



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01855
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2024

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**Decision**

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BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 23, 2022. On September 29, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H and Guideline J. The DOD 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 (AG) effective on June 8, 2017.

Applicant provided an undated supplemental response to the SOR (Answer) after he failed to specifically admit or deny the SOR allegations in his initial response. The

original SOR response was not in my case file. Applicant also did not initially request a hearing before an administrative judge. He requested a decision to be made on the written record, but he later changed his mind and requested a hearing before a DOHA judge, which was granted. The case was assigned to me on August 6, 2024. He had several documents attached with his Answer, and I marked these as Applicant Exhibits (AE) A through H. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 27, 2024, setting the hearing for September 10, 2024. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2. Applicant testified and offered two additional documents, which I marked as AE I and J. I admitted all proffered exhibits into evidence without objection. I held the record open until October 1, 2024, in the event either party wanted to supplement the record. Applicant timely submitted one document, which I labeled as AE K and admitted into evidence without objection. Department Counsel submitted a March 2024 disclosure letter, and a post-hearing written closing argument, marked as Hearing Exhibit (HE) I and II, and they were appended to the record. DOHA received the hearing transcript (Tr.) on September 17, 2024, and the record closed on October 2, 2024.

### **Findings of Fact**

Applicant admitted all of the SOR allegations under Guidelines H and J, and he also made some revisions with the alleged dates of illegal drug use. (SOR ¶¶ 1.a-1.d, and 2.a.) (Answer; Tr. 10-12) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 33 years old. He earned a machinist certification in 2019. He has also attended some college courses, but he has not earned enough credits for a college degree. He is unmarried and he does not have children. Since June 2022, he has been residing in a sober living home, and he has been on “methadone maintenance” for the past ten years. Methadone maintenance treatment assists individuals who are dependent on heroin to reduce, or stop, their use of drugs classified as an opioid. This is a recognized and accepted form of heroin rehabilitation. Although Applicant currently remains on methadone maintenance, it is his intention, once he receives a security clearance and remains “stable” from continued employment with a DOD contractor, to begin tapering off from methadone, and hopefully, to the point that he no longer needs to take it anymore. (Answer; Tr. 48, 55, 58; GE 1, 2; AE I)

In his August 2022 SCA, Applicant disclosed that he used marijuana, cocaine, and heroin, but the dates he listed were later corrected during the hearing and are now used for reference. SOR ¶ 1.a alleges that Applicant used heroin, from about 2010 (age 19) to at least March 2022. He used heroin/fentanyl daily from September 2010 until March 2011. He attended a 30-day inpatient rehabilitation program in March 2011, and he remained clean and sober until July 2013. In July 2013, he relapsed, and he was using heroin/fentanyl daily again. He testified that he was arrested twice in late 2013 for possession of heroin. These charges were merged together. (SOR ¶ 1.d) In January

2014, Applicant began a court-ordered 30-day inpatient substance abuse treatment program, and then he transitioned to the outpatient program until the program terminated in 2020 due to the COVID-19 pandemic. He remained free from all illegal drugs until he had another relapse in October 2021. He admitted that he used heroin once in October 2021 while he was intoxicated, and then he used it one other time in March 2022, which was his last use. (Answer; Tr. 29-31, 33-36, 39, 47-50)

Applicant stated that he relapsed on heroin in October 2021 because he was drinking alcohol every couple of days to the point of blacking out. His excessive alcohol use continued until March 2022, when he relapsed by using heroin a second, and last, time. In March 2022, Applicant admitted himself into a substance abuse treatment facility for a three-month inpatient program due to his excessive use of alcohol. He was “kicked out” of the program in late May 2022, only a month-and-a-half into the three-month program, after he tested positive for fentanyl, also an opioid drug like heroin and oxycodone. He testified that he was emptying the trash and touched an empty bag that had contained fentanyl, which is a very powerful drug, and he suspected the drug was absorbed into his system from this contact. He was discharged from the program as noncompliant. Applicant admitted that he started drinking alcohol again after he was discharged, but he stopped all alcohol use in June 2022. The SOR does not address the alcohol issue, or his failed rehabilitation effort. Applicant did not disclose his 2022 alcohol treatment on the August 2022 SCA because he was either more focused on his illegal drug history, or he was being dishonest about it. (Answer; Tr. 35-52)

SOR ¶ 1.b alleges that Applicant used cocaine, from about 2010 (age 19) to at least January 2014. Applicant submitted a variety of urine drug screens and it was pointed out to him during the hearing that he tested positive for cocaine twice, in November and December 2021. Applicant was unaware of these positive drug test results. He could not understand the reason for the positive drug tests since he had not used cocaine, and he surmised that these tests were probably “false positives.” (Answer; Tr. 32-33, 41-42; AE H)

Applicant submitted his urine drug screens from October 2020 through October 2023, which is a requirement for methadone treatment. (AE H) The records showed that he tested positive for opioids on approximately nine occasions, from November 2021 to April 2023, and he also tested positive for “Oxy” in March 2022. During the hearing Applicant admitted that he was getting pain pills from a coworker, most likely oxycodone pills. He did not disclose his improper use of this prescribed opiate on the August 2022 SCA, during his November 2022 background interview, or in his September 2023 interrogatory response. Falsification was not alleged in the SOR. He stated,

I wasn't taking my methadone properly. I was working the overnight shift with this fellow and I knew he had them [oxycodone pills] and you know, whenever I would get sick at work from not taking my methadone, I would ask him for a couple, and he obliged. So, I kept doing it. It wasn't -- It wasn't really enough to get high or anything like that because I was on methadone at that time, so I didn't really register it as getting high and I

put it in the back of my mind for a long time. It wasn't until I realized that those dirty urines were opiate[s], and I was thinking about it, you know, there was only one other way that opiates could have been in my urine at the time was because of those pills. (Tr. 15)

Applicant would take one or two oxycodone pills every few days because he felt sick since he was not taking his methadone regularly, as prescribed. He said these prescription pills that were not prescribed for him were given to him free of charge. The record showed that his last use of oxycodone occurred in April 2023. This information was not listed in the SOR. (AE H; Tr. 14-16, 39-43)

SOR ¶ 1.c alleges that Applicant used marijuana, from about 2007 (age 16) to at least January 2014. He admitted this information in his Answer. (Tr. 33-34)

Although Applicant's drug test results were submitted, the record lacked any of his treatment records. Applicant was going to submit treatment records after the hearing, but the facility had over 2,000 pages and were going to charge him by the page, which was too expensive. He timely submitted a brief letter from his current clinician, who he sees on a monthly basis for methadone maintenance. It stated that Applicant had "reengaged" in treatment following his [involuntary] discharge from a treatment facility in May 2022. Due to his maintained recovery, Applicant is eligible for 20 take-home bottles of methadone per month. He was diagnosed with "Major Depressive Disorder," but there was no diagnosis provided for his opioid addiction. The letter ended with the statement that there were no current issues or concerns regarding Applicant's prognosis. (AE K)

Applicant also provided a character reference letter from September 2024. The reference is an individual who runs sober living houses. He stated that he has personally seen Applicant attend Narcotics Anonymous and Alcoholics Anonymous meetings weekly per the contract requirement to reside in a sober living residence. In June 2024, Applicant was selected to be a house manager, and he took over management and operation of the sober living house in which he resides. (AE I)

I have previously identified adverse information that was not alleged in the SOR. Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 as to obtaining 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 as to 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**

The security concern relating to the guideline for drug involvement and substance misuse is set out 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.

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying in this case:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used illegal drugs, to include some that are classified as opioids, at times daily and to the point of addiction, from 2007 to at least March 2022. He was arrested for two drug-related charges involving heroin in 2013. The record establishes AG ¶¶ 25(a), 25(b), and 25(c).

The guideline also includes conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being used;
  - (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

(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.

Given Applicant's long history of opioid addiction, occurring over a 13-year period, and his series of unsuccessful attempts to stop using opioids, I am not convinced that Applicant has once and for all beaten his addiction. It is concerning that the documents he submitted as evidence showed that he tested positive on nine occasions in late 2021 to April 2023 for opioids. He stated that his last use of heroin occurred in March 2022.

Applicant continues taking methadone because he does not feel comfortable enough to reduce, or taper off completely, from methadone until his security clearance is issued and he feels stable in his place of employment. His testimony that he wants to live a clean and sober life is credible, however, battling the addiction to opioids is no easy feat, and additional time in rehabilitation would more amply guarantee that Applicant has in fact finally conquered his addiction. Overall, his long history of addiction and relapse, and his recent use of illegal substances continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to mitigate the drug involvement and substance misuse security concerns.

#### **Guideline J: Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct: "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 describes conditions that could raise a security concern and may be disqualifying in this case:

(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.

Applicant possessed and used illegal opioids and other illegal drugs on multiple occasions from 2007 to at least March 2022. Each time he used and possessed illegal drugs he committed a federal and state criminal offense. He was arrested on two

separate occasions in 2013 for drug-related charges. AG ¶¶ 31(a) and 31(b) are established.

AG ¶ 32 lists conditions that could mitigate security 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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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 presented some evidence of rehabilitation and mitigation. In June 2024, he was entrusted with the responsibility of being a house manager for his sober living residence. However, the evidence against mitigation of criminal conduct security concerns is more persuasive. As discussed previously, the criminal conduct security concerns are not mitigated for the same reasons that the drug involvement and substance misuse security concerns are not mitigated. Applicant's long history of illegal drug use, despite knowing such use violated laws, continues to cast doubt on his reliability, trustworthiness, and willingness to comply with laws, rules, and regulations. More time without criminal activity involving illegal drug use and possession must elapse before criminal conduct concerns will be fully mitigated.

### **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 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 H and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant stopped his use of heroin, an opiate, in March 2022. He admitted during the hearing that he was involuntarily discharged from an alcohol rehabilitation program in May 2022 after he tested positive for opioids, which he claimed occurred from having physical contact with a bag that had once contained fentanyl. While Applicant now intends to refrain from such use in the future, based on his track record, it is difficult to give that vow much weight. It is much too early in his rehabilitation to ensure that he will not return to his old habits. He has only been completely drug free for less than two years based on his last positive drug test for opioids in April 2023. Applicant is commended for his efforts at turning his life around and is encouraged to continue working towards a complete drug-free lifestyle. However, at this time, he does not meet the eligibility requirements for access to classified information. I conclude Applicant failed to mitigate the security concerns arising under Guideline H and Guideline J.

### **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.d:	Against Applicant
Paragraph 2, Guideline J:	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 security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge