

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's misuse of prescription painkillers in the late 1990s and from July to December 2006, along with his alcohol abuse between 1998 and 2003, with continued use of alcohol to at least September 2006, when he began medication to help him abstain, falls within the scope of the drug and alcohol guidelines of the Directive. While Applicant believes he has always been honest about his substance abuse, the supervisor provided very little information about his drug and alcohol use. Applicant claimed he kept appointments with his counselor throughout each month of his relapse, but the counselor indicated he did not see Applicant during his relapse. While Applicant's job performance evidence is impressive, it does not overcome the misrepresentations he made about his drug use. Even though Applicant added anti-craving medication to his alcohol and drug rehabilitation regimen, the current period that he has been abstinent from drugs and alcohol is insufficient to warrant findings in his favor under the drug and alcohol guidelines. Clearance is denied.

STATEMENT OF CASE

On March 29, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, with revised Adjudicative Guidelines (AG) for Determining Eligibility for Determining Access to Classified Information, made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant indicating that based on his drug involvement (Guideline H) and alcohol consumption (Guideline G), DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On May 1, 2007, Applicant provided answers to all allegations (his answers were notarized on May 9, 2007) of the SOR and requested a hearing before an Administrative Judge.

On June 29, 2007, this case was assigned to me. On July 10, 2007, this case was scheduled for hearing on August 15, 2007. The Government's two exhibits (GE), and Applicant's three exhibits (AE) were admitted in evidence. Testimony was taken from Applicant, his supervisor, and his counselor. The transcript (Tr.) was received on September 4, 2007.

RULINGS ON PROCEDURE

Pursuant to E3.1.17. of the Directive, I am amending the SOR so that it conforms to the evidence presented. SOR 1.a. (pain killers) shall be amended by changing "June 2002" to "March 13, 2001." Also, in SOR 1.a., "December of 2006" shall be modified "to December 9, 2006."¹ SOR

¹ I am satisfied the "years" supplied in Applicant's answer were clerical mistakes. (Applicant's answer to the SOR; Tr. 114)

1.b. (gamma hydroxybutyric acid, GHB) is amended by changing "December 1998" to "December 1996." (Tr. 118) SOR 1.c. (cocaine) is amended by replacing "through March 2001" with "to 2000 or earlier." (Tr. 120) SOR 1.e. (marijuana) is amended by replacing "through June 1, 2002" with "to the late 1990s." (Tr. 121)

As noted on page 17 of the transcript, Applicant sought to have AE D admitted in evidence. Department Counsel observed the character statement was not signed. I marked the exhibit as AE D, and returned the document to Applicant, and told him he could cure the deficiency in the exhibit. (Tr. 17-19) No additional exhibits were submitted.

FINDINGS OF FACT

The SOR has 11 allegations under paragraph 1; Applicant admitted each allegation with explanation. The second paragraph has three allegations; Applicant admitted all allegations with explanation. He considers his awards, his supervisor's and counselor's knowledge of his drug history, his participation in AA, ongoing treatment, and demonstrated forthrightness in voluntarily disclosing his past drug abuse and relapse, sufficiently mitigate the adverse evidence of his drug history.

Applicant is 29 years old and has been employed as an industrial engineer with a defense contractor since December 2003. He seeks a secret clearance. He shares a dwelling with his girlfriend (since November 2004) he plans to marry in 2008.

Drug Involvement. Applicant began college in March 1993 and received his degree in industrial engineering in 2003. While in college, he used mescaline (1.h.) in 1994 and 1995, psychotropic mushrooms (1.g.) from 1994 to 1996, methamphetamines (1.f.) from 1995 to 1999, and marijuana (1.e.) from 1996 to the late 1990s. The aforementioned drugs were used on an infrequent or sporadic basis in the identified time periods.

Applicant used GHB (1.b.) on a daily basis, and was hospitalized twice in 1998 (1.j.) for GHB overdoses. During two periods between January 1998 to March 13, 2001, and July 2006 to December 9, 2006, as set forth in 1.a. of the SOR, Applicant abused prescription painkillers. In October 1998 (1.k.), Applicant was terminated from his employment for misuse of pain medication. He received intensive outpatient treatment (1.i.) from the summer of 1997 through 1998 for chemical dependency and substance abuse.

Applicant began attending Alcoholics Anonymous (AA) in 1998. He indicates that he has sustained participation in three AA chapters since 1998 at differing meeting frequencies. (GE 2, GE 3) He began consulting with his licensed professional counselor (LPC) in the summer of 1997 for personal issues including alcohol use. Though the professional consultations have continued to the present, Applicant's abuse of unprescribed painkillers persisted until March 2001. Except for alcohol consumption (Tr. 86), Applicant used no illegal drugs from March 2001 to July 2006, but his painkiller abuse resumed to a frequency of about twice a month in July 2006. In August 2006, Applicant indicated he increased his painkiller use to twice a week, and then to daily use for the first

two weeks of September 2006 (Tr. 134),² before decreasing to lesser frequencies until he stopped all use in December 2006.

Applicant opined that his relapse in July 2006 resulted from becoming complacent and overconfident about the strength of his recovery. While he indicates he continued to attend AA meetings during his relapse, he was not doing the step work, a necessary component of AA and successful recovery. In addition, he indicated the second reason for his relapse was that he was not consulting with his LPC as frequently as he should have, although he claims he continued to see his counselor throughout the course of the relapse. Applicant believes he advised the LPC of his relapse in September 2006. (Tr. 128-131)³ The counselor stated he did not see Applicant nor hear about his relapse until December 2006. (Tr. 92) Further, his LPC indicated Applicant told him the worse period of abuse was in December 2006. (Tr. 90) Although the LPC could have been mistaken in his recall about Applicant's consultations and his most serious drug abuse, I do not find that explanation the most reasonable under these circumstances. These different accounts of when the consultations occurred and the most serious periods of his painkiller abuse between Applicant and his counselor are resolved against Applicant.

Applicant's supervisor since December 2003 indicated Applicant was promoted from industrial engineer to senior industrial engineer in less than two years after his hire. The supervisor testified that Applicant produces outstanding work, and has become an expert for gauging project costs. The supervisor endorsed a special recognition award for Applicant in March 2007 for his job performance. According to the supervisor, Applicant also received another prestigious award in May 2007 because of his outstanding work.⁴

When asked what he knew about Applicant's most recent drug use, the supervisor stated he didn't know any details other than there were drug problems in the past. (Tr. 41) The supervisor did not want to obtain the details of Applicant's past drug use and Applicant did not offer any information.⁵

After being qualified in the field of treatment of substance abusers(Tr. 62),⁶ Applicant's LPC testified about his professional relationship with Applicant since 1997. The LPC testified that his consultations with Applicant occurred about once a month until the relapse in July 2006, and then twice a month after he learned about the relapse in December 2006. Concerning Applicant's use of GHB in the middle to late 1990s, the LPC made an initial diagnosis of drug abuse, but changed it to drug dependence after observing Applicant's emerging denial mechanisms during his early consultations with Applicant. The LPC has found Applicant always willing to share his knowledge

² Applicant testified he was nominated and received a coveted award (the second highest honor that an employee can receive) during his worse drug use. (Tr. 134) His answer reflects he received the award in May 2007.

³ Applicant also explained he advised his girlfriend about his drug use in late September 2006. (Tr. 135-137)

⁴ This award is referenced in footnote number 2.

⁵ *Id.*

⁶ The LPC testified he performs essentially the same services as a licenced clinical social worker (LCSW). (Tr. 60)

with others in achieving successful recovery. (Tr. 76-78) Based on Applicant's commitment to all elements of AA, group therapy, his support network (including his parents and girlfriend), his preventive medications, and his candor, specifically following his relapse, the LPC opined Applicant's prognosis was very good. (Tr. 70, 75, 78-80)

When asked to discuss the relationship between Applicant's drug use and alcohol use, the LPC believed Applicant's alcohol use was secondary to his drug use, explaining that the alcohol use lowers the inhibition that curbs the activation of the addictive process. (Tr. 75). At some time, the LPC recommended Applicant obtain medication like the one identified in 2.a.⁷ of the SOR (Tr. 95), and he began taking the 2.a. medication after December 2006. (Tr. 94) The LPC believes that discontinuance of the 2.a. medication by Applicant would not be helpful. The LPC envisions Applicant returning to once-a-month therapy when his stress lessens. (Tr. 103)

Alcohol Consumption. There are three allegations under the alcohol consumption guideline. As noted in the **Drug Involvement** section above, Applicant has been taking the 2.a. medication since September 2006 to prevent alcohol use and more serious use of his drug of choice. Based on Applicant's understanding from his doctor that he can take the drug indefinitely because it has no side effects, Applicant intends to continue taking the drug. (Tr. 141) In addition, taking the drug provides his girlfriend piece of mind and a warning signal should he stop taking the drug. (Tr. 141-142)

Applicant described his alcohol use over the last four years as approximately a couple times a month until the beginning of 2006 when it became more infrequent. (Tr. 132) He is not certain when his last binge drinking occurred, but surmised it may have been in late 2005. He made the decision to stop drinking alcohol in September 2006, although he testified his last drink was in late August 2006. (2.c; Tr. 133)

Applicant's supervisor testified he has traveled several times with Applicant to a midwest military facility for meetings. While his supervisor observed Applicant consume alcohol on other trips, the supervisor recalled Applicant drinking only club soda on the last trip. (Tr. 33) Regarding Applicant's overall alcohol use, his supervisor noted that Applicant mentioned something about a question on the SCA that asked about participation in treatment; the supervisor then stated he did not know about Applicant's alcohol use. (Tr. 42)

The LPC testified he began treating Applicant in 1997 while working at the hospital (identified in 1.i. and 2.b.), and has continued consulting Applicant in private therapy. The LPC testified that Applicant's binge drinking occurred mainly in college, and was unaware of any visible problems afterward. (Tr. 88) The LPC's original diagnosis of Applicant in 1998 was alcohol abuse, and continues to be alcohol abuse. (Tr. 106)

Character Evidence. In addition to the seven performance awards listed in his answer to the SOR, the record contains Applicant's performance evaluation (AE A) for 2006 acknowledging his extensive contributions to his employer's projects. The special recognition award (AE B) was signed by Applicant's supervisor on March 5, 2007, and extols Applicant's dedication to his project

⁷ The medication reduces cravings for alcohol and drugs. It does not allow alcohol or narcotics to metabolize, and has no side effects. (Tr. 67, 100)

assignments, as well as his performance on those assignments. On August 15, 2005 (AE C), Applicant typed a one-page e-mail expressing his intention to abstain from illegal drug use and misuse of legal drugs in the future; he also declared that a failure to comply with his intention to maintain abstinence in the future would result in revocation of any security clearance.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Drug Involvement (DI)

Using illegal drugs or unprescribed legal drugs, which casts doubt regarding a person’s reliability and trustworthiness, also raises questions about his willingness to comply with regulations.

Alcohol Consumption (AC)

Excessive use of alcohol leads to the exercise of poor judgment while presenting questions about a person’s reliability and trustworthiness.

CONCLUSIONS

Drug Involvement (DI). The illegal use of drugs or the misuse of prescription drugs⁸ casts doubt on a person's reliability and trustworthiness and also his ability to comply with laws and regulations. The record reflects Applicant abused several drugs from 1996 to March 2001. His abuse of six of the drugs was primarily occasional in scope. His abuse of GHB must be characterized as addictive in scope as he was using the drug on a daily basis, and was hospitalized twice for GHB overdoses. The passage of about six years with no evidence of subsequent abuse of these illegal drugs warrants favorable findings under subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., and 1.j.

Applicant's overall use of painkillers, specifically his misuse from July to December 2006, satisfies DI disqualifying condition (DC) 25.a. (*any drug abuse*) and DI DC 25.c. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) Since the LPC is not a licensed clinical social worker, and provided no evaluation regarding Applicant's abuse of unprescribed painkillers, DI DC 25.e. (*evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized treatment program*) does not apply. When the LPC (as a staff member of a recognized treatment program) delivered his diagnosis of Applicant in 1998, it applied to GHB, not misuse of prescription painkillers.

Applicant has repeatedly stated in his answer and during the hearing that he has been honest in keeping the appropriate parties aware of his drug use and his relapse on painkillers. However, his supervisor's testimony reflects he knew very little about Applicant's past drug use, and even less about his alcohol abuse. The LPC testified he did not see Applicant until after the relapse in December 2006 when Applicant told him his painkiller abuse was at its worse.

The lack of detail by the supervisor regarding Applicant's drug and alcohol abuse may be a minor point. However, as stated in the factual findings, the supervisor's lack of detail, coupled with the substantial differences in testimony between when Applicant claims he saw his LPC, and when the LPC saw Applicant, weakens the credibility of Applicant's statements not only about his continued treatment during his relapse, but other statements he made about his painkiller abuse, e.g., scope and frequency of the abuse, and the status of his recovery. In sum, I do not find Applicant was being forthright when he claimed he consulted with his LPC throughout the relapse. In addition, I find his misuse of prescribed medication was at its worse in December and not September 2006, as he claims. Applicant's lack of candor casts lingering security concerns about his reliability and trustworthiness. These concerns have not been sufficiently mitigated by his character evidence or DI mitigating condition (MC) 26.b. (*a demonstrated intent not to abuse any drugs in the future*). While Applicant has the support of his girlfriend and his parents in achieving a drug free environment, eight months is insufficient time for me to confidently conclude he has his unprescribed drug use safely in his past, particularly because of his compromised credibility. Subparagraph 1.a. is found against Applicant.

Alcohol Consumption (AC). As with abuse of illegal or unprescribed drugs, excessive alcohol consumption may lead to questionable judgment while raising questions about an individual's reliability and trustworthiness. The government's evidence reflects binge consumption of alcohol during his college years until 2003 as indicated by the LPC. AC DC 22.c. (*habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the*

⁸ As noted in section 24.b. of the Directive, drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

individual is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant was diagnosed as an alcohol abuser in 1998 when his LPC was a member of a recognized treatment program. The LPC testified his diagnosis would continue to be alcohol abuse at the present time. I find AC DC 22.e. (*evaluation of alcohol abuse alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program*) applies in conjunction with AC DC 22.f. (*relapse of alcohol abuse or dependence and completion of an alcohol rehabilitation program*) based on (1) Applicant's alcohol abuse history following outpatient treatment and AA participation since the late 1990s, and (3) the counselor's current alcohol abuse diagnosis/evaluation.

Given (1) Applicant's history of excessive alcohol consumption characterized by his LPC's alcohol abuse evaluations in 1998 and currently, (2) his alcohol consumption to at least September 2006, even though he has been aware of likelihood he could return to his drug of choice with continued drinking, AC MC 23.a. (*so much time has passed, or behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment*) does not apply.

Applicant acknowledges his alcohol abuse, and claims he has taken appropriate action to resolve the problem. However, AC MC 23.b. (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*) has only limited application. There has been an ample amount of testimony of Applicant's participation in AA over the years. However, Applicant has continued to drink alcohol until September 2006, notwithstanding his knowledge that drinking could increase the chances of resumption of his drug of choice. The implementation of the anti-craving medication in September 2006 into Applicant's recovery regimen is favorable as it decreases the chances he will use alcohol in the future. However, using one medication to prevent the use of another drug or drugs raises security concerns about the strength of Applicant's recovery. Given his ten year alcohol history, which has been diagnosed/evaluated as alcohol abuse by his LPC, an insufficient period of abstinence or responsible use has transpired for me to find Applicant has overcome the adverse evidence under the AC guideline.

AC MC 23.d. (*the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of AA or similar organization and has received a favorable prognosis by a duly qualified medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) does not apply because all the elements are not present. While Applicant completed the outpatient counseling in February 1998, he continued to abuse other drugs and alcohol to March 2001. The favorable evidence of abstinence from the other identified drugs between 2001 to July 2006 must be balanced against Applicant's occasional alcohol abuse and use until September 2006, when he began use of a medication to help him abstain from alcohol use. Even though his LPC furnished a good prognosis for Applicant, insufficient time has passed for me to find in Applicant's favor under the AC guideline. I find for Appellant under subparagraph 2.a. but against him under subparagraphs 2.b. and 2.c.

In addition to the disqualifying and mitigating conditions connected to both guidelines of the Directive, I have also considered the circumstances of this case under the whole person model of the

Directive. Applicant's misuse of painkillers in the late 1990s, and from July to December 2006, raises serious reliability and trustworthiness concerns. While Applicant has repeatedly declared his openness about the painkiller use, his supervisor knew little or nothing about either drugs or alcohol. Applicant unequivocally stated he kept his LPC advised throughout the entire course of his relapse. But his LPC, who has treated him since 1998, did not see Applicant for at least three months of the relapse. When he reestablished contact, Applicant identified December, not September 2006, as the worse period of painkiller abuse. Applicant has furnished praiseworthy exhibits and testimony about his job performance since December 2003. However, this favorable character evidence and his stated intentions to forego future drug and alcohol use, provide little insight into the reasons for Applicant's misrepresentations about critical events during his relapse. These misrepresentations carry a negative impact on his reliability and trustworthiness under the drug and alcohol guidelines that are not overcome or excused by his topnotch character evidence.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Drug Involvement, Guideline H):	AGAINST THE APPLICANT.
Subparagraph 1. a.	Against the Applicant.
Subparagraph 1.b.	For the Applicant.
Subparagraph 1.c.	For the Applicant.
Subparagraph 1.d.	For the Applicant.
Subparagraph 1.e.	For the Applicant.
Subparagraph 1.f.	For the Applicant.
Subparagraph 1.g.	For the Applicant.
Subparagraph 1.h.	For the Applicant.
Subparagraph 1.i.	Against the Applicant.
Subparagraph 1.j.	For the Applicant.
Subparagraph 1.k.	Against the Applicant.
Paragraph 2 (Alcohol Consumption, Guideline G):	AGAINST THE APPLICANT.
Subparagraph 2.a.	For the Applicant.
Subparagraph 2.b.	Against the Applicant.
Subparagraph 2.c.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Paul J. Mason
Administrative Judge