



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-03527  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

July 9, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the drug and personal conduct security concerns that arose out of her infrequent marijuana use from October 2010 to August 2013. Applicant has been candid with the Department of Defense about her illegal marijuana use, and does not intend to use any illegal drugs, including marijuana, in the future. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 24, 2014.<sup>1</sup> On August 13, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing

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<sup>1</sup>Item 5.

security concerns under Guidelines H (Drug Involvement) and E (Personal Conduct).<sup>2</sup> 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on October 2, 2014, and requested that her case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on February 6, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on April 3, 2015. She submitted a one-page letter in response to the FORM (Response). I received the case assignment on May 21, 2015.

### **Findings of Fact**

Applicant is 25 years old. She earned a bachelor's degree in 2012. She was hired as a government contractor in August 2012. She has never married and has no children.<sup>5</sup>

On Applicant's SCA, she indicated she used marijuana between October 2010 and August 2013 "about 7 times total." She also indicated that she did not intend to use marijuana in the future because it was "[n]ot overly enjoyable" and that she wanted to comply with security regulations.<sup>6</sup>

Applicant's infrequent marijuana use occurred primarily while in college, between October 2010 and her graduation in 2012. Her boyfriend at that time provided the marijuana. She no longer has a relationship with him, and no longer attends college. She also used marijuana once in August 2013 with friends. Those friends have moved away. Further, she has watched one of those friends "suffer greatly under the impacts of continued drug use" and is committed to remaining abstinent. She has not used marijuana since August 2013 because she does not want to jeopardize her employment

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<sup>2</sup>Item 1.

<sup>3</sup>Item 4.

<sup>4</sup>Department Counsel submitted six Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 5.

with a government contractor. She stated her solid commitment to abstain from future drug use in writing.<sup>7</sup>

## **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

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<sup>7</sup>Item 5; Item 6; Response.

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to 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 all of the disqualifying conditions under Drug Involvement AG ¶ 25, and the following is potentially applicable:

(a) any drug abuse.

The Government presented sufficient information to support the factual allegation under Guideline H. Applicant used marijuana approximately seven times between 2010 and 2013. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under the above disqualifying condition.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and the following is potentially applicable:

(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.

While Applicant's illegal drug use spanned a three-year period, Applicant has made a number of significant changes in her life during the past two years that demonstrate her serious commitment to abstain from illegal substances. She recognized that she was wrong to use marijuana. She ceased using all drugs prior to applying for a security clearance. She no longer associates with drug-using friends and associates. Applicant's drug use occurred while she was attending undergraduate school. 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 drug abuse leads me to accept as credible her assertions that she has no future intent to use any illegal substance under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. She signed a statement indicating she would not use drugs again. 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(b).

## **Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions is potentially applicable:

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's illegal drug use could potentially create a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant acknowledged her illegal drug use and is committed to abstinence. She witnessed the suffering of a friend due to her continued drug use. Future unreliable, inappropriate, and illegal behavior is unlikely to occur. Her candor with the government concerning her drug use makes it unlikely that she would be vulnerable to exploitation or manipulation with respect to her prior drug use. AG ¶ 17(c) and 17(e) 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 pertinent facts and circumstances surrounding this case. Applicant's infrequent but illegal drug use occurred seven times. 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 almost two years after deciding that there was no room for illegal substances in her future professional life. Her behavioral changes are permanent and the likelihood of recurrence is extremely low. 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 is eligible to 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

JENNIFER I. GOLDSTEIN  
Administrative Judge