

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant, who had abused marijuana since age 15, and cocaine since age 19, abused OxyContin for four months at age 21. She exhibited good judgment in taking the initiative and pursuing rehabilitation treatment from August 2004 to about November 2006. She has abstained from all illicit substance abuse since a relapse in September 2004, and changed her lifestyle and her associates. Drug Involvement concerns are mitigated. Personal Conduct concerns because of her failure to disclose her marijuana and cocaine use on her security clearance application are not proven where Applicant listed her recent OxyContin abuse and treatment and intended to provide full details of her drug use to an investigator. Clearance is granted.

CASENO: 06-17264.h1

DATE: 07/30/2007

DATE: July 30, 2007

\_\_\_\_\_ )  
In re: )  
 )  
 )  
----- ) ISCR Case No. 06-17264  
SSN: ----- )  
 )  
Applicant for Security Clearance )  
\_\_\_\_\_ )

**DECISION OF ADMINISTRATIVE JUDGE  
ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn Hoffman, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant, who had abused marijuana since age 15, and cocaine since age 19, abused OxyContin for four months at age 21. She exhibited good judgment in taking the initiative and pursuing rehabilitation treatment from August 2004 to about November 2006. She has abstained from all illicit substance abuse since a relapse in September 2004, and changed her lifestyle and her associates. Drug Involvement concerns are mitigated. Personal Conduct concerns because of her failure to disclose her marijuana and cocaine use on her security clearance application are not proven where Applicant listed her recent OxyContin abuse and treatment and intended to provide full details of her drug use to an investigator. Clearance is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 16, 2006, detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. On December 20, 2006, Applicant submitted an initial answer that was not considered responsive in that she failed to specifically admit or deny SOR ¶¶ 1.d, 1.e, and 2.a,<sup>1</sup> or indicate whether she wanted a hearing. By letter dated January 18, 2007, Applicant was given ten days from receipt to provide her responses. On January 23, 2007, Applicant answered ¶¶ 1.d, 1.e, and 2.a and requested a decision based on the written record without a hearing.

On February 21, 2007, Applicant requested a hearing before a DOHA administrative judge, and the case was assigned to me on March 22, 2007. With the consent of the parties, I convened a hearing on May 8, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government presented one exhibit (Ex. 1), Applicant's security clearance application, which was admitted without objection. Since Applicant elected to not testify on her behalf, Department Counsel called her as a witness. Applicant's case consisted of one exhibit (Ex. A) and the testimonies of her sister, and a manager from her previous job. A transcript of the hearing was received on May 17, 2007.

The record was held open until May 22, 2007, for Applicant to submit a prognosis from a therapist. Applicant timely submitted a one-page letter of discharge from a licensed mental health counselor. The government had no objection and the document with its forwarding correspondence was admitted as Exhibit B.

---

<sup>1</sup>In detailed comments, Applicant stated with respect to the alleged falsification (¶ 2.a), "Although I never tried to 'falsify material facts,' it appears that I have. I did not disclose other illegal drug use, but instead answered yes to question #27 and listed ONLY OxyContin." In her supplemental answer, she denied deliberate falsification. Applicant did not respond to ¶ 1.f, although her failure to respond to that allegation was not raised by DOHA until the hearing.

## FINDINGS OF FACT

DOHA alleged under Guideline H that Applicant abused OxyContin with varying frequency to include up to three times daily, from about April 2004 to at least September 2004 (¶ 1.a), used and purchased cocaine from about 2000 to at least summer 2004 (¶ 1.b), used and purchased marijuana from about 1998 to at least summer 2004 (¶ 1.c), received inpatient treatment at a hospital for opiate dependence from about January 2004 to March 2004 (¶ 1.d), received outpatient treatment at the same facility from August 2004 to February 2005 for diagnosed adjustment disorder with anxiety and polysubstance dependence (¶ 1.e), and received treatment at an outpatient facility from March 2004 to at least April 2006 (¶ 1.f). Under Guideline E, Applicant was alleged to have deliberately falsified her May 2005 security clearance application (SF 86) by disclosing her illegal drug activity with OxyContin only and not including her abuse of marijuana and cocaine (¶ 2.a).

In her answers to the SOR, and with respect to ¶ 1.f at the hearing, Applicant admitted the drug involvement and treatments as alleged,<sup>2</sup> but she denied any intentional falsification of her SF 86. After a thorough consideration of the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is 24-year-old human resources generalist, who has worked for her employer, a defense contractor, since May 2005. Initially hired as an administrative assistant, she was promoted at the end of her first year to the position of financial assistant. Effective July 2006, she assumed her human resources position where she is a payroll administrator. Applicant seeks a secret-level clearance for her duties.<sup>3</sup>

Applicant has a history of drug abuse from about 1998 to summer 2004. She started using marijuana as a high school freshman at age 15. She socialized with older students, including one who had already graduated, because she wanted to be accepted. After about six months of intermittent involvement, she started smoking the drug a couple times per week. Seven to eight months after she first tried it, she began purchasing marijuana. Applicant knew her drug use was illegal and she worried about getting caught, but she chose to stay in contact with her same group of friends, and to use drugs with them, after she moved to another high school in November 1999.

At the beginning of her senior year of high school in Fall 2000, Applicant was offered cocaine by her friends. She decided to try it as everyone was using it, but she did not like the sense of heightened alertness that it caused. Four or five months later, she again accepted an offer from friends to use cocaine, as she wanted to escape and not face reality. Applicant used cocaine thereafter on occasion (“probably months apart from each other” Tr. 79). She purchased cocaine a couple of times.

---

<sup>2</sup>Despite Applicant’s admission to ¶ 1.d, the evidence does not support that she received any treatment in early 2004. Applicant testified credibly that her treatment was all after she left the employ of the security services company in May 2004 (Tr. 90).

<sup>3</sup>Applicant testified she was not sure whether her present position requires her to maintain a security clearance, although she understands that the company wants her to backup the facility security officer (Tr. 69-70). When Applicant was offered her initial position with the company, she was informed that her employment was contingent on holding or being issued a DoD security clearance (Ex. A). Although she no longer holds the same position, there was no indication that her employer had withdrawn its sponsorship of her clearance.

After graduating from high school, Applicant enrolled in a private college in August 2001 but left after only two months. She smoked marijuana a couple of times with other students on campus during her brief stay.

In October 2001, she got a job as a receptionist for a security services company where her mother was employed. Since the company tested its employees for illegal drugs, Applicant scaled down her drug involvement, although she continued to use marijuana and cocaine on occasion. Applicant also tried ecstasy once at age 19 or 20. Applicant did not allow her drug use to affect her work, and she was given permit administration responsibilities. In January 2004, she was evaluated as an “exemplary performer” for her performance in 2003.

In April 2004, Applicant was given some OxyContin by her then boyfriend, whom she met at work. The OxyContin had not been prescribed for either Applicant or her boyfriend. Applicant enjoyed the effect of the drug and she used it again a couple of weeks later. After her fifth or sixth use, she began ingesting the drug daily. Developing an addiction to OxyContin and not wanting to face her coworkers, Applicant decided to quit her job in May 2004. Unemployed until October 2004, Applicant abused primarily OxyContin up to multiple times daily that summer, although she also used cocaine at least once in August 2004. She depleted \$6,000 to \$7,000 of her savings because of her addiction to OxyContin.

In August 2004, Applicant checked herself into a hospital-affiliated outpatient treatment program. She was diagnosed with adjustment disorder with anxiety and with polysubstance (including opiate) dependence. For the first few weeks, she spent the day at the hospital where she was prescribed withdrawal medication and was released to home at night. Applicant had a relapse while in the program, using OxyContin once in September 2004. Applicant continued the treatment program through February 2005.

Applicant maintained her relationship with her boyfriend after she started rehabilitation despite advice from her family and her counselors that it was not conducive to her recovery. She gave him chances to maintain a sober lifestyle, but he continued to check himself in and out of rehabilitation. After she ended the relationship in December 2004, he would not leave her alone. He got physically abusive with her on one occasion, and in February 2005, she obtained a restraining order against him.

In about March 2005, Applicant began individual counseling with a licensed mental health counselor (LMHC) who specializes in addictions. Applicant was referred to her by a psychiatrist. In early May 2005, Applicant began working for her current employer as an administrative assistant at an annual salary of \$33,000. Her employment was contingent on her holding or being issued a secret clearance. In her offer letter, Applicant was informed she would have to submit an SF 86 if she did not have a current clearance.

Her first day on the job, Applicant was asked to complete the SF 86. When she got to question 27 concerning any illegal drug use or misuse of prescription drugs since age 16 or within the past seven years, Applicant had second thoughts about whether she wanted to complete the application because of her drug abuse history. Told by the security officer that the information was confidential to just the security officer, Applicant responded, “Yes” to question 27 and listed use of OxyContin often from April 12, 2004 to August 2, 2004. She answered “Yes” to question 19

concerning any mental health consultation in the last seven years, and reported contact with the psychiatrist on August 10, 2004, and with the LMHC from August 13, 2004, to present. She did not include the hospital program by name, but indicated in response to question 43:

AS STATED IN THE DRUG ABUSE SECTION I HAD A PROBLEM THAT LASTED ABOUT FOUR MONTHS WHICH I SOUGHT TREATMENT FOR AND CONTINUE TO. SINCE THEN I HAVE GONE THROUGH AN OUTPATIENT PROGRAM, GROUP SESSIONS THREE NIGHTS A WEEK FOR A MONTH AND AM NOW INVOLVED IN THE PROGRAM AND SEE A LICENSED COUNSELOR [sic] EVERY OTHER WEEK. MY ADDICTION HAS BEEN UNDER CONTROL FOR SOME TIME NOW AND I PLAN TO KEEP IT THAT WAY. ANY QUESTIONS REGARDING THIS CAN BE DIRECTED TO [LMHC name omitted] (COUNSELOR) [sic] (HER INFO WAS LISTED IN ONE OF THE PREVIOUS MODULES.)

Applicant's performance as an administrative assistant exceeded her employer's expectations. She exhibited a great attitude, self-motivation, and willingness to help where needed. After her first year on the job, Applicant was given a merit increase of 21.21% to \$40,000 annually and promoted to financial assistant. Effective July 24, 2006, she was promoted to her present position at an annual salary of \$44,500.

In about November 2006, Applicant was discharged from her sessions with the LMHC. It was a mutually agreed on termination. The LMHC assessed Applicant as psychiatrically stable and abstinent from all substances.

Applicant has not used any illegal drug or abused OxyContin since her last use of OxyContin in September 2004. She does not intend to engage in illicit substance abuse in the future. As of May 2007, Applicant was not receiving any counseling or attending meetings of Narcotics Anonymous (NA) or similar organization. She had been to NA in the past but feels confident enough in her recovery at this point to where she does not feel she needs them. She would not hesitate to attend NA if she felt the need ("Because I feel that I'm strong enough now, I know that they are there and I wouldn't hesitate to walk into one, should I need it, but I haven't felt that I needed one." Tr. 106).

Applicant's family is supportive of her recovery. She is involved in a serious relationship with someone who does not use illegal drugs. He is aware of her past drug use and that she has been in treatment. Sometime in Spring 2006, a distant friend of her boyfriend brought out some drugs in her presence during a gathering at her boyfriend's home. Her boyfriend took the initiative and asked the person to leave. Applicant has not seen this person since then. She no longer socializes with known drug users.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 occupy a position . . . that will give that person access to such information." *Id.* at 527.

The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only 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). An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline H—Drug Involvement**

*Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.* (AG ¶ 24). Drugs are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens). (AG ¶ 24(a)(1)). Just as abuse of marijuana or cocaine is considered drug abuse under the Directive, so too is the use of a controlled drug such as OxyContin without a prescription (¶ 24(b) *drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*).

Drug involvement disqualifying conditions (DC) ¶ 25(a) *any drug abuse*, and ¶ 25(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia*, apply. Applicant used and purchased marijuana up to a couple times per week in high school and occasionally thereafter to sometime in summer 2004; used cocaine on occasion from 2000 to a last use in August 2004, and purchased it at least twice; and abused OxyContin without a prescription to the point of addiction from April 2004 to September 2004, depleting about \$6,000 to \$7,000 of her savings to support her habit. Although Applicant admits she was diagnosed with opiate dependence in the hospital's outpatient treatment program, the qualifications of the clinician who rendered the diagnosis are not of record. The government presented no records from the hospital outpatient program or from the LMHC to confirm the diagnosis. Applicant's admission is not sufficient in and of itself to apply ¶ 25(d), *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*, or ¶ 25(e), *evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*.

Applicant's drug abuse of six years' duration and up to multiple times daily with respect to OxyContin in summer 2004 cannot reasonably be considered as happening so long ago or as so infrequent, which is required under MC ¶ 26(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*. However, Applicant is credited with taking steps to resolve her drug problem starting in August 2004. While there is conflicting evidence as to the dates of her treatment, Applicant testified credibly that following about four months of OxyContin abuse, she voluntarily entered a hospital's outpatient rehabilitation program. After a few weeks of intensive treatment where she received medication for withdrawal and was allowed home only to sleep, Applicant continued with group and individual counseling and some NA sessions. In March 2005, she began a therapeutic relationship with a licensed mental health counselor at the referral of a psychiatrist. Applicant continued her individual sessions until November 2006, when she was discharged psychiatrically stable and drug-free. This favorable prognosis by the LMHC does not carry the same weight as had it been rendered by the duly qualified medical professional required under MC ¶ 26(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*. Under Guideline H, physicians, clinical psychologists, and psychiatrists are deemed duly qualified medical professionals.

Yet, her treatment was effective in bringing about a cessation of her drug abuse. As of May 2007, she has 2 1/2 years of abstinence during which time she compiled a record of significant accomplishment at work. She no longer associates with those friends from high school with whom she used marijuana, or with the boyfriend who introduced her to OxyContin and was her supplier of the drugs she abused in 2004. Nor is she likely to renew those connections when she is in a serious relationship with a boyfriend who does not use any illegal drugs. When a distant friend of his pulled out an illegal drug at a social gathering, Applicant's boyfriend asked him to leave. Her family, including her sister who testified at her hearing, is also supportive of her ongoing sobriety. While an ongoing affiliation with NA or similar organization could provide additional guarantees about her recovery, she testified credibly to a willingness to contact the LMHC or attend self-help meetings if she feels it necessary to maintain her sobriety. Peer pressure and the immature judgment of youth were clearly factors in her drug use, and she has shown maturity, despite her still relatively young age, in taking the initiative to cope with her drug problem. Mitigating condition ¶ 26(b), *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation, applies*.

### **Guideline E—Personal Conduct**

*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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.* (AG ¶ 15) Although Applicant disclosed her abuse of OxyContin in 2004 on her SF 86, she did not list her use of marijuana from 1998 to 2004 or of cocaine from 2000 to 2004 in response to the illegal drug inquiry. There is no question that Applicant

was aware of her marijuana and cocaine abuse, but she has consistently denied any intentional concealment. When she answered the SOR in December 2006, Applicant indicated that while she listed only her OxyContin abuse, she requested in the comments section of the same application to speak with someone in person so that she would have the opportunity to explain her drug use and prove how far she had come. She also provided DoD with the contact information for the individuals who helped her. After she was asked to either admit or deny the alleged falsification of her SF 86, Applicant indicated on January 23, 2007:

My intention was never to falsify anything. I'm not quite sure how to answer the above ("I admit" or "I deny"). My intentions in answering question #27 the way I did were entirely innocent. I listed my problem/dependency with oxy and asked that I speak to someone in detail regarding my drug history. At that time I disclosed all information asked of me 100 % truthfully. I think it is pretty apparent that I did not intend to hide or falsify any information since I willingly listed all doctor's health care facilities that I received treatment from. This information was given to them and retained in my medical file.

A candid disclosure of her OxyContin abuse "often" from April to August 2004 does not relieve her of her obligation to report her less frequent but of longer duration involvement with marijuana and cocaine. However, a good faith belief that she had complied with her obligation would negate the willful intent required under DC ¶ 16(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.*

At her hearing, Applicant continued to maintain that she had written down in her comments that if she could meet with someone in person, she would provide all the details (Tr. 109). A review of her SF 86 (Ex. 1) fails to confirm that she requested specifically to meet with an investigator. Whether she made a request in another document or verbally cannot be determined based on the record before me. Yet, I am persuaded Applicant did not intend to conceal her involvement with marijuana and cocaine from the government. She indicated in the general remarks section of her SF 86 that she had an addiction problem that lasted four months for which she was in treatment, and that any questions could be directed to her counselor. By August 2004, when she entered treatment for OxyContin abuse, she was not using marijuana and had used cocaine only one time that month, while she was abusing OxyContin multiple times daily. Her OxyContin abuse was much more extensive at that point and immediate, thus understandably her focus. There is no evidence that Applicant ever denied that she had been involved with illegal drugs such as cocaine or marijuana. Either Applicant herself or through admissions to her counselor is likely to have provided the details that led to the allegations of cocaine use and purchase in ¶ 1.b and of marijuana use and purchase in ¶ 1.c. The government did not allege, and there is no evidence to suggest, that Applicant lied to a government investigator. This is apparently also the first questionnaire that Applicant ever filled out and she was only 22 years old at the time. Under the circumstances, her disclosure of only her OxyContin abuse was not a knowing and willful misrepresentation.

## **Whole Person Analysis**



*The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. AG ¶ 2(a). Applicant tried to escape her adolescent problems by turning to illegal drugs, primarily marijuana but also some cocaine. She allowed her boyfriend to turn her onto OxyContin, and she kept him in her life for months after she had started her own rehabilitation against the advice of her family and friends who saw the threat to her own reform (¶ 2(a)(1) *the nature, extent, and seriousness of the conduct*). Yet, she has put the mistakes of her youth (¶ 2(a)(4) *the individual's age and maturity at the time of the conduct*) behind her through her own efforts in seeking treatment, complying with her program, and changing her environment and associates (¶ 2(a)(6) *the presence or absence of rehabilitation and other permanent behavioral changes*). Over the past two years, she has been promoted to positions of increasing responsibility with significant increases in her pay. There is no indication of any illegal drug involvement since September 2004, while her work performance is consistent with maturation and an ability to safeguard classified information. There is little likelihood of her returning to her drug abusing past (¶ 2(a)(9) *the likelihood of continuation or recurrence*).*

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Elizabeth M. Matchinski  
Administrative Judge