



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 12-07214
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Christopher Morin, Esq., Department Counsel  
For Applicant: Jon L. Roberts, Esq.

06/28/2013

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 12, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) enumerating security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded on December 10, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on January 16, 2013. The parties proposed a hearing date of February 7, 2013. A notice setting the hearing for that date was issued on January 25, 2013. I convened the hearing as scheduled.

Applicant testified, called two witnesses, and offered 13 documents, which were accepted into the record without objection as exhibits (Exs.) A through M. Department Counsel offered five documents, which were admitted as exhibits (Exs.) 1-5 without objection. On February 15, 2013, the transcript (Tr.) of the proceeding was received

and the record closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating the security concerns raised in the SOR. Clearance is denied.

### **Findings of Fact**

Applicant is a 52-year-old engineer who has worked in the same position for the same defense contractor for the past two years. He has a bachelor's degree in computer science. Applicant is married and has two children.

In May 1978, Applicant graduated from high school. He joined the United States Navy in order to mature and see the world. He received his first security clearance at age 18 and he served as an operations specialist. He was honorably discharged in 1982, at which point he began college. Applicant graduated with a 3.2 grade point average in 1986, then accepted a position with a defense contractor, where he was again granted a security clearance. He continued to work in both the defense and commercial industries through the 1990s. Today, he works in the defense industry. He has maintained his current security clearance since first working for his present employer in 2004.

From about February 2008 through February 2011, Applicant took his wife's prescription pain medication on at least six to eight occasions. He did so without her knowledge. On one or two occasions he used her drugs for pain caused by shoveling snow. The rest of the time he used them with alcohol to achieve a relaxing "high." In addition, from some time in 2010 through July 2011, he took additional Adderall above his prescribed dosage in order to help him stay focused.<sup>1</sup>

On July 12, 2010, and on March 7, 2011, Applicant certified his answers on two separate security clearance applications (SCA). *Section 23, Illegal Use of Drugs or Drug Involvement* on both SCAs inquired about various types of drug use in the preceding seven years, including substances ranging from cocaine and marijuana to the illegal use of stimulants and prescription drugs (including painkillers). When reading the question on both SCAs, he got as far as the references to cocaine and marijuana, then directly answered "no" because he did not use illegal drugs. He then moved on to the next question. He did not foresee that the question inquired about the abuse of prescription drugs.<sup>2</sup> Therefore, Applicant did not note his abuse of his wife's pain medications and his abuse of Adderall. Sharing of prescription medication between spouses or manipulating one's own prescription dosages did not occur to him to be an issue of drug abuse.<sup>3</sup>

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<sup>1</sup> Tr. 147. Adderall is a prescribed amphetamine and dextroamphetamine medication used to address Applicant's attention deficit hyperactivity disorder (ADHD). Applicant repeatedly stated that references in the record that he used Adderall to get a "high" are incorrect and may have been due to his own error in reporting.

<sup>2</sup> Tr. 125.

<sup>3</sup> Tr. 127.

In December 2010, Applicant's service with his current employer was curtailed due to a round of layoffs. He interviewed at another defense contractor, where he was given a polygraph test in July 2011. During the polygraph, questions were asked about the use of illegal drugs.<sup>4</sup> Applicant initially failed to disclose his abuse of both his wife's pain medication and his Adderall for the same reason he failed to disclose it on his SCAs. He was then told that he failed the polygraph test due to his responses regarding drugs. Discussion ensued, and Applicant disclosed his prescription drug abuse. When he got home, he discussed the issue with his wife. To safeguard that he did not have a drug problem, he immediately contacted a counselor, who he continues to see with varying frequency now for stress. The counselor has helped Applicant cope with adverse situations and tensions. He also convinced Applicant that he did not have a drug abuse problem.<sup>5</sup>

In the interim, when interviewed in May 2012, Applicant attributed his abuse of his wife's prescription drugs to back pain related to snow removal. He failed to also disclose he used it at times with alcohol to relax and escape from stressors such as marital strife, professional worries, his farther's ill health, and generalized anxieties.<sup>6</sup> He did not share his new found understanding regarding the security concerns raised by prescription drug abuse with the investigator. Applicant admits that he "wasn't telling the whole truth" and was "less than forthcoming" or "obfuscating" with regard to drugs during the interview.<sup>7</sup>

In his free time, Applicant is active with his church, where he volunteers with sound and video effects and with its men's group. He is well-respected by his church community. At work, Applicant is highly regarded. He keeps up-to-date with security and awareness training sessions, as well as a number of training seminars related to his area of expertise. Applicant is highly embarrassed by his abuse of medications and highly contrite. He is equally contrite that he was not more forthcoming.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-

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<sup>4</sup> Tr.128.

<sup>5</sup> Tr. 134-135.

<sup>6</sup> Tr. 140-142.

<sup>7</sup> Tr. 143-145. Applicant later testified that he was not as clear as he should have been. He apparently did explain to the investigator that he did not have a prescription for a pain medication he had used such drugs. Tr. 145.

person concept.” The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel....”<sup>8</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>9</sup>

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. The Government reposes a high degree of trust and confidence in 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>11</sup>

## Analysis

### 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,

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<sup>8</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>9</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

rules, and regulations.<sup>12</sup> “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) and inhalants and other substances.<sup>13</sup> “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.<sup>14</sup>

Applicant admitted he used his wife’s prescription pain medication on multiple occasions between February 2008 and February 2011. Sometimes he used her medications for genuine pain, at other times it was to seek relaxation or relieve stress. He also admitted that he manipulated the dosage of Adderal he consumed about twice a week between 2010 and July 2011. Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*), and AG ¶ 25(g) (*any illegal drug use after being granted a security clearance*) apply. With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

In offering his testimony, Applicant was highly credible when stating that he was unaware that there was a prohibition against using his spouse’s medications or increasing the dosage of his own prescription medication. Given his age and the increase in drug monitoring and control in recent years, his statement is quite plausible. He now understands these matters. Moreover, he sought and has received counseling to help him better cope with stress and to help him relax. It is unlikely he will again abuse another’s or his own prescription medication. Drug Involvement Mitigating Condition AG ¶ 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*) applies.

Applicant has not used his wife’s medications since February 2011, nearly two-and-a-half years ago. He has not self-adjusted the dosages on his own prescription medication since July 2011, two years ago. There is no indication that he became dependent on either of these medications or that he has had difficulty foregoing their use. In light of the brief period of abuse and the limited number of instances involved in abusing his wife’s prescribed pain medication, I find AG ¶ 26(b)(3) (*an appropriate period of abstinence*) applies. In sum, given the mitigating conditions raised, I find Applicant mitigated drug involvement security concerns.

## **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability,

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<sup>12</sup> AG ¶ 24.

<sup>13</sup> *Id.* at ¶ 24(a)(1-2).

<sup>14</sup> *Id.* at ¶ 24(b).

trustworthiness, and ability to protect classified information.<sup>15</sup> In addition, any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process is of special interest.<sup>16</sup>

In July 2010 and in March 2011, Applicant failed to disclose the fact he had abused his wife's pain medication on multiple occasions between February 2008 and February 2011, and that he had manipulated the dosage of his Adderall prescription on multiple occasions between 2010 and July 2011. He failed to disclose that same information during a July 2011 polygraph examination. Finally, in May 2012, he failed to explicitly disclose this drug abuse in an interview. If these failures were deliberate or meant to mislead or obfuscate relevant facts during the investigative process, Personal Conduct Disqualifying Conditions AG ¶ 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*) and AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*) would apply.

Applicant has maintained a security clearance for the better part of his adult life, having received his first clearance in the military at age 18. It is nearly inconceivable that a 52 year old man with that background would not be aware that the SCAs are amended from time to time, and that it is paramount that an applicant take the execution of an SCA very seriously. This would include reading each and every question in its entirety before certifying one's answers. Anything less than giving an SCA one's full attention and consideration shows poor judgment. Here, Applicant may not have been deliberate in his failing to disclose his prescription drug abuse on the SCAs, but his admitted failure to read the question to completion is worrisome. Regardless, having jumped to the incorrect conclusion that security concerns only stemmed from illegal drugs, it is not illogical for Applicant to have declined to disclose his prescription drug abuse during a polygraph unless that particular kind of abuse was explicitly asked.

To this point, Applicant's explanations are not implausible, *per se*. Although it is curious that he failed the polygraph with regard to drug questions when, apparently, he was not asked about prescription drug abuse and he did not at that time believe such abuse was a security issue. However, the situation involving the May 2012 interview with an investigator in which he again failed to fully disclose his prescription drug abuse between 2008 and 2011 is troublesome. By that point, according to his own testimony, he had come clean about his prescription drug abuse to a polygrapher in July 2011, told his wife about his failed polygraph, commenced counseling to address his misuse of prescription medications, and developed alternative techniques for stress reduction. If all of that is true, there is no explanation for why, during the May 2012 interview, he

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<sup>15</sup> AG ¶ 15.

<sup>16</sup> *Id.*

“wasn’t telling the whole truth” and was “less than forthcoming” or “obfuscating” with regard to prescription drug abuse, such as mixing alcohol with his wife’s pain medication to relax.

In considering this concession, it is relevant that there is no evidence that he made a prompt, good-faith effort to correct his omission, that his incomplete answers were made on the advice of counsel, or other evidence that could raise a relevant mitigating condition. While it can be argued that his counseling has helped him accept his past drug abuse and find alternative forms of stress relief, such counseling is not the type contemplated in Personal Conduct Mitigating Condition AG ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*). Moreover, Applicant’s “less than forthcoming” answers occurred nearly a year after his counseling had begun. That counseling was initially prompted in response to what he learned after giving incomplete answers during the 2011 polygraph. At best, Applicant’s openness to discuss the matter and his obvious contrition raises AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*).

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Multiple facts speak in Applicant’s favor. He is a mature and educated family man who is a valued employee. He served honorably in the U.S. military and excelled in college. He was first granted a security clearance at age 18 and has maintained one for the majority of his adult life without incident. Therefore, it can be assumed he understands the gravity and significance of both the application and investigation stages of seeking a security clearance.

Guideline H security concerns related to Applicant’s actual abuse of prescription medication can be mitigated, particularly because of the period of abstinence, counseling, and the fact it is not likely to recur. The incidents noted under Guideline E, for the most part, could be mitigated in pieces because there is no actual evidence that Applicant deliberately falsified his answers on the SCAs. Even the failure to disclose those same facts during the polygraph could, giving Applicant the benefit of the doubt, be mitigated for the same reason. It gives one pause, however, to consider how Applicant failed a polygraph over a drug-related question when at the time, he apparently did not know that his prescription drug use was cause for concern.

A year after Applicant learned that prescription drug abuse was a security concern, and after he sought counseling to accept his past drug abuse and find alternative therapies for stress, Applicant was interviewed in May 2012. Applicant admits that he “wasn’t telling the whole truth” and was “less than forthcoming” or “obfuscating” with regard to his prescription drug abuse during that meeting. Such concessions are tantamount to an admission that Applicant intentionally tried to withhold information about the prescription drug abuse. It has been barely 14 months since Applicant chose to be “less than forthcoming” with an investigator. Less than two years has provided insufficient time for Applicant to reestablish a demonstrated record of candor, reliability, and sound judgment.

In sum, I find that Applicant failed to mitigate personal conduct security concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. It is noted that the denial of a security clearance does not preclude the ability to reapply for a security clearance. It is further noted that a denial does not necessarily indicate anything adverse about an applicant’s character or loyalty. It simply means that the individual present insufficient evidence to meet the strict standards controlling security clearances. Clearance is denied.

### **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
Subparagraphs 1.a–1b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge