

KEYWORD: Drugs

DIGEST: Applicant's use of marijuana between September 1999 and July 2006 was mitigated by the circumstances and infrequency of the use, and his demonstrated intent not to abuse any drugs in the future. Clearance granted.

CASENO: 07-01929.h1

DATE: 08/30/2007

DATE: August 30, 2007

In Re:	)	
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	)	
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SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Alison O'Connell, Esquire, Department Counsel  
John B. Glendon, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's use of marijuana between September 1999 and July 2006 was mitigated by the circumstances and infrequency of the use, and his demonstrated intent not to abuse any drugs in the future. Clearance granted.

### **STATEMENT OF THE CASE**

Applicant challenges the 26 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use.<sup>1</sup> He answered the SOR 16 May 2007, and requested a hearing. DOHA assigned the case to me 22 June 2007, and I convened a hearing 2 August 2007. DOHA received the transcript 15 August 2007.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate the admissions as findings of fact.

Applicant—a 23-year-old civil engineer employed by a defense contractor since August 2006—seeks access to classified information. He has not previously held a clearance.

Applicant has a history of marijuana use between September 1999 and July 2006. He first started using marijuana in September 1999, during his sophomore year in high school. Between September 1999 and November 2000, he estimates he used marijuana about 25 times in social settings with his friends. Marijuana was always offered to him. He never purchased or sold it. After November 2000, Applicant's marijuana use dropped off sharply, if not ceasing altogether, during the time he was participating in varsity sports in a school district that randomly tested its athletes for illegal drug use. He tested negative on two or three random urinalyses (Tr. 37).

Between 2001 and July 2006, Applicant estimates he used marijuana about once per year in social settings, usually with members of his fraternity. There were also occasions where he was offered marijuana in social settings, but declined. The last time he used marijuana was July 2006, while on what fairly is described as the grand tour of Europe after graduating from college. Between June and August 2006, Applicant visited 14 European countries. While in Holland—a country which has decriminalized if not legalized marijuana use—Applicant used marijuana in a youth hostel where he was staying. His next most recent marijuana use was September 2005, the fall of his senior year in college. In high school and college, he never used marijuana alone, only in groups.

Applicant interviewed with his current employer in fall 2005, and later that fall was offered a position to begin in August 2006, in a state different both from where he attended college and from where he grew up. He assumed the company would have a drug policy prohibiting illegal drug use (Tr. 34). When he applied for his clearance in March 2007, he truthfully disclosed the full extent of his drug use between September 1999 and July 2006 (G.E. 1). He also disclosed potentially adverse information about receiving mental health treatment while in college, even though that treatment

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended—most recently in August 2006 (Directive).

consisted of three visits to the mental health clinic undertaken largely out of curiosity about what services were available—and because the services were free. In his March 2007 answer to DOHA interrogatories (G.E. 2), he provided certification from the chief of that mental health clinic that he did not suffer from any condition raising security concerns. He also stated that he had ceased using marijuana because it was unhealthy, illegal, and detrimental to work productivity.

Applicant testified credibly at hearing, and consistently with both his clearance application and his answer to interrogatories, that he has very little contact with his high school and college friends with whom he used marijuana. He is more settled and focused on his career. He has been promoted at work. His social time is spent with young professionals who share similar career goals. Marijuana use is not part of that culture, and is viewed as immature.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant’s security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government’s case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>2</sup>

### **CONCLUSIONS**

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

The government established a case for disqualification under Guideline H, by demonstrating that Applicant used marijuana in varying frequency between September 1999 and July 2006.<sup>3</sup> Nevertheless, the arc of that drug use was heavier between his sophomore and junior years in high school, with a sharp decline in frequency from 2001 until July 2006. His use over his last five years of use is fairly described as casual and infrequent, limited to his college environment or his grand tour of Europe, which I consider part and parcel of that college experience. Applicant thus mitigates the security concerns, by demonstrating that the use was infrequent and under circumstances unlikely to recur,<sup>4</sup> and further demonstrating intent to not abuse drugs in the future.<sup>5</sup> His high school use was with the friends he grew up with. His college use was with the friends he went to college with. But when he moved to a new state to begin his professional career, he realized it was time to put away childish things. While Applicant’s use is fairly characterized as “recent,” this term has less meaning under the new adjudicative criteria, where the corresponding language “the behavior happened so long ago. . .” [¶ 26.(a)], is used in the disjunctive with language that clearly applies to Applicant. Further, while his abstention from marijuana use for only a year might not necessarily constitute an appropriate period of abstinence, given the minimal marijuana use by Applicant and his change in environment—both physical (new state) and psychological (career versus school)—I conclude that a year’s abstinence is appropriate [¶ 26.(b)]. On this record, it is extremely unlikely that Applicant would return to illegal drug use. Accordingly, I resolve Guideline H for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

**John Grattan Metz, Jr.**  
**Administrative Judge**

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<sup>3</sup>Any drug abuse [§ 25.(a)];

<sup>4</sup>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 [¶ 26.(a)][Emphasis supplied];

<sup>5</sup>A demonstrated intent not to abuse any drugs in the future, such as: . . . (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; . . . [¶ 26.(b)].

