



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



In the matter of:)
)
-----) ISCR Case No. 22-01870
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: Pro se

03/01/2023

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On September 26, 2022, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (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.

Applicant responded to the SOR on October 7, 2022, and elected to have his case decided on the written record, in lieu of a hearing. Applicant received the file of Relevant material (FORM) on December 1, 2022 and interposed no objections to the materials in the FORM. Applicant timely submitted information to supplement the FORM within the time period. In his response to the FORM, Applicant incorporated his explanations from his SOR response. To support his claims, he cited his SOR answer with updates through December 1, 2022, and documented his September 2019 certificate of completion of his intensive treatment, his updated December 2022 diagnosis of major depressive disorder and Attention Deficit Disorder (ADD), with a stable prognosis with continuing treatment, an updated diagnosis and prognosis with a noted history of drugs and alcohol abuse in full sustained remission, and character references. Applicant's post-FORM submissions were admitted as Items 9-15. The case was assigned to me on January 26, 2023.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used Methamphetamine with varying frequency from about May 2015 to about May 2019; (b) purchased Methamphetamine with varying frequency from about June 2015 to about May 2019; (c) used Methamphetamine with varying frequency from about May 2015 to about September 2019, while granted access to classified information or holding a sensitive position; and (d) received treatment at a substance abuse clinic (A Clinic) from about August 2019 to the present, for a condition diagnosed as moderate to severe substance abuse disorder. The allegations covered by Guideline H were cross-alleged under Guideline E.

In Applicant's response to the Guideline H and the incorporated Guideline E allegations, he admitted each of the allegations with explanations and clarifications. He claimed he completed his five-week treatment program for substance abuse in September 2019, and continued his treatment sessions until July 2021. He claimed he has cut ties with all drug-using associates and has surrounded himself with others who are clean and in recovery. He also claimed to have been clean and sober from drugs and alcohol for three years and four and a half months, and attends one to three 12-step meetings a day. He claimed his willingness to submit to random drug testing. And, he claimed to have maintained a security clearance since approximately 1984 with no infractions or issues.

Findings of Fact

Applicant is a 63-year-old civilian for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in October 1987 and divorced in March 1994. (Item 3) He has one adult daughter (age 33) from this marriage. Applicant earned a bachelor' degree in January 1983. (GE 3) He reported no military service.

Since June 2001, Applicant has been employed by his current defense contractor as an engineer/scientist. (Item 3) He has held a security clearance since 1984. (items 2-3 and 7)

Applicant's drug history

Applicant used Methamphetamine with varying frequency between May 2015 and September 2019 to help him with his ADD. (Items 3 and 8) What began as sporadic use of the drug soon escalated to "weekly use and a in the end daily use." (Item 3)

In a personal subject interview (PSI). convened by an investigator of the Office of Personnel Management (OPM) in March 2021, Applicant disclosed his use of Crystal Meth (Methamphetamine) between 2015 and 2019. (Item 8) He confirmed he as bean using Crystal Meth since the Spring of 2015 to help him with his Attention Deficit Disorder (ADD). (Item 8) Soon after his introduction to the drug, he became addicted to it and experienced health issues he believed were exasperated by his use of Crystal Meth. (GE 8) He assured that his last use of the drug was in September 2019. To obtain his Crystal Meth, he furnished funds three or four times a month to sources he found on-line. (Item 8) Some of his sources joined him in smoking in his home; while others did not. (Item 8)

Asked for more information about his use of Methamphetamines by the OPM investigator who interviewed him, Applicant responded that the drug enhanced his sexual experiences, which further contributed to his addiction. (Item 8) While he knew it was wrong to use the drug, he became so addicted to using it that he could not abstain. (Item 8) Because the Crystal Meth he used helped him focus, he was able to avert detection and defer his obtaining prescribed medications to address his health issues. (Item 8)

Unable to control his use of Crystal Meth, Applicant turned to drug counseling and treatment with A Clinic in August 2019 (Items 3 and 11) As a part of his intensive outpatient treatment program, beginning in September 2019, Applicant was treated with comprehensive detoxification, rehabilitation, and continuing care services in a structured, intensive outpatient setting. (Item 11) His rehabilitation phase consisted of 20 to 30 sessions, spread out over a period of two months, and included group psychotherapy, individual therapy sessions, and daily administration of Antabuse. (Items 11 and 12)

After completing his intensive care outpatient program in September 2019, Applicant entered a continuing care phase with the same A Clinic. (Item 11) This phase consisted of at least 20 sessions of group therapy, in addition to Alcoholics Anonymous (AA), Controlled Anonymous (CA), and Narcotics Anonymous (NA) meetings. (Item 11)

Applicant was credited with successfully completing his substance abuse program in July 2021 with a discharge diagnosis of amphetamine disorder moderately severe and was urged to continue with individual therapy and participate in community-based recovery support groups. (Item 11) The extent of his participation with these network

programs after July 2021 is unclear. Documentation of earned chips commemorating his sobriety and abstinence is lacking in the record.

Since Applicant's A Clinic outpatient discharge in September 2019, he has cut all ties with drug-using associates and has abstained from Crystal Meth and all other forms of behavior-altering illegal drugs. (Item 9) Applicant has been fully forthcoming with his employer about his past use of Methamphetamines to address his ADD. (Items 3 and 9) He assured that he abstained from illegal drug use for over three years. With his illegal drug problems now under control, he believes he is a much more valuable contributor to his employer. Applicant further assured that he has no intention of ever using illegal drugs again, and credited (a) the tools he has acquired from his outpatient treatment counseling and (b) his embracing the 12-step program for recovery addicts. (Item 14)

Health dangers from Methamphetamine use

Methamphetamine is a powerful, highly addictive stimulant that affects the central nervous system. (Item 4) Crystal Meth is a form of the drug that looks like glass fragmented or shiny, bluish-white rocks. Chemically, it is similar to amphetamines, a drug used to treat Attention Deficit Hyperactivity Disorder (ADHA), as well as narcolepsy, a sleep disorder. (Items 4-6) Meth users are at increased risk of contracting infectious diseases, such as HIV and Hepatitis B and C. (Item 4) Methamphetamine use is known to alter decision-making, and it can create cognitive problems in thinking, understanding, learning, and hearing loss. (Item 14) Withdrawal symptoms from Methamphetamine cessation include anxiety, fatigue, severe depression, psychosis, and intense drug cravings. (Items 4-6)

Applicant's updated diagnosis and prognosis

In an updated diagnosis and prognosis from a licensed physician affiliated with A Clinic, this physician diagnosed Applicant with a major depressive disorder and ADD for which he has been receiving treatment at the A Clinic. (Item 13) This physician noted Applicant's "remote history of drugs and alcohol but is in sustained remission." (Item 13) The A Clinic physician offered no comments on what continuing treatment and medications Applicant might require to sustain his abstinence from Methamphetamine and other illegal drugs for the foreseeable future. Applicant' supplied no documentation of any continuing participation in AA, CA, and NA, or with any continuing care he may still be receiving from substance abuse specialists to ensure his continuing recovery. Although, he did provide a character reference from his sponsor who has worked with Applicant in a 12-Step Book Study group on Zoom. (Item 15) His sponsor characterized Applicant as "a pleasure to work with in our sponsor/sponsee relationship." (Item 15)

Endorsements and work recognitions

Applicant is well-regarded by his work group leader, his current sponsor, and longtime friend who are familiar with Applicant's historical addiction issues. (Item 15) They credit Applicant with overall honesty, integrity, strong work ethic, and trustworthiness.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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. An 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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 ¶ 24.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . . AG ¶ 15.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v.*

Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant's historical addictive use and purchases of a federally controlled illegal drug (methamphetamine) over an extended period (over four years) while holding a security clearance. Applicant's involvement with illegal drugs raise security concerns over whether Applicant's actions reflect pattern Methamphetamine use and involvement incompatible with the judgment, reliability, and trustworthiness requirements for gaining access to classified information.

Drug involvement concerns

Applicant's admissions of using Methamphetamine raise security concerns over risks of recurrence as well as judgment issues. On the strength of the evidence presented, three disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant's situation: DC ¶¶ 25(a), "any substance misuse"; 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia"; and 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position."

To his credit, Applicant has committed to abandoning all involvement with Methamphetamine and has committed to intensive outpatient treatment and participation in support groups (AA, CA, and NA meetings) with the support of his sponsor. For over three years, he has remained abstinent from illegal drugs (inclusive of Methamphetamine) and exhibits no manifest signs or indications of succumbing to any risks or pressures he might encounter to return to illegal drug use in the foreseeable future. To help him with his focus issues in the future, he will continue to look other types of medications to address his ADD issues and avoid any recurrent returns to self-medicating with Methamphetamine. Applicant's efforts and commitments are encouraging.

Recognizing his need to set a better example for himself, his coworkers, and his family he has abandoned illegal drugs and charted a sustained recovery course that hopefully will enable him to sustain his abstinence from Methamphetamine. Overall, he

has shown marked improvement in his judgment and maturity level in the three-plus years he has abstained from Methamphetamine use and purchases and disassociated from individuals known for their involvement in illegal drugs.

Applicant's assurances of sustained abstinence from illegal drugs (Methamphetamine) are welcomed. And, his efforts warrant partial application of three mitigating conditions (MCs) of the drug involvement guideline: MC ¶¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"; 26(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

26(d), "satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of and favorable prognosis by a duly qualified medical professional."

Still, with the combination of addictive use of Chrystal Meth over an extended period (over four years) while holding a security clearance and his constructive awareness of the federal ban on the use of illegal drugs during his years of usage, it is still too soon to absolve Applicant of risks of recurrent use of illegal drugs in the foreseeable future. Without additional time to establish a more probative pattern of sustained abstinence from the use and purchase of Methamphetamine, none of the pertinent mitigating conditions are fully available to Applicant at this time.

With only three-plus years of demonstrated abstinence from a very addictive drug (Methamphetamine), Applicant will require additional time with more corroborating evidentiary sources to support his continued abstinence before he can be absolved of recurrence risks. Potentially helpful to Applicant in making his case for sustained remission would be earned chips from his AA, CA, NA networks commemorating his sustained commitments to long-term recovery from Methamphetamine addiction.

Because Applicant's addictive use of Crystal Meth for many years (2015-2019) while holding a security clearance violated federally controlled bans on the use and possession of the substance, his involvement with the drug falls within the applicable contours of Guideline E as well. Applicant's habitual use of Crystal Meth while holding a security clearance is clearly incompatible with the general concerns expressed in Guideline E about an applicant's failure to comply with rules and regulations, and how such failed compliance can create questions about the applicant's reliability, trustworthiness, and ability to protect classified or sensitive information. Without more

probative proof of his ability to sustain his commitment to abstinence from illegal drug use, none of the mitigating conditions covered by Guideline E are available to Applicant at this time.

In the face of multiple proven acts of drug use and purchases of a federally banned substance (Methamphetamine), more time is needed to restore trust in Applicant's ability to avoid recurrent acts of misuse of illegal drugs in the foreseeable future. His laudatory endorsements from his group leader and friends while impressive, are not enough to counter his history of addictive drug use while holding a security clearance. While this is not a close case, even close cases must be resolved in the favor of the national security. See *Dept. of Navy v. Egan, supra*. Quite apart from any illegal drug concerns the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect good judgment and trustworthy behavior or sustained periods of time from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980)

Whole-person assessment

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of his overall maturity, good judgment, reliability, and trustworthiness required of those who seek eligibility to hold a security clearance or sensitive position.

While Applicant presents with many positive reinforcements from his group leader and friends, of his overall reliability and trustworthiness, he lacks a sufficient track record of sustained avoidance of recurrent illegal use and purchases of Crystal Meth to facilitate safe predictions he is at no risk of recurrence.

Considering the record as a whole at this time, including Applicant's recognized contributions to the nation's defense efforts, and granting due weight to the positive steps Applicant has taken to sustain his commitments to avoidance of illegal drug involvement, there is insufficient probative evidence of sustainable mitigation in the record at this time to make safe predictable judgments about Applicant's ability to avoid illegal drugs and drug activities in the foreseeable future.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person, I conclude drug involvement and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs 1.a-1.d:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge