

KEYWORD: Criminal Conduct; Drugs

DIGEST: Applicant is a 24-year-old procurement administrative assistant employed by a federal contractor. Since the age of 16, she has suffered chronic and recurring kidney stones and renal infections. From 1999 until 2004, she required increased dosages of prescription pain medications, becoming addicted to their use. In 2004, she began abusing these medications by taking more than was prescribed for her, ultimately leading to her attempt to fraudulently procure these controlled substances from a pharmacy. In April 2005, she entered a plea of guilty to one charge, and was placed on probation for two years. She is rehabilitated and using the "whole person concept", she successfully mitigated the security concerns under Guideline J (Criminal Conduct) and Guideline H (Drug Involvement). Clearance is granted.

CASENO: 06-08893.h1

DATE: 06/22/2007

DATE: June 22, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-08893
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 24-year-old procurement administrative assistant employed by a federal contractor. Since the age of 16, she has suffered chronic and recurring kidney stones and renal infections. From 1999 until 2004, she required increased dosages of prescription pain medications, becoming addicted to their use. In 2004, she began abusing these medications by taking more than was prescribed for her, ultimately leading to her attempt to fraudulently procure these controlled substances from a pharmacy. In April 2005, she entered a plea of guilty to one charge, and was placed on probation for two years. She is rehabilitated and using the “whole person concept”, she successfully mitigated the security concerns under Guideline J (Criminal Conduct) and Guideline H (Drug Involvement). Clearance is granted.

STATEMENT OF THE CASE

On November 13, 2003, Applicant submitted a Security Clearance Application (SF 86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 ¶ E3.1.2 *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified, and revised, DOHA issued a Statement of Reasons (SOR) on August 8, 2006, detailing the basis for its decision – security concerns raised under Guideline J (Criminal Conduct) and Guideline H (Drug Involvement) of the Directive. The President issued revised adjudicative guidelines (RAG) on December 30, 2005. DoD implemented them effective September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the RAG are to be used in all cases when the SOR is issued on or after September 1, 2006. Because the SOR was issued prior to September 1, 2006, DOHA policy requires that this case proceed under the old guidelines.

Applicant answered the SOR in writing on September 21, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 21, 2006. The Notice of Hearing, dated January 26, 2007, was issued to convene a hearing on February 14, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered four exhibits, marked as exhibits 1-4, received without objections. Applicant offered five exhibits marked as exhibits A-E, received without objections. I kept the record open until February 23, 2007, to allow Applicant the time to file additional documents. She filed one document that was marked as Applicant's Exhibit F. The government had no objection and Exhibit F was admitted. DOHA received the hearing transcript (Tr.) on February 23, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 24-year-old procurement administrative assistant employed by a federal contractor.² She is single and a high school graduate.³ She has no military service and this is her first application for a security clearance.⁴

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated October 14, 2004.

²Tr. at 16, 18.

³*Id.* at 17.

⁴*Id.*

On September 21, 2004, Applicant was charged with two counts of obtaining or attempting to obtain a controlled drug by uttering a false or forged prescription, a felony. On January 24, 2005, she pled guilty to one count, as charged, and count two was dismissed. She was found guilty by the court. On April 22, 2005, she was placed on probation for two years, ordered to obtain a drug evaluation, and ordered to submit to monthly drug tests. She disclosed this information on her SF 86.⁵

From 1999 through 2004, Applicant's physician prescribed Percocet™, Vicodin™, and Tramadol™ to control her pain. During 2004, she abused Percocet™ and Tramadol™ by consuming more than the prescribed amount of medication, taking approximately seven to eight pills a day. In November and December 2004, she sought addiction counseling and chemical detoxification on three occasions.⁶ Between January and November 2005, she attended monthly addiction counseling with her physician.

Since the age of 16, Applicant suffered from chronic and recurring kidney stones and renal infections. This medical condition causes severe pain and often requires surgery to remove kidney stones that are too large to pass on their own. The first kidney stone was diagnosed at age 16. A second came about seven months later. Thereafter, almost every five or six months, she was either in an emergency room with severe pain from a kidney stone or hospitalized from a surgical procedure. Her urologist performed a variation of tests but could never pinpoint an exact cause of the recurring kidney stones. She saw several different urologists and endocrinologists, none of whom were able to find preventive measures for these kidney stones. During this time, her doctors kept her on pain and nausea medications to treat her symptoms. Beginning in 2004, she would feel sick (nausea, insomnia, cold sweats, muscle aches, vomiting, and high blood pressure) when she didn't take her pain medication. The doctor explained that her body had become dependent on the pain medications and that she was experiencing withdrawal symptoms from taking medication for such a long period. The doctor continued her on Percocet for emergencies and suggested she try Ultracet™ for daily use. Ultracet™ is a less addictive pain medicine but still a morphine derivative.⁷ Her addiction continued as she stated:

The doctor would give me one prescription a month and no more. I had built such a high tolerance and would need more than a month supply of pain medication to manage the pain in withdrawal symptoms. I realized at that time that I was dealing with a difficult addiction. I was so afraid of going through the pain in withdrawal, and I didn't know how to ask for help. There was no part of me that enjoyed being dependent on a medication to be able to function. This was never something I did for recreational use; it was medication that my body had developed a dependency on in the previous five years. I would ask the doctor for refills on the medication before the month was up and she would deny my request. As my withdrawal symptoms

⁵Government Exhibit 1, *supra*, note 1, at 4-5.

⁶ Applicant's Exhibit F, Letter dated February 21, 2007.

⁷Applicants Answer to the SOR, dated September 20, 2006, at 1.

increased, I took desperate measures and tried to call the prescription in myself, leading to my arrest and felony charge.⁸

In November 2004, Applicant entered a voluntary detoxification program, then enrolled in counseling sessions.⁹ She has continued to counseling sessions to the present, and plans to continue that the sessions, even though she feels she has been rehabilitated from her dependency. She claims to have a large support system of friends and family and that she now knows how to ask for help when she needs it. She has been off the prescribed medications since November 2004.¹⁰

Applicant's medical condition continues and she has learned to deal with and tolerate her pain without the use of prescribed narcotic derivatives.¹¹ She has a final court appearance regarding her probation in April 2007.¹²

Applicant's personnel security specialist stated that Applicant had been open and honest about providing information with respect to her prescription drug abuse and subsequent rehabilitation efforts. She recommends Applicant as being a person trustworthy of holding a security clearance.¹³ Two of Applicant's co-workers sent letters requesting that she be granted a security clearance.¹⁴

Her probation office sent a letter stating that Applicant had remained compliant with rules and regulations of her probation supervisor, she reported as instructed, has maintained a stable residence and employment, that all drug tests have been negative for illegal drug use, and she met all special conditions ordered by the court. She stated that her psychiatrist had confirmed treating her for opiate dependency for treatment for chronic recurring kidney stones, and he reported that she had been off opiate medications since January 2005. She stated that Applicant had been honest and cooperative, and that she has expressed regret for her actions and has continued a to maintain a positive attitude.¹⁵ Her psychiatrist stated: "It is my opinion that Applicant is medically and psychiatrically able to obtain any level of security clearance. I feel strongly that her prior difficulties would not have occurred if she had not been prescribed opiate medications to treat her pain."¹⁶

⁸*Id.* at 2.

⁹*Id.* at 3.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.* at 4.

¹³Applicant's Exhibit A, Letter dated January 31, 2007.

¹⁴Applicant's Exhibit C, Letter dated September 21, 2006; Applicant's Exhibit E, Letter dated February 8, 2007.

¹⁵Applicant's Exhibit D, Letter dated September 21, 2006.

¹⁶Applicant's Exhibit E, Letter dated August 17, 2006.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed below. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of 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.

In the decision-making process, facts must be established by "substantial evidence. The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition.¹⁷ Directive ¶ E3.1.15 provides, "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, and [applicant] has the ultimate burden of persuasion as to obtaining a

¹⁷"Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government.¹⁸

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

The scope of an administrative judge’s decision is limited. Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism

CONCLUSIONS

Criminal Conduct

The government established its case under Guideline J. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*) apply. Applicant admitted her crime.

Criminal Conduct Mitigating Conditions (CC MC) E2.A6.1.3.1. (*The criminal behavior was not recent*), E2.A10.1.3.3. (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*), E2.A10.1.3.4. (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*), and E2.A10.1.3.5. (*Acquittal*) do not apply. While the crime occurred in 2004, she was not sentenced until 2005, and is still on probation. The criminal conduct is still an on-going process. No one forced her to commit a crime. She was addicted to pain medications, although she appears to have her problem under control and is not likely to commit a similar violation again. And there is no acquittal as she entered a plea of guilty.

Criminal Conduct Mitigating Conditions E2.A10.1.3.2. (*The crime was an isolated incident*) applies, as does CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*). She

¹⁸See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

has this only criminal charge on her record. She has not used prescription pain medication since the beginning of 2005. Her probation officer's report is excellent. She has been honest with her employer.

Drug Involvement

The government established its case under Guideline H. Drug Involvement Disqualifying Condition (DIDC) E2.A8.1.2.1. (*Any drug abuse*)¹⁹ is applicable, because Applicant admitted abuse of prescription drugs.

Drug Involvement Mitigating Condition E2.A8.1.3.2. (*The drug involvement was an isolated or aberrational event*) does not apply because her abuse lasted over about a five year period.

Drug Involvement Mitigating Conditions (DIMC) E2.A8.1.3.1. (*The drug involvement was not recent*), E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*), and E2.A8.1.3.4. (*Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) all apply. Applicant has not used prescription pain medications in over two years. She has learned to control her pain with over-the-counter pain medicines. She has demonstrated her intent not to use by continuing to see her psychiatrist for counseling on a regular basis, even though she has completed her required treatment programs. Her doctor's prognosis is favorable.

Whole Person Analysis

In assessing whether an applicant is a security risk because of her criminal conduct and drug abuse, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept. Applicant has made progress in resolving her abuse of prescription pain medications. She controls her pain with over-the-counter medications. She successfully completed a treatment program. She continues to see her psychiatrist regularly to help her to control her pain without prescriptions. Her doctor has given her a positive prognosis. She has expressed remorse for her actions and I am confident she will not, in the future, attempt to obtain any prescription medications by fraudulent means. Based upon a report from her probation officer I believe she will successfully complete that probation.

The "whole person" concept—not the potentially disqualifying or mitigating conditions—is the heart of the analysis of whether an applicant is eligible for a security clearance.²⁰ Indeed, the Appeal Board has repeatedly held that an administrative judge may find in favor of an applicant where no specific mitigating conditions apply.

¹⁹E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

²⁰Directive, ¶ E2.2.3.

After weighing the disqualifying and mitigating conditions and all of the facts and circumstances, in the context of the whole person, I determine she has mitigated the security concerns pertaining to criminal conduct and drug involvement. I have no concerns about her reliability, judgment, and honesty. The totality of the circumstances and her actions subsequent to her drug abuse and her criminal activity, leads me to conclude that this record raises no reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Therefore, notwithstanding that Criminal Conduct Mitigating Conditions E2.A6.1.3.1., E2.A10.1.3.3., E2.A10.1.3.4., E2.A10.1.3.5., and E2.A8.1.3.2. do not apply, under the "whole person concept", I conclude Guideline F and Guideline E for Applicant, and determine it is clearly consistent with the national interest to grant or continue her security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2. Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Christopher Graham
Administrative Judge