



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-06232

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro se*

December 8, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing dated April 28, 2014. (Government Exhibit 1.) On February 20, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. 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 (AG) effective within the Department of Defense after September 1, 2006.

Applicant responded to the SOR on March 20, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on July 16, 2015. A notice of hearing was issued on August 12, 2015, scheduling the hearing for September 23, 2015. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. He also testified on his own behalf. The official transcript (Tr.) was received on October 1, 2015.

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 52 years old and unmarried. He has a Bachelor's Degree in electrical engineering. He is employed by a defense contractor as an Electrical Engineer, or Senior Radio Frequency Engineer. He is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

Applicant denied the allegations set forth under this guideline. (See Applicant's Answer to the SOR.) Applicant began working for his current employer in February 2013.

Applicant has a history of illegal drug use involving marijuana that occurred over a thirty year period from August 1977 to at least February 2014. Applicant began using marijuana in high school about twice a month. By college, he was using it on a weekly basis. He estimates that he has smoked marijuana about 500 times in his life. He explained that he smoked marijuana because he enjoyed it and it calmed him down. (Tr. p. 19.) He used it with friends and at home alone. (Government Exhibit 2.)

He states that while working for a previous defense contractor, from July 1992 to April 1996, and holding a security clearance, he did not use marijuana. (Tr. pp. 20-21.) Once he left the job in April 1996, and the clearance was no longer required, he started using marijuana again. After being hired by his current employer in February 2013, he started using marijuana again. He last smoked marijuana in January or February 2014, when he learned he was being submitted for a security clearance. (Government Exhibit 2.)

Applicant also stated that to obtain marijuana for his own use, he purchased it on various occasions from a friend. Applicant stated that if he does not get his security clearance or if he gets one and it lapses again, he cannot rule out smoking marijuana in the future. (Tr. pp. 24-25.) He understands that the use of marijuana is illegal and against his company's and DoD policy. Applicant stated that since 2008, he has tried to stay away from his old friends that use marijuana. He stated that he has abstained for long periods before and he can do it again if necessary. (Tr. pp. 30-31)

Applicant submitted two letters of recommendation, one from a Program Manager, another from a Business Unit Deputy. Both have recently worked with the Applicant and attest to his skills, talent, dedication to his work, his ability to focus and compartmentalize and his reliability and trustworthiness. Applicant is highly recommended for a security clearance. (Applicant's Exhibits A and B.)

## POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline H (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.

#### Conditions that could raise a security concern:

25.(a) any drug abuse; and

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . 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.”

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in illegal drug abuse that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government met its initial burden of proving that the Applicant has engaged in drug involvement (Guideline H). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government’s case under Guideline H of the SOR.

Applicant's thirty year history of drug use involving marijuana, both use and purchase, knowing the drug to be illegal, and against company and DoD policy, is incomprehensible. This conduct is wrong and demonstrates a lapse in sound judgment that is puzzling and raises serious questions about his judgment, reliability and trustworthiness. Applicant is not a recent college graduate, without sufficient experience or the know-with-all to comprehend the seriousness of his actions. Instead the Applicant is a 52-year old, educated engineer, who has worked in the defense industry for many years. His continued use of marijuana over the years calls into question his maturity, character, judgment, and ability to follow rules and regulations. His intent to resume marijuana use if he is not granted a security clearance, or if granted one, to resume his use of marijuana when his clearance is no longer needed or revoked is quite disturbing.

Applicant was hired by his most recent employer in 2013, with the common sense understanding that he would follow company policy. Applicant knew that his company prohibited the use of illegal drugs, and that it was against DoD policy and of course, against the law. This conduct shows extreme immaturity and raises serious security concerns about his reliability and trustworthiness. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*; and 25.(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia* apply. None of the mitigating conditions are applicable.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. He does not demonstrate the level of maturity, responsibility, or the characteristics expected of an employee who works for the defense industry and wants access to classified information. Applicant's illegal conduct is too recent, and a clear indicator of poor judgment and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the Applicant is, and has been, sufficiently trustworthy on the job and in his everyday life to adequately protect the government's national interest. Based upon the conduct outlined here, this Applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge