



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01662
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: Sean M. Bigley, Esq.

06/13/2016

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**Decision**

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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 November 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 December 7, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 23, 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 January 6, 2016. His counsel submitted a brief (marked as Hearing Exhibit (HE) I) and exhibits (AE) A through E in response to the FORM. Applicant's counsel objected to Item 4 of the Government's offered evidence based upon authentication. I am sustaining that objection and have not considered that evidence. The Government's remaining evidence (Item 3) is admitted.<sup>1</sup> Applicant's exhibits are admitted into evidence without objection. The case was assigned to me on May 4, 2016.

### **Findings of Fact**

Applicant admitted the allegation in his answer to the SOR. 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 55 years old. He has never been married and has no children. He has worked for his current employer, a defense contractor, since 1985. He earned a bachelor's degree in 1993. He has never served in the military, but has held a security clearance since at least March 2005.<sup>2</sup>

Applicant's admitted conduct raised in the SOR concerning Guideline H includes using marijuana approximately three to four times in December 2013 after being granted a security clearance in 2005. He admitted to a substance abuse social worker that he used marijuana three times over Christmas vacation while he was home alone. He obtained the marijuana from an acquaintance who gave him the marijuana for his personal use. He further stated that he used the marijuana because he "was curious to see what it was all about." He tried it the first time and it did not do anything to or for him. The second time he smoked it, he found it to be an unpleasant experience. The third use was to finish off the amount he was given. He stated the experience was unpleasant and he had no intention of smoking marijuana again. He also reported that he felt guilty about his use of marijuana and confessed his actions to his priest. He did not inform his employer about his marijuana use until he was required to complete a security clearance application in June 2014, when he admitted his usage while holding a security clearance. Since Applicant chose to have his case decided on the written record in lieu of a hearing, I am unable to make a credibility determination of Applicant.<sup>3</sup>

Applicant provided a written statement of intent not to use any illegal controlled substances in the future. Additionally, he supplied a report from a suitably licensed substance abuse social worker. The report contains the social worker's opinion on various topics to include her opinion that Applicant "does not present a threat to

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<sup>1</sup> Items 1 and 2 are the SOR and Answer and are considered pleadings, not requiring admission.

<sup>2</sup> Items 2-3.

<sup>3</sup> Item 2; AE D.

National Security or the possession of a Security Clearance.” I give no weight to that opinion since it is not within her purview. I do give some weight to her opinion regarding whether the Applicant’s use was a one-time event. I also considered the results from the drug abuse screening test (DAST), which indicated no abuse, dependence, or addiction.<sup>4</sup>

Applicant was recognized for his 30 years of employment by his employer. His overall performance assessment for 2015 was a “3” (achieves expectations). Four coworkers/managers recommend Applicant for a security clearance. They also attest to his honesty, reliability, and work ethic.<sup>5</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

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<sup>4</sup> AE D.

<sup>5</sup> AE A-B.

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 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.

Applicant illegally used marijuana three times in December 2013 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; 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's admitted marijuana use happened as recently as December 2013. His drug use at his age, education level, and security background is troubling and a cause for concern. I do not find persuasive his claim of future intention not to use based upon his "unpleasant" experience when this so-called unpleasant experience involved three separate uses. If it was so unpleasant to him, why did he continue to use it two more times? I also find his reason for use—to satisfy his curiosity—demonstrative of poor judgment. He is an educated, mature man who has worked for the same defense contractor for 30 years and has held a security clearance since 2005. That he was willing to jeopardize his career for satisfying his "curiosity" speaks not only to his poor judgment, but how easily he was willing to engage in prohibited activity. These circumstances lead me to conclude that his actions cast doubt on his current reliability, trustworthiness, and 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 I am not persuaded that he will honor his statement given how easily he succumbed to using marijuana previously. The social worker's opinions were not persuasive to me. AG ¶ 26(b) partially applies. Applicant was evaluated by a licensed clinical social worker, but there is no evidence that he participated or completed a prescribed drug treatment program. 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 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 performance evaluation and his coworker recommendations. Applicant engaged in recent drug use that, given his age, education level, and security clearance status, calls into question his reliability, trustworthiness, and judgment.

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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge