



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



In the matter of:)
)
) ADP Case No. 21-02828
)
Applicant for Public Trust Position)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the trustworthiness concerns under Guideline J (criminal conduct), and H (drug involvement and substance misuse). Eligibility for access to a public trust position is granted.

Statement of the Case

On March 4, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 24, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant under Executive Order (Exec. Or.) 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), effective June 8, 2017.

On February 25, 2022, Applicant responded to the SOR, and she requested a hearing before an administrative judge. On May 6, 2022, the case was assigned to me. The Defense Office of Hearings and Appeals (DOHA) issued the hearing notice on September 15, 2022, setting the hearing for September 29, 2022. The hearing proceeded as scheduled.

During the hearing, Department Counsel submitted four documents, which I admitted into evidence as Government Exhibits (GE) 1 through 4, without objection. Applicant did not submit any documentation, but I held the record open for two weeks in the event either party wanted to supplement the record. Applicant timely submitted seven Exhibits (AE) A through G, which I admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 6, 2022.

Findings of Fact

Applicant admitted all of the allegations in the SOR. (SOR ¶¶ 1.a through 1.k, and 2.a through 2.e.) Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 38 years old. She was previously married on two occasions and was divorced in approximately 2007, and again in 2017. She is currently unmarried and resides with her three children, ages 5, 10, and 14. Applicant began working for her current employer two years ago. She works in data management and assists retired and enlisted service members with their health insurance benefits. Her employer requires her to be issued a trustworthiness eligibility to perform specific employment duties. (GE 1, GE 2; Tr. 7-20)

Under Guideline H, the SOR alleged Applicant's use of controlled substances from 2004 to June 2020. Under Guideline J, the SOR alleged approximately eight drug-related arrests and two arrests for assault, as follows:

Applicant began using methamphetamine (crystal meth) around the age of 20 (2004). Her father had committed suicide when she was 18 years old, and she started hanging out with friends who used drugs. In 2004, she used and purchased crystal meth to escape her personal problems arising from her father's death. The use of crystal meth started out as recreational, but it did not take long before her drug use became a habit and she used it on a daily basis. (SOR ¶ 2.b) (Tr. 21-23)

SOR ¶¶ 1.a and 1.c. Applicant was arrested twice in 2006 for possession of a controlled substance and public intoxication with a controlled substance. She admitted these arrests but could not recall many details about these incidents. (GE 2, 23-26)

SOR ¶ 1.b. Applicant was arrested in November 2006 for operating a motor vehicle while under the influence of drugs and for possession of drug paraphernalia. She admitted these arrests and explained that she was stopped by police while driving, and a syringe was found under her feet. (GE 2, GE 3; Tr. 25-27)

Applicant was arrested for driving on a suspended licenses in June 2007 (SOR ¶ 1.d); for public intoxication with a controlled substance in August 2007 (SOR ¶ 1.e); and for possession of drug paraphernalia in September 2007 (SOR ¶ 1.f). Applicant admitted at the hearing that she could not remember all the details of her arrests and convictions, but she did acknowledge that almost all of her drug-related arrests, cited above, involved crystal meth. At one point, she was sentenced to serve 30 days in jail following an arrest, but she only served about 10 days in jail. After her September 2007 arrest for possession of drug paraphernalia, the court sentenced her to six-and-a-half months in jail. (Tr. 23, 26-29; GE 1, GE 3)

Applicant admitted that she gave birth to her daughter in 2008 while serving her six-and-a-half month jail sentence. After her release, she stayed out of legal trouble for about five years, but she continued her illegal use of controlled substances. She began to use prescription pain pills, without a valid prescription, on a daily basis. In 2012, Applicant's doctor prescribed her Suboxone, a medication to treat opioid addiction, and she gave birth to her second daughter. She also admitted that she used crystal meth again in about 2015 on a couple of occasions, but she could not recall the details. She lost custody of her two daughters following her arrest in November 2016 for assault (domestic violence) with injury. This arrest involved a fight with her youngest daughter's father. He had hit her in the face with a television remote control, and she retaliated by biting him. The children were in the house at the time and both Applicant and her daughter's father were arrested. She was required to take anger-management classes. Her daughters were eventually returned to her by the court. (Tr. 28-36, 43; GE 1, GE 2)

Applicant continued using Suboxone, with a valid prescription, from 2012 through 2016. In 2017, she started going to the methadone clinic. She was pregnant at the time with her third child. In December 2018, she injured her arm and required medical treatment. To help Applicant calm down immediately following the injury, her mother gave her an unprescribed medication, possibly Valium or Xanax. When Applicant and her daughter arrived at the hospital, the staff notified Child Protective Services due to the belief that Applicant was under the influence of a controlled substance while in control of her daughter. Applicant stopped visiting the methadone clinic in 2019. She lost custody of her children again in 2019 due to her drug addiction. In 2019, she started buying Suboxone illegally from known sources. She continued to purchase Suboxone illegally until June 2020. (Tr. 28-35, 36-38, 43-51; GE 2)

In June 2020, Applicant went to a drug treatment program to overcome her substance abuse addiction. She also wanted to regain legal custody of her children and live a drug-free lifestyle. She was diagnosed with opioid dependence, severe. She was devoted to her recovery and she successfully completed the substance abuse treatment program in September 2020. At that time, her condition was listed as opioid dependence, severe, in remission. Thereafter, the court returned Applicant's children to her custody. (Tr. 45-55; GE 4)

Since June 2020, Applicant has remained completely sober and has not relapsed. She stated that she was tired of being a terrible mother to her children, and

she was tired of living the life of a drug addict. She has remained free from illegal substances and addictive prescription medications since June 2020. She does not consume alcohol because it is a mood-altering substance that can cause her to relapse. After she completed treatment, she regularly attended Alcoholic Anonymous (AA) and Narcotics Anonymous (NA) support meetings and was paired with a sponsor. She now occasionally attends an AA or NA support meeting if she feels the need, and she continues to communicate with her sponsor and sober friends. Her family members remain active in supporting her recovery. She does not associate with her old friends who continue to use illegal drugs. Her definition of “sober” is “to be free.” She testified that she is a completely different person since June 2020, and she wakes up every morning feeling gratitude. She is committed to her sobriety, her children, and her second chance at life. (Tr. 45-55)

Following the hearing, Applicant submitted seven letters of recommendation. According to Applicant’s supervisor, since March 2021, Applicant shows up for work as scheduled and performs her job duties in a successful manner. She recommended Applicant be allowed to continue working on the assigned government contract. A psychosocial support employee from the treatment facility, who met Applicant in August 2020, noted that she witnessed Applicant transform during treatment and could see that she wanted a better life. After Applicant’s successful completion of treatment, the support employee reported seeing Applicant attending community substance abuse and recovery events. Even though Applicant is a busy single mom holding down a stable job, she has reached out several times to help others start their own recovery process. Applicant’s friend and family members all described Applicant as a new person who continues to set a good example for her children. They all reported how proud they were of her continued sobriety and productive lifestyle. (AE A- G)

Policies

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

A person who seeks access to sensitive 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.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all

available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” The Government must present substantial evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline J: Criminal Conduct

The trustworthiness concern related to the criminal conduct guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists conditions that could raise a trustworthiness concern and may be disqualifying. Two conditions potentially apply:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The record evidence establishes AG ¶¶ 31(a), and 31(b). Applicant admitted criminal conduct in eight drug-related arrests between 2006 and 2018, two arrests for assault in 2012 and 2016, and a minor offense in 2007.

AG ¶ 32 lists two conditions that could mitigate the trustworthiness concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur

and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's pattern of criminal conduct raises serious trustworthiness concerns, and calls into question her ability to follow laws, rules, and regulations. She has a long history of multiple offenses that occurred from approximately 2006 through 2018. On the other hand, she has demonstrated several responsible and positive changes. Since June 2020, she has abstained from using any mood-altering substances, to include alcohol. She is committed to her recovery and no longer associates with her old friends entangled in illegal activities. She is involved in her children's lives and she is performing well at her place of employment. She has matured and is now more responsible. Four years have passed since she was charged with violation of a criminal offense. I find there is sufficient evidence in the record to demonstrate through the passage of time that Applicant's criminal conduct will not recur. The criminal conduct trustworthiness concerns are mitigated.

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the trustworthiness concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

(a) any substance misuse;

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(d) diagnosis by a duly qualified medical or mental health professional . . . of substance use disorder.

Applicant used a variety of illegal drugs, to include crystal meth and opiates without a valid prescription, from about 2004 to June 2020. In June 2020, she was diagnosed with opioid dependence, severe. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

(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;

(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; 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.

Applicant used illegal drugs, to include crystal meth and opiates, over a long period of time and to the point of addiction. Her last use of illegal drugs occurred in June 2020, when she entered a substance abuse treatment program. At that time, she was tired of living the life of a drug addict and she wanted to regain custody of her children. She realized that she needed to make drastic changes in order to be a better mother and to live a life free from all mood-altering substances. She embraced the principles of the drug-rehabilitation program, and she testified at the hearing that she is a new person today. She has not used any illegal substances for two-and-a-half years. She occasionally attends AA or NA meetings when needed, she regularly communicates with her sponsor, and she has family members and sober friends who support her sobriety. She is involved in community programs for substance abuse awareness and has actively encouraged others to get treatment.

I find Applicant is sincere about her commitment to remain drug-free since the successful completion of her substance abuse treatment program. She was forthright about her illegal drug use during the hearing, and she stopped associating with friends

who use illegal drugs. She has abstained from all mood-altering substances, to include alcohol, for two-and-a-half years, and she is unlikely to resume her use of illegal drugs. AG ¶¶ 26(a), 26(b), and 26(d), apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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 trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines 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 have incorporated my comments under Guidelines J and H in my whole-person analysis.

Applicant took responsible measures to turn her life around. She has not been charged with a criminal offense over the last four years, and she has not used any illegal or mood-altering substances for the last two-and-a-half years. She made efforts to begin a life of sobriety well before the SOR was issued. Her employer stated that Applicant is a productive employee and recommended that she be permitted to remain active on the government contract. Her friend, family members, and a medical professional from the treatment facility reported that Applicant is a new person committed to a drug-free lifestyle. I find that future criminal conduct and illegal drug use are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated all of the trustworthiness concerns alleged in the SOR.

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 J:	FOR APPLICANT
Subparagraphs 1.a - 1.k:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

Pamela C. Benson
Administrative Judge