



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01911
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/08/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding his drug use. Eligibility for access to classified information is granted.

**History of the Case**

On September 26, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 21, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's

File of Relevant Material (FORM) on December 23, 2015, and responded to the FORM within the time permitted with a letter explaining his casual use of marijuana. The case was assigned to me on February 8, 2016.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly used marijuana on four occasions from August 2012 to June 2014. The allegations contained under Guideline H are alleged as personal conduct under Guideline E.

In his response to the SOR, Applicant admitted to using marijuana on four occasions between August 2012 and June 2014, but denied being untruthful about his drug usage in completing his security clearance application. Addressing his marijuana use, he expressed regret for his decisions to partake in marijuana use. He claimed his use of marijuana in 2012-2014 represented the first occasions he used marijuana in nearly 30 years. He claimed there has been no recurrent usage and never will be.

### **Findings of Fact**

Applicant is a 57-year-old carpenter for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in May 1984 and has three adult children (ages 36, 28, and 25) He has a high school diploma and claims no military service. He has been employed by his current employer since June 2014 and has never held a security clearance. (Item 3)

#### **Drug use**

Applicant experimented with marijuana on four occasions between August 2012 and June 2014. He attributes his use to poor judgment. Before trying marijuana in 2012, he had not used marijuana or any other illegal substance in over 30 years. (Items 2 and 4) In his interview with an investigator from the Office of Personnel Management (OPM) in August 2014, he told the investigator that he started using marijuana in 1976, liked it, and continued using the drug on a daily basis until approximately 1979. (Item 4)

Encouraged by his wife not to use marijuana, he stopped using it until he was offered marijuana at a party in 2012, over 30 years later. (Item 4) Since his last use in June 2014, he has not used marijuana or any other illegal substance and has disassociated himself from the acquaintances who offered him marijuana at parties. (Item 4) Applicant assured that he would never use marijuana or any other illegal substance in the future. (Items 2 and 4) Applicant's assurances are accepted.

#### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) 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 (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Drug Involvement**

*The 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 AG ¶ 24.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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, ¶ 15.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a carpenter for a defense contractor who used marijuana on four separate occasions between August 2012 and June 2014. At the time of his use, he did not work for a defense contractor or hold a security clearance. Presumably, he was not aware of DoD policies in force banning the use of illegal drugs.

On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,”

and DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” DC ¶ 16(c), “credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information,” has some application Applicant’s situation. While technically applicable, because of the small amount of marijuana intake at a time when he did not have a security clearance, DC ¶ 16(c) has limited application to the facts of Applicant’s case. Because Applicant’s marijuana use, even when used infrequently, is barred by state law in Applicant’s state of residence as well as federal law, his limited use is covered by Guideline E as well.

Considering the isolated nature of Applicant’s most recent marijuana use in 2012-2014), enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the foreseeable future. Pertinent mitigating conditions covered by AG ¶ 24 are available to Applicant. MC ¶ 24(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,” and MC ¶ 24(b), “a demonstrated intent not to use any drugs in the future, such as (1) disassociation from drug-using associates and contacts, and (3) an appropriate period of abstinence,” of Guideline H apply to Applicant’s limited and aged use of marijuana. Applicable, too, to Applicant’s limited marijuana use is MC ¶ 17(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,” of Guideline E.

Prior to his isolated use of marijuana in 2012-2014, Applicant had not used marijuana in over 30 years. With so little recurrent history of marijuana use, and with so much time that has elapsed since his last use in 2014 (i.e., almost two years), it is unlikely that he will resume his use of the substance in the foreseeable future.

From a whole-person perspective, Applicant has established independent probative evidence of his limited use of marijuana and unlikelihood of ever resuming his use of the substance. Applicant’s own acknowledgment of poor judgment and disassociation of acquaintances with whom he shared marijuana at parties help to reinforce favorable conclusions about his overall judgment, reliability and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant’s isolated drug use and judgment lapses, Applicant mitigates security concerns related to his drug use and personal conduct. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a of Guideline H and 2.a of Guideline E.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT): FOR APPLICANT

Subpara. 1.a: For Applicant

GUIDELINE E: (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 2.a For Applicant

### **Conclusions**

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 Applicant's security clearance. Clearance is granted.

---

Roger C. Wesley  
Administrative Judge

