



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-06981

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

01/08/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding drug involvement. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On February 23, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ The Department of Defense (DOD) issued a Statement of Reasons (SOR) to her on September 13, 2012, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines H (Drug Involvement) and E (Personal

¹ GE 1 (SF 86, dated February 23, 2012).

Conduct), and detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on September 20, 2012. In a sworn statement, dated October 5, 2012, Applicant requested a hearing before an administrative judge. Department Counsel indicated that the Government was prepared to proceed on October 26, 2012, and the case was assigned to me on November 6, 2012. A Notice of Hearing was issued on November 30, 2012, and I convened the hearing, as scheduled, on December 11, 2012.

During the hearing, one Joint exhibit (JE I), two Government exhibits (GE 1 and 2), and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on December 19, 2012.

Findings of Fact

In her Answer to the SOR, Applicant admitted two of the factual allegations (§§ 1.a. and 1.c.), a portion of another factual allegation (§ 1.b.) pertaining to drug involvement, and the factual allegation pertaining to personal conduct (§ 2.a.).² She denied the remaining portion of § 1.b. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor who, since February 2012, has served as a consultant.³ She was previously employed in a variety of positions including restaurant server, administrative intern, sales associate, game room attendant, graduate teaching assistant, and office assistant.⁴ Applicant has never served in the U.S. military,⁵ and she has never held a security clearance.⁶

Applicant has never been married.⁷ She was an outstanding student-athlete while in high school during 2002 until 2005,⁸ as well as a scholarship recipient while in

² At the commencement of the hearing, Department Counsel moved to amend the SOR by withdrawing the entire factual allegation pertaining to personal conduct. There being no objection, the motion was granted and § 2 of the SOR was withdrawn. See, Tr. at 11-12.

³ GE 1, *supra* note 1, at 17.

⁴ GE 1, *supra* note 1, at 17-27.

⁵ GE 1, *supra* note 1, at 28.

⁶ GE 1, *supra* note 1, at 44.

⁷ GE 1, *supra* note 1, at 30.

⁸ AE F (Various scholar athlete awards, academic awards, and academic letter awards, various dates).

college.⁹ Applicant received a bachelor of science in psychology in 2009 (with only one grade below an “A”,¹⁰ and a master of science in psychology in 2011 (again with only one grade below an “A.”¹¹

Drug Involvement

Over the years, Applicant has been afflicted with a variety of maladies. She had low self-esteem, was extremely shy, and initially overweight. During her high school years, her mother provided meals based on the South Beach Diet, and as a result, Applicant began to lose weight and received compliments from her peers. The dieting and increased physical activity, along with the positive feedback, led her to take extreme measures, and she progressed to using laxatives, diet pills, and purging. During her freshman year in college, her anorexia progressed to bulimia, and she suffered from depression and severe anxiety.

Applicant sought professional care from several caregivers both at home and while at school, and underwent relatively frequent therapy for the following diagnoses: anorexia, bulimia, major depression, low self-esteem, social anxiety, attention deficit hyperactive disorder (ADHD), and poor impulse control.¹² She was prescribed a number of medications, including Prozac, Wellbutrin, Lithium, Trazodone, Ritalin, and Adderall.¹³ Applicant’s mental health displayed marked improvement after she was prescribed the Adderall to control her extreme anxiety attacks, but she no longer takes any antidepressants.¹⁴ She still takes Adderall.

During the period March 2002 until August 2010, Applicant was a substance abuser whose choice of substances was marijuana, cocaine, and heroin. While Applicant was a student in high school, she first encountered marijuana. In March 2002, when she was a 15-year old member of the softball team, she and a group of teammates were at a sleepover. Some of the older members of the team placed marijuana in a bowl for all to share. Applicant was extremely shy and impressionable, and she wanted to fit in with the crowd. So despite feeling uncomfortable, she took two puffs of the marijuana cigarette. Filled with social anxiety, she wondered if she was doing it correctly because everyone else seemed to be enjoying the experience, and she was curious about what would occur if she decided to quit.¹⁵ The same scenario occurred in November 2002 when she was 17 years old, and again in March 2005 when

⁹ AE G (Academic Excellence certificate, letter from director of admissions, and Certificate of Scholarship Recognition, various dates); AE H (Senior Excellence Award, dated April 24, 2009).

¹⁰ GE 1, *supra* note 1, at 15; AE I (Transcript, dated November 15, 2012).

¹¹ GE 1, *supra* note 1, at 15-16; AE J (Transcript, dated November 15, 2012).

¹² AE A (Letter from Licensed Clinical Social Worker (LCSW), dated November 27, 2012).

¹³ GE 2 (Personal Subject Interview, dated April 25, 2012), at 2.

¹⁴ GE 2, *supra* note 13, at 2; Tr. at 67.

¹⁵ Tr. at 40-41, 70-73.

she was 18 years old.¹⁶ Applicant used marijuana again in college. From August 2006 until May 2007, and again in April 2009, she took two or three puffs of marijuana each time with her roommates.¹⁷ Applicant never personally purchased the marijuana.¹⁸

In October 2004, Applicant was introduced to cocaine while at a party. She snorted two to three lines of cocaine.¹⁹ Her high school boyfriend snorted cocaine, so she did too.²⁰ In the spring of 2005, she again snorted two or three lines of cocaine. Upon realizing that cocaine suppressed her desire for food, she began using it periodically, perhaps less than 20 times, over the ensuing years while working during breaks from college and summer vacations until the spring of 2010.²¹ Although she never personally purchased the cocaine, she did contribute money for its purchase.²²

In August 2010, while having a beer at the restaurant where she had previously worked, Applicant raised her substance abuse to a new level by experimenting with heroin. When she inquired about needle marks on a coworker's hand, that coworker took her to the bathroom where she injected herself with heroin. She offered Applicant another needle, and Applicant was injected with heroin.²³ Applicant initially felt sick and threw up, but later felt good.²⁴ About two weeks later, while in class, her chest tightened and her heart raced. She was taken to the college clinic where she was treated for dehydration and a blood infection (from the heroin needle). She was hospitalized for five days.²⁵

Upon being discharged from the hospital, Applicant took the semester off to address her health, including her substance abuse and her underlying emotional and psychological issues.²⁶ She went through psychotherapy and counseling and also attended narcotics anonymous (NA) meetings four times each week.²⁷ According to her LCSW, Applicant developed effective coping skills and set limits on dysfunctional family

¹⁶ GE 2, *supra* note 13, at 3.

¹⁷ GE 2, *supra* note 13, at 3.

¹⁸ GE 2, *supra* note 13, at 3.

¹⁹ GE 2, *supra* note 13, at 3.

²⁰ Tr. at 76.

²¹ GE 2, *supra* note 13, at 3; Applicant's Answer to the SOR, at 1; Tr. at 34, 77.

²² GE 2, *supra* note 13, at 3.

²³ GE 2, *supra* note 13, at 3-4; JE I (Clarifications and corrections to Personal Subject Interview, dated December 11, 2012), at 2; Tr. at 31, 42. It is unclear if Applicant's coworker injected Applicant or if Applicant did so herself.

²⁴ GE 2, *supra* note 13, at 4.

²⁵ GE 2, *supra* note 13, at 4; Tr. at 31.

²⁶ GE 2, *supra* note 13, at 4.

²⁷ GE 2, *supra* note 13, at 4; AE A, *supra* note 12; Tr. at 46.

dynamics. He opined that her substance abuse, which he characterized as “experimental drug use,”

can be attributed to a combination of factors in the environment she lived and worked in, her personal issues with low self-esteem (Major Depression), poor impulse control/behavioral inhibition [ADHD] and social anxiety. Both of these dynamics have been addressed. She is no longer working in a restaurant environment where drug-use was the culture. Second, through our weekly psychotherapy sessions, we successfully addressed her emotional issues (i.e., low self-esteem, immaturity, insecurities and social anxiety issues) which hampered her ability to stand up for herself and develop a path away from negative influences.²⁸

The LCSW added, “I do not believe that her drug history will have any impact on her judgment, decision making, or behavior in the future. It was a symptom of a problem, not the problem.”²⁹ Applicant graduated from psychotherapy in January 2012, and she is currently taking medication to control her ADHD.³⁰

On December 10, 2012, Applicant declared, “I will abstain from all illegal drug use and understand that my security clearance will be automatically revoked for any violation of this.”³¹ Applicant contends she has picked up healthy coping skills and hobbies to help her manage stress; she has changed her environment (home location and telephone number); no longer associates with her former drug-using friends; and avoids the company of questionable characters.³²

Character References

Applicant was initially a student and teaching assistant, and later a baby sitter, dog-sitter, and trusted family friend for a university professor. That professor has characterized her in extremely positive terms. Applicant is extremely trustworthy and has the highest possible integrity. She is a very reliable and dependable student, colleague, and friend.³³ A family friend who has known Applicant since infancy, commented on Applicant’s becoming a “well-adjusted, confident, intelligent, trustworthy and productive citizen.”³⁴ A colleague who oversaw Applicant’s hiring process and now

²⁸ AE A, *supra* note 12, at 1.

²⁹ AE A, *supra* note 12, at 2.

³⁰ AE A, *supra* note 12, at 2.

³¹ AE K (Statement of Intent, dated December 10, 2012).

³² Applicant’s Answer to the SOR, at 2-5.

³³ AE E (Character Reference, dated December 4, 2012).

³⁴ AE D (Character Reference, dated December 6, 2012).

works with her, as well as a former colleague, both were very positive and supportive of Applicant.³⁵

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”³⁶ 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 have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁷

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”³⁸ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation,

³⁵ AE B (Character Reference, dated December 5, 2012); AE C (Character Reference, dated December 6, 2012).

³⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁸ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.³⁹

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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 include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁴⁰

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁴¹ Thus, 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. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

³⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁰ *Egan*, 484 U.S. at 531

⁴¹ See Exec. Or. 10865 § 7.

(1) 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), and

(2) inhalants and other similar substances.

(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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. In addition, *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, is potentially disqualifying under AG ¶ 25(c). Similarly, under AG ¶ 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*, may raise security concerns. From 2002 to 2009, Applicant used marijuana with varying frequency. From 2004 to 2010, she contributed to the purchase of cocaine on a number of occasions and used that substance with varying frequency. She also used heroin on one occasion in 2010. AG ¶¶ 25(a) and 25(c) apply. The SOR does not allege a diagnosis of drug abuse or dependence. However, as to an evaluation of drug abuse or drug dependence by an LCSW, Applicant was treated for a variety of conditions, but not drug abuse or drug dependence. Her drug use was considered an “ineffective coping mechanism” that was a symptom of her problems, not the problem. The evidence fails to establish AG ¶ 25(e).

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition may be mitigated where *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*. Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is 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; (4) a signed statement of intent with automatic revocation of clearance for any violation*. And, AG ¶ 26(d) may apply when there is:

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.

Applicant's substance abuse commenced while she was in high school and was afflicted with anorexia, bulimia, major depression, low self-esteem, social anxiety, ADHD, and poor impulse control. Being extremely shy and impressionable, she wanted

to fit in with the crowd, and in doing so, succumbed to peer pressure. Experimentation with marijuana progressed to periodic use of marijuana, then cocaine, and finally culminated with a one-time experimentation with heroin. The heroin experiment eventually put her in the hospital and led to psychotherapy and counseling for her underlying issues. She eventually graduated from psychotherapy armed with effective coping skills. She also attended NA. She made a decision to stop using illegal substances, and has abstained from all such substance abuse since August 2010. As noted above, Applicant has changed her behavior and made a conscious decision to avoid environments where it may occur. She no longer associates with people who might use illegal substances, she intends to never use any illegal drug in the future, and she has signed a statement of intent with automatic revocation of clearance for any violation. Considering her period of abstinence, her continuing social and professional relationships, her maturity, and her new appreciation of the significance of illegal substance abuse, her behavior is unlikely to recur, and no longer casts doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶¶ 26(a), 26(b), and 26(d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴²

There is some evidence against mitigating Applicant's conduct. She used marijuana and cocaine for varying periods commencing while in high school, and experimented with heroin on one occasion in 2010.

The mitigating evidence under the whole-person concept is more substantial. Afflicted with a number of maladies, and being extremely shy and impressionable,

⁴² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant simply wanted to fit in with the crowd. She went down the road from marijuana abuse to cocaine abuse, followed by heroin experimentation. However, she also went through psychotherapy and counseling and attended NA meetings. Applicant developed effective coping skills and set limits on dysfunctional family dynamics. Her LCSW opined that her experimental drug use could be attributed to her low self-esteem (Major Depression), poor impulse control/behavioral inhibition, ADHD, and social anxiety.

Applicant successfully addressed her low self-esteem, immaturity, insecurities and social anxiety issues which hampered her ability to stand up for herself and develop a path away from negative influences. Applicant's substance abuse was a symptom of a problem, not the problem. Now armed with good coping skills and the appropriate medication to treat her ADHD, Applicant has changed her behavior and made a conscious effort to avoid environments where substance abuse may occur. According to those who know her well, Applicant is honest and trustworthy. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge