



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-03371  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

07/27/2021

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement and substance misuse. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 5, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The DCSA CAF 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 effective June 8, 2017 (AG).

Applicant answered the SOR on January 22, 2021, 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), which was sent to Applicant on March 24, 2021. The evidence included in the FORM is identified as Items 4-5 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 15, 2021. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file any objections, but he submitted an email to Department Counsel that I have marked as an exhibit (AE A). All exhibits are admitted into evidence without objection. The case was assigned to me on July 9, 2021.

### **Findings of Fact**

In Applicant's answer, he admitted both allegations in the SOR. He also provided some explanation for his conduct. I adopt his admissions as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 2)

Applicant is 52 years old. He is married with no children. He served in his state's Army National Guard from 2004-2011 and was honorably discharged. He has worked as a federal contractor since 2011. He holds a bachelor's degree. He has held a security clearance since at least 2010. (Item 4)

The SOR alleged Applicant misused prescription medication from approximately June 2017 to August 2020. The SOR also alleged he misused this prescription medicine after being granted a security clearance. His admissions in his June 2020 security clearance application (SCA), in his November 2020 answers to interrogatories, and in his answer to the SOR, provide sufficient evidence to support the allegations. (Items 3-5)

Applicant claims he abused the prescription drug Hydrocodone from 2017 to 2020 because he suffers from a medical condition for which he was not receiving proper medical treatment. At the time of his drug abuse, he held a security clearance. He obtained the Hydrocodone from his wife, who has a legal prescription for it. He used the drug intermittently, about three times a month, to manage pain because over-the-counter pain medicines did not work for him. At the time Applicant was questioned during his last background investigation in August 2020, he had not reported this prescription drug abuse to his employer. He told the investigator that he was thinking about reporting the abuse, but had not yet made the decision to do so. He claims that he stopped using the drug in August 2020. (Items 3-5; AE A)

Applicant claims that he started seeing a local physician about his medical condition in August 2020. He also stated that he was in the process of contacting a rheumatologist to address his arthritic issues. He did not provide any medical records, diagnoses, or prognoses from either of the doctors. He also stated that he used his employer's anonymous tip-line to inquire about how to report his past drug abuse. He

also volunteered for regular drug testing. He has not received any drug counseling or treatment. He did not provide any information about whether his wife still has access to Hydrocodone. He claimed his civilian performance reviews were good, but he did not provide any supporting documentation. I was unable to determine Applicant's credibility based on demeanor, because he chose an administrative determination rather than a hearing. (Items 3, 5; AE A)

## **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(a), 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 national security eligibility will be resolved in favor of the 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 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 EO 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 and Substance Misuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

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 describes conditions that could raise a security concern and may be disqualifying. One condition is potentially applicable in this case, to wit:

- (a) any substance misuse; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

From 2017 to 2020, Applicant abused the prescription drug Hydrocodone without a prescription, while holding a security clearance. I find that both the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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 since ended.

Applicant abused his wife's prescription for Hydrocodone by illegally taking the drug himself approximately three times a month from June 2017 to August 2020. His use was frequent and regular. Apparently, he still suffers from the medical condition that led to his illegal substance abuse, but he provided no medical information concerning a diagnosis or prognosis. Given this state of the evidence, I am unable to state that future drug abuse will not recur. His illegal use of his wife's prescription over a three-year period while holding a security clearance casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Although Applicant acknowledges his illegal substance abuse of Hydrocodone, his claimed recent abstinence of less than one year is insufficient to establish that a pattern of abstinence exists. He also failed to provide a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse would be grounds for revocation of national security eligibility. AG ¶ 26(b) does not apply. The Hydrocodone Applicant abused was prescribed for his wife, not for him. He had no legal reason to take the drug at any time. AG ¶ 26(c) 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(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 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. I considered his military and contractor service, but I also considered that he illegally used Hydrocodone regularly for approximately three years while holding a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse.

### **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
Subparagraphs 1.a-1.b:	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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge