

KEYWORD: Drugs

DIGEST: Security concerns are raised pertaining to Applicant's history of drug abuse to include marijuana, heroin, crystal methamphetamine, cocaine, and ecstasy. In 2003, she attended inpatient treatment and received a diagnosis of opioid dependence, cannabis dependence, and sedative abuse. She has not met her burden to mitigate the concerns raised under drug involvement. Clearance is denied.

CASENO: 06-21821.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No.06-21821
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Security concerns are raised pertaining to Applicant's history of drug abuse to include marijuana, heroin, crystal methamphetamine, cocaine, and ecstasy. In 2003, she attended inpatient

treatment and received a diagnosis of opioid dependence, cannabis dependence, and sedative abuse. She has not met her burden to mitigate the concerns raised under drug involvement. Clearance is denied.

STATEMENT OF CASE

On November 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H, Drug Involvement of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

On December 26, 2006, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 29, 2007. The FORM was mailed to Applicant on January 27, 2006, and received on February 4, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely responded. Department Counsel had no objection. The case was assigned to me on February 22, 2007.

On March 15, 2007, it was discovered that Applicant was not provided a copy of the revised AG, effective September 1, 2006. On March 16, 2007, a copy of the revised AG was sent to Applicant along with an order allowing her 30 days to review the revised AGs and to submit additional comments or documents. On March 27, 2007, Applicant faxed in an acknowledgment that she received the revised AG. After 30 days of receipt, no additional documents were submitted.

FINDINGS OF FACT

____ Applicant is a 25-year-old office administrator employed with a defense contractor. She submitted a security clearance application on October 20, 2005.² She admits to all of the allegations in the SOR with the qualification that her last drug use occurred in September 2003.³

Applicant has a history of illegal drug use. Between February 2000 and September 2003, she used heroin on a daily basis. She also purchased heroin. From May 2001 to September 2003, she used marijuana on various occasions. During this time, she would purchase anywhere between \$20

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² Item 5.

³ Item 4.

to \$100 worth of marijuana on a weekly basis. In 2001, she used the following drugs on at least one occasion: crystal methamphetamine, cocaine, ecstasy, and acid.⁴

On December 30, 2002, Applicant was arrested and charged with Possession of Drug Paraphernalia. She was found guilty and fined \$222, placed on two years probation, and ordered to attend mandatory drug classes.

Between September 15, 2003, and October 2003, Applicant attended in-patient treatment at a drug counseling facility. She received a diagnosis of opioid dependence, cannabis dependence, and sedative abuse.⁵ She made excellent progress while in residential treatment. Part of her treatment plan was to continue out-patient treatment. After leaving residential treatment, she declined out-patient treatment because she did not think she needed to continue treatment. The drug counseling facility unsuccessfully discharged Applicant because continued out-patient treatment was one of the requirements for her to have successfully completed the program.⁶

In her answer to the SOR, Applicant indicates that she has abstained from alcohol and drugs since completing the in-patient program. She no longer associates with her drug using friends. In her response to the FORM, she indicated that she did not realize that she was unsuccessfully discharged from the treatment program. She denied out-patient treatment when she went back to school and work. She attended weekly Narcotics Anonymous meetings for six months after completion of in-patient treatment. She no longer attends Narcotics Anonymous meetings due to the demands of the college courses she takes. She achieved a 3.93 Grade Point Average during the fall quarter 2006.⁷

POLICIES

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.”⁸ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive and the revised AGs, effective September 1, 2006. The revised AGs set forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

⁴ *Id.*

⁵ Item 6.

⁶ Item 6 at 2, Discharge Diagnosis, dated October 13, 2003.

⁷ Response to FORM, undated but timely submitted.

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.⁹

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

“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.”¹⁰ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹¹ An administrative judge should consider the following factors: (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.¹²

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹³ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.¹⁴ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”¹⁵

⁹ Revised AG, dated August 2006, ¶ 24.

¹⁰ Revised AG, dated August 2006, ¶ 2.

¹¹ *Id.*

¹² *Id.*

¹³ Directive ¶ E3.1.14.

¹⁴ Directive ¶ E3.1.15.

¹⁵ Directive ¶ E.2.2.2; Revised AG, dated August 2006, ¶ 2(b).

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline H.

Guideline H - Drug Involvement

Applicant's past drug abuse raises a security concern. Drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."¹⁶ Between 2000 to September 2003, Applicant used illegal drugs on a daily basis. The drug involvement security concern is heightened further by her diagnosis during her September 2003 in-patient treatment of opioid dependence, cannabis dependence, and sedative abuse.

The following Drug Involvement Disqualifying Conditions (DI DC) apply to Applicant's case. DI DC ¶25(a) (*any drug abuse*) applies due to her past history of illegal drug use. DI DC ¶25 (c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) applies. Applicant possessed and purchased illegal drugs on numerous occasions over a four year period. One can reasonably conclude that she possessed drug paraphernalia as well based on her December 2002 arrest for drug paraphernalia and subsequent conviction.

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 drug treatment program*) cannot be applied. While Applicant was diagnosed as drug dependent during her in-patient treatment, the record is not clear that the evaluation or diagnosis was made by a licensed clinical social worker.

DI DC ¶25(f) (*failure to unsuccessfully complete a drug treatment program prescribed by a duly qualified medical professional*) cannot be applied for the same reason that DI DC ¶25(e) cannot be applied. Although, the treatment facility concluded Applicant's discharge from the program was unsuccessful, the record is not clear that treatment program was prescribed by "a duly qualified medical professional."

The drug involvement concern can be mitigated. However, I find none of the mitigating conditions apply. Applicant has an extensive history of illegal drug use. She was diagnosed as opioid and cannabis dependent. Although she has indicated she does not intend to use illegal drugs in the future, it is too soon to conclude that she will follow through on her intentions. This conclusion is based on Applicant's extent of illegal drug abuse; her refusal to attend out-patient treatment against

¹⁶ AG, ¶ 24(b).

the recommendations of the treatment facility staff; and the fact that she does not attend support groups which could assist her with staying drug free. Once the government establishes a prima facie case to raise a security concern, Applicant has the burden to mitigate the security concern raised. Applicant has not presented sufficient evidence to mitigate the drug involvement security concerns. I find against Applicant under Guideline H.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. While it appears Applicant made progress while attending in-patient treatment, a security concern remains due to her failure to meet all of her aftercare requirements. She failed to mitigate the security concerns raised by the drug involvement concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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
	Subparagraph 1.a.	Against Applicant
	Subparagraph 1.b.	Against Applicant
	Subparagraph 1.c.	Against Applicant
	Subparagraph 1.d.	Against Applicant
	Subparagraph 1.e.	Against Applicant
	Subparagraph 1.f.	Against Applicant
_____	Subparagraph 1.g.	Against Applicant
	Subparagraph 1.h.	Against 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.

Erin C. Hogan
Administrative Judge