, Applicant responded to Interrogatories sent by the Defense Office of Hearings and Appeals. Question one asked "Have you used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) and/or any Cannabis (to include marijuana and hashish), except prescribed by a licensed physician?" Applicant answered, "Yes" and listed that he used marijuana approximately two times a year from 2000 to December 12, 2005. The average quantity of marijuana used was 1/2 teaspoon. He does not intend to use marijuana in the future.<sup>9</sup> Question 3 asked "When did you start using marijuana?" Applicant answered, "As stated in the questionnaire dated September 8, 2006, January 2000 estimated."<sup>10</sup>

Applicant did not list his marijuana use from 1985 to 1995 in his response to the interrogatories. He did not list his earlier marijuana use on the interrogatory because he believed that he only had to go back seven years. He had no intent to falsify his security clearance application.<sup>11</sup>

Applicant indicated that he purchased marijuana for personal use. On occasion, he would smoke marijuana with his wife. Other times, he would smoke it alone. He used marijuana to help him quit smoking tobacco. He stopped using marijuana as the urge to smoke tobacco declined and also to become a good role model for his son.<sup>12</sup>

In his response to the FORM, Applicant states that he has worked for his employer for over 20 years. He provided several copies of his performance appraisals and indicated that he had been promoted four times during his career. He regrets the choices he made in the past. He chose to tell the truth during this inquiry. He no longer uses marijuana and has no intention of using marijuana in the future.<sup>13</sup> The performance appraisals that Applicant submitted were favorable.<sup>14</sup>

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<sup>7</sup> Item 4.

<sup>8</sup> Item 4, questions 23B and 23D.

<sup>9</sup> Item 5, question 1.

<sup>10</sup> Item 5, question 3.

<sup>11</sup> Item 3.

<sup>12</sup> Item 5, question 2.

<sup>13</sup> Response to FORM, dated October 16, 2007.

<sup>14</sup> Response to FORM, Performance Appraisals for the periods October 1998 to October 1999, December 2000 to December 2001, January 2004 to December 2004, November 2004 to November 2005, and November 2005 to November 2006.

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>15</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive and the revised AGs, effective September 1, 2006. The revised AGs set forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline H - 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.<sup>16</sup>

Guideline E - Personal Conduct: 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.<sup>17</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>18</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>19</sup> An administrative judge should consider the following factors: (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

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<sup>15</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>16</sup> Revised AG, dated August 2006, ¶ 24.

<sup>17</sup> Revised AG, dated August 2006, ¶15.

<sup>18</sup> Revised AG, dated August 2006, ¶ 2.

<sup>19</sup> *Id.*

(9) the likelihood of continuation or recurrence.<sup>20</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>21</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>22</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>23</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline H and Guideline E.

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

Applicant's past drug abuse raises a security concern. Drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."<sup>24</sup> Applicant admits to using marijuana on a monthly basis from August 1985 to 1995. He used marijuana approximately ten times between January 2000 to December 2005, after being granted a security clearance in July 1996.

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<sup>20</sup> *Id.*

<sup>21</sup> Directive ¶ E3.1.14.

<sup>22</sup> Directive ¶ E3.1.15.

<sup>23</sup> Directive ¶ E.2.2.2; Revised AG, dated August 2006, ¶ 2(b).

<sup>24</sup> AG, ¶ 24(b).

The following Drug Involvement Disqualifying Conditions (DIDC) apply to Applicant's case. DIDC ¶ 25(a) (*any drug abuse*) applies due to his past history of illegal marijuana use. DIDC ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) applies. Applicant possessed and purchased marijuana on several occasions. DIDC ¶ 25(g) (*any illegal drug use after being granted a security clearance*) applies. Applicant admits to using marijuana on several occasions while holding a security clearance from 2000 to 2005. I find for Applicant with respect to SOR ¶ 1.b because he was not found guilty of the offense of the possession of marijuana/hashish offense and the passage of time since his arrest. Drug involvement concerns remain due to his illegal drug use.

The drug involvement concern can be mitigated. However, I find none of the mitigating conditions apply. In Applicant's case, two of the Drug Involvement Mitigating Conditions (DI MC) have the potential to apply. DI MC ¶ 26(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*) does not apply. Applicant's drug use was recent. His decision to use marijuana while holding a security clearance raises questions about his judgment and reliability.

DI MC ¶ 26(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*) is not applicable. Applicant's more recent use of marijuana occurred either by himself or with his wife. As such, disassociation from drug-using associates and contacts does not apply. Applicant did disclose his drug use on his security clearance questionnaire. He states that he has no intent to use marijuana because he wants to be a good example for his son. An appropriate period of abstinence has not been demonstrated. He has not presented sufficient evidence to mitigate the drug involvement security concern. I find against Applicant under Guideline H.

## **Guideline E, Personal Conduct**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

With respect to SOR ¶ 2.a which cross alleges SOR ¶ 1.c, regarding his use of marijuana after being granted a security clearance, a security concern is raised under personal conduct because Applicant's illegal use of marijuana after being granted a security clearance makes him vulnerable to exploitation, manipulation, or duress. Personal Conduct Disqualifying Condition (PC DC) ¶ 17(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect*

*the person's personal professional, or community standing...*) applies. While Applicant disclosed his use of marijuana while holding a security clearance on his security clearance questionnaire, there is insufficient evidence to fully support the mitigation of this concern. Personal Conduct Mitigating Condition (PC MC) ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) partially applies because of Applicant's disclosure of his marijuana use from 2000 to 2005, on his security clearance application. However, nothing in the record evidence indicates that Applicant disclosed his marijuana use to his employer. He is still vulnerable to exploitation or manipulation. He may not want to disclose his recent marijuana use to his employer because it may place his job in jeopardy since illegal drug use is often a concern in the work place. Applicant has not presented sufficient evidence to mitigate this concern.

I find for Applicant with respect to SOR ¶ 2.b which alleges that Applicant deliberately falsified material facts in his response to interrogatories by failing to disclose that he started using marijuana in 1985. Applicant states that he thought he only had to list marijuana use within the past seven years. I find his explanation credible. I note that he listed a 1988 marijuana offense on his recent security clearance questionnaire. If he were trying to mislead the government about his earlier marijuana use, it is likely that he would not have listed this offense. Aside from his own admissions in response to the SOR, there is no other evidence of Applicant's marijuana use in 1985 to 1995. He had no intent to mislead the government with respect to his earlier marijuana use. SOR ¶ 2.b is found for Applicant.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. While Applicant claims that he no longer intends to use marijuana, his use of marijuana over a five year period after being granted a security clearance raises questions about his judgment and reliability. He was in his mid to late thirties during his 2000 - 2005 marijuana use and cannot blame his marijuana use on youthful indiscretion. Although he fully disclosed the recent marijuana use on his security clearance application, a question remains as to his potential for vulnerability and duress absent evidence that his employer is also aware of his marijuana use. Considering Applicant's history of marijuana use, not enough time has passed to mitigate the security concerns raised under drug involvement. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **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
	Subparagraph 1.b.	For Applicant
	Subparagraph 1.c.	Against Applicant
Paragraph 2	Guideline E:	AGAINST APPLICANT

Subparagraph 2.a.  
Subparagraph 2.b.

Against Applicant  
For Applicant

**DECISION**

\_\_\_\_\_ In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Erin C. Hogan  
Administrative Judge