



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



In the matter of:	)	
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	)	ADP Case No. 14-04628
Applicant for Public Trust Position	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Kenneth A. Lee, Esq.

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for a public trust position. Applicant presented sufficient evidence of reform to mitigate the concern raised by his history of drug abuse consisting of the occasional use of marijuana from 1990 to January 2014. Accordingly, this case is decided for Applicant.

**Statement of the Case**

On October 6, 2014, the Department of Defense (DOD)<sup>1</sup> sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline H for drug involvement. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*

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<sup>1</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland, which is a separate and distinct organization from the Defense Office of Hearings in Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

(Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)<sup>2</sup> implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine his eligibility to occupy an automated data processing (ADP) position to support a contract with the DOD.

Applicant answered the SOR on October 20, 2014, and requested a hearing. The case was assigned to me December 15, 2014. The hearing was held as scheduled on January 27, 2015. Department Counsel presented Exhibit 1, which was admitted. Applicant presented Exhibits A–G, which were admitted. The hearing transcript (Tr.) was received February 5, 2015.

### **Findings of Fact**

Applicant is a 43-year-old employee of a health care contractor for the Defense Department. He is seeking to obtain eligibility to occupy a position of public trust for the first time. Eligibility is necessary because his job may involve access to sensitive but unclassified information known as personally identifiable information, which is commonly abbreviated as PII.

Applicant has been married for about 14 years, and he has a nine-year-old child. He and his family have resided at the same address since 2002. His educational background includes a bachelor's degree in business administration.

Applicant has worked for his current employer since March 2014. He serves in an executive-level position where he earns an annual salary of about \$140,000. Before that, he worked for another health care company for nearly 16 years in positions of increasing responsibility. He was working as an operations manager when he left the company in 2014.

Applicant completed a Questionnaire for National Security Positions (SF 86 Format) in February 2014.<sup>3</sup> The time frame is shortly after receiving the job offer, but before starting employment. In completing the questionnaire, he disclosed he had on occasion used marijuana on a recreational basis. He stated that it occurred on his own time and never during work, and that it had never interfered with his work performance. He stated that his occasional marijuana use took place from about October 1990 to January 2014. He denied using any other illegal drugs throughout his life. The information he disclosed served as the basis for the SOR allegation, which Applicant admits.

At the hearing, Applicant provided additional details about his marijuana use as follows: (1) he used marijuana with friends in social settings; (2) he never bought

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<sup>2</sup> The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>3</sup> Exhibit 1.

marijuana; (3) he never cultivated, sold, or transported marijuana; (4) his spouse is aware of his marijuana use; (5) marijuana use did not affect his finances; (6) the last time he used marijuana was in January 2014; (7) he estimated or guessed that he used marijuana a little more than 40 times during the 15-year-period; and (8) his marijuana use did not violate his former employer's drug policy because the policy was limited to drug use at work.<sup>4</sup> He decided to stop marijuana use in January 2014, because he discovered that any illegal drug use would be inconsistent with the terms of his current employment and ADP eligibility.<sup>5</sup> He has also informed the friends with whom he smoked marijuana that he will no longer partake, and they have respected his decision.<sup>6</sup>

Also at the hearing, Applicant submitted a statement of intent not to abuse any drugs in the future, and he further agreed that any such violation will be grounds for automatic revocation of his eligibility.<sup>7</sup> He stated that he takes the commitment not to abuse drugs in the future "incredibly seriously," that it is a "very important priority," that his job and work for the Defense Department are "paramount," and that any future drug abuse would be an "epic fail[ure]" on his part.<sup>8</sup> His spouse is in full agreement with his decision to stop using marijuana.<sup>9</sup>

Applicant presented numerous letters of recommendation and a good amount of documentary evidence related to his good employment record and community involvement.<sup>10</sup> In addition, he was recently elected to a leadership position as a director for a local community services board.<sup>11</sup>

## Discussion

In analyzing this case, I have paid special attention to Applicant's credibility. During the hearing, I had an opportunity to observe his demeanor and evaluate his sincerity, candor, and truthfulness, and I was impressed by what I saw and heard. Applicant answered questions openly and without reservation or equivocation, and I found his testimony to be credible in all respects.

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<sup>4</sup> Tr. 30–32, 44–45, 46–48, and 50.

<sup>5</sup> Tr. 32.

<sup>6</sup> Tr. 35–36, 59–62.

<sup>7</sup> Exhibit A.

<sup>8</sup> Tr. 34, 42, and 51.

<sup>9</sup> Tr. 62–63; Exhibit C (letter from spouse).

<sup>10</sup> Exhibits C, D, E, F, and G.

<sup>11</sup> Exhibit B.

Applicant's history of marijuana use is disqualifying under Guideline H.<sup>12</sup> The undisputed evidence shows he engaged in drug abuse<sup>13</sup> by using marijuana on an occasional basis from October 1990 to January 2014, a 15-year period. His marijuana use was not limited to youthful experimentation or immaturity during his college years, but extended into his adulthood to his early 40s. His drug abuse reflects negatively on his judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations.

There are four mitigating conditions to consider under Guideline H, although only AG ¶¶ 26(a) and (b) are relevant to the facts of Applicant's case.<sup>14</sup> I considered both, and they are sufficient to mitigate the concern.

The mitigating condition in AG ¶ 26(a) applies in Applicant's favor, because his drug abuse ended in January 2014, before he started his current employment and before he applied for ADP eligibility. His last marijuana use took place more than one year ago, which is a sufficient period of abstinence to show that it is no longer a concern.

The mitigating condition in AG ¶ 26(b) applies in Applicant's favor, because he presented sufficient evidence to demonstrate an intent not to abuse marijuana in the future. Applicant impressed me as a successful person who enjoys his work and his family, and he is serving his local community in a leadership position. Those are traits associated with reliability, trustworthiness, and good judgment. In addition to his credible testimony, under AG ¶ 26(b)(4), Applicant submitted a signed statement of intent not to abuse any drugs in the future with automatic revocation for any violation. He also receives credit for disclosing his marijuana use during the processing of his case. By doing so, he did what is expected of a person seeking access to sensitive but unclassified information. Moreover, it is possible that the Defense Department would have never learned of his marijuana use but for his disclosure. For all these reasons, I am persuaded and convinced that Applicant's history of occasional marijuana use is safely in the past and will not recur.

To conclude, the evidence leaves me with no doubt or concern about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the

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<sup>12</sup> AG ¶ 25(a). Concerning Guideline H, in an October 24, 2014 memorandum, the Director of National Intelligence reaffirmed that the disregard of federal law concerning use, sale, or manufacture of marijuana is relevant in national security determinations regardless of changes to state laws concerning marijuana use.

<sup>13</sup> AG ¶ 24(b).

<sup>14</sup> AG ¶ 26(a)–(d).

unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.<sup>15</sup> For all these reasons, I conclude Applicant mitigated the drug involvement concern.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline H:	For Applicant
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is granted.

Michael H. Leonard  
Administrative Judge

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<sup>15</sup> AG ¶ 2(a)(1)–(9).