



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-00210
)
Applicant for Security Clearance)
)

Appearances

For Government: Daniel O’Reilley, Esq., Benjamin Dorsey, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.
11/08/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant exercised seriously poor judgment by misusing a controlled substance to curb her appetite so that she could become pregnant. However, the passage of time and her credible medical evidence in mitigation is sufficient to overcome the remaining security concerns raised by the guideline for drug involvement and substance misuse. Eligibility for classified information is granted.

Statement of Case

On June 30, 2016, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. On October 7, 2016, Applicant provided a summary interview (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation and PSI, the Department of Defense (DOD) could not make the affirmative findings to issue a security clearance. On March 1, 2018, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under misuse of prescription drugs (Guideline H, ¶ 1) and personal conduct (Guideline E, ¶ 2). The action was taken under Executive Order (E.O.) 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 Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017.

Applicant answered the SOR on March 14, 2018, and requested a hearing. I was assigned the case on July 28, 2018. On March 28, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for April 15, 2019. The Government's two exhibits and Applicant's 15 exhibits were admitted without objection. On April 30, 2019, DOHA received a copy of the transcript (Tr.); the record closed the same day.

Rulings on Evidence

Before opening statement, the Government moved to withdraw ¶ 2 (Guideline E) of SOR. The motion was granted. (Tr. 5)

Findings of Fact

In Applicant's answer to the SOR, she admitted misuse of prescription drugs as alleged under ¶ 1.a.

Applicant is 38 years old. She married in May 2015 and gave birth to a daughter on August 26, 2017. She has owned her home since March 2011. In May 2003, Applicant received a bachelor's degree in history; in August 2004, she earned a master's degree in cultural studies; and in May 2009, she was awarded a law degree. From 2009 to September 2010, she clerked for a federal district court judge. She was a law firm associate for three years before landing her current job in 2014 where she is presently a senior contract attorney. She is a member of two state bars. Applicant has never been investigated or held a security clearance. She has no criminal record and the only drug she has used in her life is Adderall. (GE 1 at 9-14, 22, 69, 72; GE 2 at 16; AE B; AE C; AE F; AE G; AE N at 2-3; AE O)

In her October 2016 PSI, Applicant indicated she used Adderall about two times a month beginning in January 2016, when she was 34 years old. The controlled substance was prescribed to her brother for his attention deficit disorder. She began taking the drug to curb her appetite. She indicated that the drug never had an adverse effect on her judgment, her work, or her finances. She informed the OPM investigator that she intended to continue using the drug unless required to stop to obtain a security clearance. (GE 2 at 16)

In her interrogatory answers dated and notarized on February 9, 2018, Applicant noted several minor changes in her October 2016 PSI. She then disclosed that her

daughter was born in August 2017. She also indicated that she used Adderall about 30 times from January 2016 to February 9, 2018. (GE 2 at 1-5, 16)

Though not mentioned in her October 2016 PSI or her February 2018 interrogatory answers, she informed a licensed clinical social worker (LCSW) in April 2019 that during her pregnancy and nursing of her daughter from December 2016 to approximately February 2018, she used no Adderall. (AE N at 2-3)

The LCSW conducted a full evaluation of Applicant in April 2019. For part of the evaluation, she administered the drug assessment screening test (DAST) to Applicant. She conducted an examination using the 11-point screening criteria of Diagnostic and Statistical Manual of Mental Disorders (DSM-5). She conducted a mental status exam followed by a clinical interview. After referencing the AGs for security clearance eligibility and reviewing the pertinent sections of the DSM-5, the LCSW diagnosed Applicant as having no substance abuse disorder. (AE N at 1-4)

At the hearing, Applicant explained that her obesity was the reason she started using Adderall in January 2016. Over the next several months, she lost 70 pounds and became pregnant in December 2016. She indicated that she did not use Adderall during her pregnancy (December 2016 to August 2017) and while she was nursing her daughter for the next four months. Applicant resumed her Adderall use in January 2018 because she wanted to lose weight again, a decision she regrets. She discontinued use in February 2018 “because that’s when I received the Government’s Statement of Reasons.” (Tr. 33) (She is mistaken as the SOR was not issued until March 1, 2018.) Applicant did not know the drug was a controlled substance until a later date. (SOR; Tr. 22-28; 33)

The circumstances in Applicant’s life have changed since the birth and nursing of her daughter. She is no longer trying to lose weight to achieve pregnancy. She pledged not to use Adderall or another person’s prescription drugs in the future. Applicant’s six drug tests from October 2018 through March 2019 registered negative results. On December 11, 2018, she signed a statement of intent to abstain from future misuse of prescription drugs, realizing that future misuse of prescription medication is grounds for revocation of national security eligibility. (Tr. 22-28; AE L; AE M)

In November 2018, Applicant’s treating psychiatrist recalled that that she told him in August 2016 she was using Adderall though he was unable to conclude “during that time” or “since that time” that she was addicted to the drug. Applicant’s weight loss doctor, who she has been consulting occasionally for four years, discouraged her from using Adderall. She has never tried to obtain a prescription for the drug from a medical professional. She has had some success with other prescribed weight-loss drugs, but stopped using one of those drugs because of the risk of birth defects. (Tr. 31-33, 35-38; AE K)

Applicant selected Adderall to control her appetite because somehow she knew the drug could subdue hunger desires and she was aware her brother had a prescription for the drug. She did not know if the drug had any side effects or a negative influence on her fertility. (Tr. 36-37, 42-43)

Applicant's fear of not being granted a security clearance was one reason she stopped using Adderall. However, when she received the SOR labeling her a national security concern, she knew she had to strengthen her resolve for continued abstinence from Adderall misuse or misuse of another's prescription drugs. (Tr. 37)

Character Evidence

Applicant's colleague (Mr. R3) at her current employer testified that he has been working with Applicant for three years. In his daily contact with her, he has found her to be very professional and a trustworthy attorney. Applicant expressed her remorse to Mr. R3 for having used Adderall that was prescribed to her brother. She was trying to lose weight so that she could become pregnant. (Tr. 11-19)

Applicant submitted nine character references. A program manager (Mr. R1) has known Applicant since 2011 because they worked together on government contracts at a law firm until she accepted her present job in 2014. Applicant's professionalism and trustworthiness is based on Mr. R1's regular interaction with her. Mr. R2 has known Applicant for nine years and believes that she is a diligent worker. Mr. R3, corporate counsel who testified at the hearing, indicated that Applicant is involved in a neighborhood charity that provides scholarships to worthy candidates from the area. (AE H; AE J)

Mr. R4, a contractor, has known Applicant professionally and socially for four years. He believes she is a knowledgeable member of the government contractor community. Ms. R5 has known Applicant since they were in law school in 2006. Ms. R5 and Applicant have maintained friendship over the years. Mr. R6, an associate law school professor, was a law clerk with Applicant in 2009. They have remained friends with Mr. R6 and Applicant socializing often. (AE H)

Mr. R7, who has known Applicant for five years, worked with her for a period of time at her current employer. He found her to be honest, dedicated, and a team player. Mr. R8, currently a police officer, worked with Applicant at her employer's industrial security office. He personally observed her trustworthiness and high caliber of her work product. (AE H)

Mrs. R9, a lawyer, has known Applicant since 2012, when Mrs. R9 was hired at a contracts law firm, and Applicant was assigned to be her adviser. Applicant's mentoring helped Mrs. R9 manage her time more effectively and stimulate her professional development. Applicant is an honest person, a responsible wife, and attentive mother.

(AE H) None of the nine glowing character endorsements, not even the reference from Mr. R3, make any reference to Applicant's misuse of prescription drugs.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

(a) any substance misuse (see above definition).

The record evidence indicates that Applicant misused Adderall, a schedule II controlled substance (stimulant) as defined 21 United States Code (U.S.C.) 802. By

obtaining the drug that was prescribed to her brother for his attention deficit disorder, Applicant misused a legal drug in a manner inconsistent with the drug's intended purpose.

Applicant began misusing Adderall in January 2016 at a frequency of about twice a month. After reporting her history of misuse during an October 2016 PSI, she informed the OPM investigator that she would continue to misuse Adderall unless she was required to stop to receive a security clearance.

Applicant continued to misuse Adderall until December 2016, when she became pregnant. After the birth of her daughter in August 2017, and a four-month period of nursing, she resumed misuse of the drug in January 2018, and used the drug until February 2018. AG ¶ 25(a) applies.

AG ¶ 26. Conditions that could mitigate security concerns include:

(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

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has ended; 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.

AG ¶ 26(a) applies in part because Applicant's substance misuse is unlikely to recur. I find that Applicant no longer has a reason to use Adderall because she has given birth and knows that she can curb her appetite and weight with other prescription drugs as she has in the past. Additionally, she did not know the drug was a controlled substance.

Applicant receives some mitigation from AG ¶ 26(b) because she provided credible testimony of her intention not to misuse prescription drugs in the future. Her intention is supported by her responsible decision to self-report her substance misuse to the OPM investigator, her abstinence from substance misuse since February 2018, and her signed statement of intention to forego future misuse of prescription drugs.

AG ¶ 26(c) applies in part because Applicant wanted to have a baby and her weight was preventing her procreation. Applicant does not receive full credit under the condition because after she completed nursing she again used poor judgment in resuming misuse of Adderall.

While Applicant has not completed a substance abuse program, she did undergo a comprehensive evaluation by a LCSW in April 2019. After administering a DAST, an 11-point evaluation under the DSM-5, a mental health status exam, a clinical interview, and assessing the AGs for security clearance eligibility, the LCSW diagnosed Applicant as having no substance abuse disorder. AG ¶ 26(d) applies in part.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept listed at AG ¶ 2(d):

- (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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant provided positive evidence that weighs in her favor. She is 38 years old. She has been married for four years and has a young daughter. She has a bachelor's degree, a master's degree, and a law degree. Since her graduation from law

school, she has developed a respected reputation from former and current coworkers for her intelligence, team player attitude and professionalism.

When Applicant was interviewed by the OPM investigator in October 2016, she exercised good judgment by volunteering her Adderall use before being questioned about any drug abuse or misuse. But then she displayed poor judgment by announcing that she planned to continue using the drug unless the use prevented her from receiving a security clearance. Even though she did not know the drug was a controlled substance, she knew (at ages 34-36) that she was misusing a drug prescribed to her brother. She continued using the drug until she became pregnant in December 2016, and resumed use for a short period in early 2018, after a four months of nursing.

Judging by the totality of all the evidence, Applicant's fear of not receiving security clearance eligibility was a critical consideration in her decision to stop using Adderall. However, her subsequent understanding of the drug's classification as a controlled substance, along with the impropriety of using another person's prescription drugs, were two other factors that caused her to stop. I find that there has been no use of this drug since February 2018. In April 2019, following a complete diagnostic evaluation encompassing alcohol tests, and a clinical interview, the LCSW found no substance abuse disorder that is recognized by the DSM-5. Considering the evidence as a whole, particularly the favorable character and medical evidence, Applicant has overcome the security concerns raised by the guideline for drug involvement and substance abuse.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge