



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 23-01729  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2024

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant has not mitigated the security concerns arising from the guideline for drug involvement. Eligibility for a security clearance is denied.

**Statement of Case**

On October 10 ,2022, Applicant certified and signed Electronic Questionnaire for Investigations Processing (Item 3, e-QIP) to obtain or retain a security clearance required for employment with a defense contractor. On November 18, 2022, she provided a personal summary interview (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Department of Defense Consolidated Adjudications Facility (the DoD CAF, predecessor to the Defense Counterintelligence Security Agency (DCSA), Consolidated Adjudications Services (CAS)) could not make the affirmative findings necessary to issue a security clearance. On September 29, 2023, the DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines for drug involvement and substance misuse (Guideline H). The action was taken pursuant to 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.

On October 12, 2023, Applicant furnished an answer to the SOR. She decided to have her case evaluated administratively on the written record in lieu of a hearing. On December 8, 2023, and January 11, 2024, the Government sent copies of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. She received the FORM on January 16, 2024. She was provided 30 days after receipt of the FORM to submit a response. Response was due by February 15, 2024. No response was received by the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 2, 2024.

### **Findings of Fact**

The SOR alleges under subparagraph 1.a that Applicant used Percocet covered by Fentanyl from April 2021 to March 2022. Under subparagraph 1.b, the Government alleges that Applicant purchased Percocet spiked with Fentanyl from November 2021 to March 2022. Under subparagraph 1.c, Applicant allegedly used marijuana with varying frequency from November 2015 to January 2019. The fourth subparagraph alleges that during Applicant's drug treatment beginning in March 2022, she was diagnosed with Opioid Use Disorder, Severe. Applicant admitted all four SOR allegations.

Applicant is 23 years old and single with no children. She has been living with her parents since December 2020. She graduated from high school in June 2019. She held a security clearance during her enlistment in the United States Air Force (USAF) from April to December 2020. (Item 3 at 35-36) Since October 2022, she has been employed in aircraft structural maintenance and also a training expert in some capacity. (Item 3 at 6-11)

SOR ¶ 1.c – Applicant used marijuana at least twice a month at house parties from November 2015 to January 2019. Giving in to peer pressure, she used the drug to fit in with her friends. She stated that she stopped using the drug because she lost interest. She stopped interacting with her drug-using friends. She never purchased the drug. (Item 5 at 4-5) Because of her subsequent history of more serious drug use, a troublesome issue which she did not address is why she lost interest in the drug.

After Applicant discontinued marijuana use in January 2019 and before she began using unprescribed Percocet in April 2021, she joined the United States Air Force in April 2020. Following two Article 15s for drinking while under age in July 2020, disobeying curfew, and other infractions, she received a General Discharge following another charge of underage drinking in December 2020. She realized her abusive alcohol consumption contributed to her underage drinking and left the military following charges or allegations of misconduct. The drinking was a major factor in the Uniform Code of Military Justice (UCMJ) Article 15 violations during her enlistment. Applicant

was in an alcohol and drug prevention and treatment program from August 2020 until December 2020, when her General Discharge required her to discontinue further treatment. (Item 3 at 34; Item 5 at 2-3) These violations were not alleged in the SOR and may not constitute an independent basis for denying her security clearance application. However, the evidence will be used to consider whether Applicant has demonstrated successful rehabilitation. The evidence will also be incorporated into the whole-person discussion of this case.

SOR ¶¶ 1.a, 1b –After her discharge from the USAF in December 2020, Applicant began using Percocet spiked with Fentanyl in April 2021 to March 2022. On several earlier occasions, she had refused to use the drug when offered by a close friend (apparently a former boyfriend), but this time she accepted. Her curiosity and peer pressure led to her use of the drug. From April to November 2021, she began using the Percocet once a month for a period of time, then daily. (Item 5 at 5) She became dependent on the drug from November 2021 to March 2022. She purchased the drug once every four months at \$15 a pill. She figured that she was dependent on the drug because when she tried to stop she got physically sick. Given her daily use of the drug leading dependency on the drug, I conclude that she was purchasing the drug more than once every four months. (Item 3 at 29-33; Item 5 at 5)

SOR ¶ 1.d – When Applicant sought treatment in March 2022, she was tested for and learned that the Percocet she was using was laced with Fentanyl. During her treatment beginning in March 2022, she minimized her diagnosis by claiming that she had only a mild substance abuse disorder. (Item 5 at 5) The treatment center's diagnosis was Opioid Use Disorder, Severe. (Item 4 at 1) She has been taking prescribed Suboxone from the beginning of treatment in March 2022 to April 25, 2023. (Item 4 at 3, 8) The drug, which reduces withdrawal and cravings for opioids, has successfully curbed her cravings. She proclaimed that her past drug use does not affect her current behavior. She has no intentions of using drugs in the future because she wants to change her life and have a career. (Item 3 at 29-33; Item 4 at 1; Item 5 at 5)

Applicant indicated that her use of marijuana was not persuaded by the decriminalization or legalization of state laws. (Item 4 at 2). She has never failed a random drug test. In April 2023, she was not illegally using any drugs or controlled substances. (Item 4 at 4) She has never used illegal drugs while holding a security clearance. (Item 4 at 5)

In Item 4, the Government directed Applicant to request and submit complete medical records of her treatment at the location identified in SOR ¶ 1.d. Even though she indicated that on April 25, 2023, she mailed or faxed to the treatment provider, the Government letter of request, the specific release form, and the medical records affirmation, the Government never received the medical records. See FORM, page 3; Item 4 at 6-9.

## 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. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering 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.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum Adherence of Federal Laws Prohibiting Marijuana Use, (October 25, 2014), *Adherence to Federal Laws Prohibiting Marijuana Use*, which clearly states that

state laws do not authorize persons to violate federal law, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to illegal use, possession, production, and distribution of marijuana. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the "whole-person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

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

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (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 profession of a substance use disorder;
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

If Applicant's illegal use of marijuana had been the only drug that she ingested from 2015 to the present, then her drug involvement may have been mitigated by the passage of time and her proclamations severing herself from all illegal drugs and drug users in the future. However, her use of Percocet spiked with Fentanyl for almost a year

from April 2021 to March 2022 brings her illegal narcotic use and purchase within AG ¶¶ 25(a), 25(b), 25(c), 25(d), 25(e), and 25(f).

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;

(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 treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) does not apply because Applicant's use of Percocet, which was once a month for a period of time, became daily, and did not end until March 2022. Her use is aggravated by the fact that she became dependent on the Percocet after she began purchasing the drug between November 2021 and March 2022. She believed that she was dependent because every time she tried to stop use, she became sick.

Applicant has made repeated statements of severing ties with all drug users and foregoing all drug use in the future. Considering her drug history dating to 2015, the Article 15 conduct leading to her General Discharge in December 2020, and her Percocet dependency, culminating in the diagnosis in March 2022 of Opioid Use Disorder, Serious, I am unable to find in Applicant's favor under AG ¶ 26(c). Similarly, I am unable to apply AG¶ 26(d) in Applicant's favor because no medical records have produced to explain her treatment beginning in March 2022.

### **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 is 23 years old and single. She has been working for her current employer since October 2022.

The favorable evidence supporting security eligibility is insufficient to overcome the countervailing evidence. Applicant has illegally used marijuana from 2015 to 2019. In December 2020, she received a General Discharge from the USAF after an eight-month enlistment fraught with alcohol-related behavior leading to two Article 15 infractions under the UCMJ. Following her discharge, she began using Percocet laced with Fentanyl and did not stop until she became addicted. Although she is entitled to significant mitigation for seeking treatment in March 2022, and continuing to comply with the Suboxone regimen, the record contains no treatment records, current health status or prognosis from a duly licensed medical professional. There is no supporting evidence that she transmitted the request for medical records as she claimed on April 25, 2023. After weighing the entire record under the whole person, Applicant's evidence in mitigation does not overcome the security concerns raised by the drug involvement guideline.

### **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
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Subparagraphs 1.a-d:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge