



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



In the matter of:)
)
) ADP Case No. 14-01542
)
)
Applicant for Public Trust Position)

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

02/03/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to sensitive information is denied.

Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) on November 13, 2013. The Department of Defense Consolidated Adjudications Facility, Division A (DOD CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline E, personal conduct, on August 4, 2014. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 12, 2014. He answered the SOR in writing on August 20, 2014, and he requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on October 30, 2014, and I received the case assignment on November 3, 2014. DOHA issued a notice of hearing on November 26, 2014, and an amended notice of hearing on December 3, 2014 for a change in the hearing location. I convened the hearing as scheduled on December 10, 2014. The Government offered two exhibits (GE) 1 and 2, which were received, marked, and admitted into evidence without objection. Applicant testified. Applicant submitted two exhibits (AE) A and B, which were received, marked, and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 22, 2014. I held the record open until January 9, 2015, for the submission of additional matters. Applicant timely submitted AE C through AE H, which were received, marked, and admitted without objection. The record closed on January 9, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. He also provided additional information to support his request for eligibility for a public trust position.

Applicant, who is 45 years old, works as a nurse reviewer for a DOD contractor. He began his current employment in November 2013. His section manager indicates that he exceeds expectations in matters of professional and personal accountability; he exhibits honesty and integrity; and he shows a genuine concern for others in his work. He is highly regarded by his team members. On a personal level, his section manager finds him to be forthright and principled and indicates that Applicant's words and promises can be trusted. His immediate supervisor praises his work ethic and skills. His supervisor advises that Applicant has been forthright about his past history and that there are no concerns or problems since he was hired.¹

After high school graduation, Applicant served as an enlisted soldier on active duty in the United States Army from February 1988 until June 1991. He received an honorable discharged. Applicant served as a member of the active Army reserve from January 1992 until January 2010, when he retired at the rank of captain.²

Applicant and his wife married in 1995 and separated in 2012. They are in the process of a divorce, although he still lives in the marital home. They have twin sons, who are 14 years old, and a daughter, who is 10 years old.³

¹GE 1; AE A; AE B; Tr. 33.

²GE 1; Tr.15-16, 32.

³GE 1; Tr. 16.

Applicant received an associate's degree in 1994, and he received his bachelor's degree in nursing in 1997. Applicant began working in nursing in 1996, one year before graduation. He worked in patient care nursing until February 2013. He was unemployed from February 2013 until November 2013.⁴

In 1997, Applicant injured his back when working with a patient. His physician prescribed Norco (the same as Vicodin), a controlled drug, for his pain. Applicant experienced an euphoric feeling and a boost in energy as well as pain relief from this drug. Between 1998 and 2005, his physician prescribed Norco to treat pain from minor surgery and from a 2004 groin injury. Applicant used the Norco prescribed for him beyond the point he needed the drug to treat his pain and until he finished the pills in his prescription. Applicant knew his father also used Norco for back pain. During this period of time, Applicant would take one or two pills from his father about once every one to two months. He did so because he enjoyed the way he felt after taking the drug.⁵

In January 2005, Applicant learned that his mother had terminal cancer. His use of Norco started to increase. In his work leadership position, he had easy access to prescription pads. He began writing prescriptions for Norco for himself. He knew this conduct was against the law. In June 2005, a pharmacy notified his employer about his conduct. About the same time, he told his supervisor about his misuse of prescription pads to get Norco. His employer did not discipline him for his conduct, nor did his employer discharge him from his employment. His employer placed him on administrative leave. He referred himself to the state Board of Nursing, which recommended that he attend a nurse diversion rehabilitation program. Applicant contacted this program and followed its recommendations. He participated in an inpatient treatment program from June 2005 until September 2005, and he voluntarily participated in this program's outpatient treatment program for a year. From June 2005 until July 2008, he attended narcotics anonymous outpatient programs, joined a support group, sought professional counseling, attended a second outpatient treatment program, and participated in drug screening. During this time, he did not use Norco; he did not test positive for any illegal drugs; and he did not receive any medication. At the time of his Office of Personnel Management (OPM) interview, Applicant stated that he had not been diagnosed as drug dependent or as a drug abuser in 2005. The limited medical record from 2005 supports his statement. Applicant also stated that he did not believe he had a drug problem while in this treatment, but complied with the requirements of the state nursing board.⁶ Applicant left his employer in January 2006 for another position.⁷

⁴GE 1.

⁵GE 2; Tr. 18-19, 31-32.

⁶At the hearing, Applicant stated that he believed he was diagnosed as drug dependent in 2005, and his employer placed him on disability. Applicant was diagnosed as drug dependent in the spring of 2013, which may be the reason for his conflicting testimony. Tr. 28.

⁷GE 1; GE 2; AE C; Tr. 20-21, 24, 28, 34, 36-37.

The police investigated the June 2005 incident. As a result of its investigation, the police arrested Applicant, and the prosecutor charged him with forging a prescription and possession, both felony charges. Applicant was convicted of misdemeanor forgery of a prescription. The court sentenced him to 58 days house arrest and three years of informal probation. He completed the terms of his sentence. Applicant self-reported his arrest to the Army and received a Letter of Reprimand in August 2005. The Letter of Reprimand was later removed from his record.⁸

In January 2009, doctors diagnosed one of his sisters with terminal cancer. The next month, February 2009, his wife underwent ankle surgery. Her physician prescribed Norco for her pain. In February 2009, Applicant started using Norco again after remaining sober for three and one-half years. In December 2010, Applicant decided to look in a co-worker's purse or desk drawer for Norco.⁹ He did not know if she used this drug or if she had the drug in her possession. As he conducted his search, the co-worker returned. Although he did not take any money or items from the purse or desk drawer, he did not respect her privacy. He and she immediately went to their supervisor and reported his actions. One week later, his employer asked him to resign for failing to comply with corporate values. Despite losing his job, Applicant continued his Norco use. He returned to work as a nurse in June 2011.¹⁰

Applicant continued to use Norco until February 2013. He obtained the drug by faking pain to his physician¹¹ or from his father or wife, both of whom knew about his misuse of the drug. He did not write prescriptions for himself until February 2013.¹² On February 22, 2013, Applicant attempted to call in a prescription for Norco for himself. The pharmacist recognized him and contacted his employer. Applicant did not state whether he or someone else reported his conduct to the nursing board. His employer terminated his employment four days later. Applicant remained unemployed until November 2013. Applicant was not charged criminally for this conduct.¹³

Applicant testified that between 2009 and 2013, he participated in narcotics anonymous, in an attempt to control his drug habit, which was his goal. In February 2013, he realized that he could not control his usage of Norco or similar drugs. He understood that if he continued his use of this drug, his life would continue to go

⁸GE 2; Tr. 20-21, 34-35.

⁹Applicant told the Office of Personnel Management investigator that he searched a desk drawer. At the hearing he said it was a purse. GE 2; Tr. 22.

¹⁰GE 2; Tr. 22, 35-36.

¹¹As an example, in 2009, he developed carpal tunnel syndrome in both wrists. He had surgery for this problem in April 2011. He faked the level of pain for his wrists to get more Norco. Tr. 23.

¹²GE 1; GE 2; Tr. 21-25, 31, 39.

¹³GE 2; Tr. 23-24.

downhill, meaning loss of jobs and impacting his family. He made a decision to seek treatment and to stop his Norco use.¹⁴

On February 28, 2013, Applicant met with a physician, whose qualifications in mental health are unknown, to discuss his “disability”, meaning his drug use. The physician conducted a full physical and took a medical history. The physician indicated episodic medication addiction as a chronic problem. The physician noted that Applicant had a poorly controlled narcotic addiction and referenced Section 304.03 of Diagnostic and Statistical Manual of Mental Disorders. The physician did not identify what criteria set forth in the manual supported the diagnosis. The physician completed the necessary disability paperwork for him to enter a rehabilitation program.¹⁵

On March 20, 2013, Applicant began an intensive outpatient substance abuse treatment program, which he completed on May 3, 2013. A licensed social worker supervised his treatment and prepared a written report. The report outlined Applicant’s history of drug use and past treatment. Applicant set his goal as remaining clean and sober. The social worker indicated that he made excellent progress in pursuing this goal. At the end of this program, the social worker recommended that he seek individual therapy and gave him a referral name. Applicant received intensive counseling with this individual from June 2013 until December 2013. The social worker also recommended that he attend narcotics anonymous four times a week. She noted that he was not taking any medication at discharge. She indicated that his discharge diagnostic impression was opiate addiction and that his prognosis was good.¹⁶

Applicant advised that since February 2013, he has made changes in his life to prevent his drug use and to avoid temptation. He now works in administration rather than in patient care. It is unclear if this change is a requirement of the nursing board to retain his license or a truly voluntary choice of Applicant’s. In his current job, he has no access to prescription pads or drugs. He has advised all his physicians, including his dentist, about his addiction to Norco and similar drugs. He will also advise any new physicians about his addiction. His goal in providing this information is to protect himself. He talked with his father and stepmother candidly about the severity of his addiction. He told his father that no matter what he [Applicant] requests or says, his father is never to provide him with drugs again. Applicant bought his father a lock box for his medications and asked his father to keep his medications in the lock box. His father has not verified this information and his compliance with Applicant’s request. Applicant told his children about his drug addiction and talks about his narcotics anonymous meetings with them. His wife is aware of his addiction. At her request, every

¹⁴GE 2; Tr. 25.

¹⁵AE D; Tr. 28.

¹⁶AE E.

few months he has his hair tested for drug use. According to Applicant, the results are negative. However, there are no testing reports in the file supporting his statement.¹⁷

Applicant's narcotics anonymous sponsor for more than four years wrote a letter on his behalf. His sponsor advised that Applicant attends numerous narcotics anonymous meetings every week; that Applicant has made steady progress in important recovery milestones; that he has embraced all the elements of his recovery; and that he has completed the first five steps of recovery and is working on the remaining steps. He believes that Applicant will continue to willingly travel his recovery journey. Applicant verified that he regularly attends five separate narcotics anonymous meetings. He indicated that he is fully committed to narcotics anonymous. Applicant also signed a letter of intent acknowledging that if he has any violation or relapse in his drug use, his trustworthiness eligibility will automatically be revoked.¹⁸

Applicant is fully aware that he can never use Norco or its equivalent. Through his treatment programs and his continued participation in narcotics anonymous, he has learned to share his emotions. He stated that he now has the ability to share his feelings and emotions with others. He has a support system to help him work through a stressful situation. He plans to continue working the steps and not to use Norco or its equivalent again. He takes one day at a time in his recovery efforts.¹⁹

Throughout the hearing, Applicant testified in a forthright and direct manner about his drug use. He made no attempt to justify his conduct, to excuse it, or to minimize his use. He recognizes his addiction and acknowledges that he can never Norco or similar drugs to treat pain in the future. I find his testimony honest and credible.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

¹⁷Tr. 25-27, 29-30, 32-34.

¹⁸AE F; AE G; AE H.

¹⁹Tr. 25-26, 41.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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. According to AG ¶ 2(c), 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 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 [sensitive] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (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).

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses a trustworthiness concern pertaining to 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.

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

(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.

AG ¶ 25 describes the disqualifying conditions that could raise trustworthiness concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and

(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 began using Norco, a prescription drug, to manage pain in 1997. Because he liked the effects of this drug, he occasionally took or received one or two pills from his father, and he used all of the pills prescribed to him. In early 2005, after learning that his mother was terminally ill, Applicant increased his use of Norco by writing prescriptions for himself. In June 2005, a pharmacist reported his effort to obtain the drug to his employer. Applicant began treatment for his drug addiction in 2005. Although Applicant stated at the hearing that he was diagnosed as drug dependent in 2005, his medical record does not reflect such a diagnosis by a qualified medical professional. He returned to his use of Norco in February 2009 when he learned about his sister's terminal illness. In February 2013, a licensed social worker diagnosed him as drug dependent, a diagnosis with which he agrees. A trustworthiness concern is established under AG ¶¶ 25(a) and 25(e).

The drug involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 26(a) through ¶¶ 26(d), and the following are potentially applicable:

(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;

(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.

Applicant appeared to successfully complete his first rehabilitation program, but seven months after completion of the program he started using Norco again after learning that his sister was dying. In February 2013, he lost a job for the second time when he again tried to obtain Norco for himself without valid medical authorization. When his conduct was reported, he finally realized the negative impact his drug use was causing in his life. He voluntarily sought medical help. His physician was aware of his drug addiction and prepared the appropriate paperwork for Applicant to get treatment. In March 2013, Applicant self-enrolled in an outpatient treatment program. He successfully completed this program six weeks later. He also followed the recommendations of the program social worker. He started actively participating in narcotics anonymous four or five times a week and continues to actively participate in this program. He began counseling sessions with the counselor recommended by the social worker. These intense sessions lasted six months.

Applicant has never associated with drug users. He is addicted to a drug, which he often, but not always, obtained through a physician. Initially, physicians prescribed Norco for pain. Later, Applicant exaggerated his pain to get Norco or wrote his own prescription for Norco. He acknowledged his actions were wrong or illegal. His actions speak to his desperation for Norco.

As a result of his counseling and treatment programs, Applicant made changes in his life. He started working in nursing administration and not patient care, which eliminates his opportunities to obtain either a prescription pad or Norco. His current supervisor is aware of his addiction and the record lacks any evidence that he has returned to Norco to manage the stress accompanying his divorce. Although he stated that he specifically directed his father and stepmother not to give him Norco no matter

his request and gave his father a lock box for his medications, this has not been verified. Likewise, Applicant has not verified that his physicians know that he is addicted to Norco. He has shown that he has established at least a partial system of support for himself in his efforts to stay away from Norco as well as placing a barrier between him and Norco. He signed a notice of intent not to use Norco or any other related drug and agreed to the immediate revocation of his trustworthiness determination. AG ¶¶ 26(b)(2), 26(b)(4), and 26(d) partially apply because it is unclear from this record what his father understands and is doing and because he has not shown that the state nursing board is aware of the 2013 incident and subsequent job loss.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant illegally wrote prescriptions for Norco. He was arrested, charged, and convicted of a misdemeanor forgery for his conduct in 2005. Although he was never arrested or charged with a crime related to his efforts to obtain Norco in 2010 and 2013, his conduct is criminal in nature. AG ¶¶ 31(a) and 31(c) apply

The criminal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through ¶ 32(d), and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's only criminal conviction occurred almost 10 years ago. The police have not arrested or charged him with any crime since 2005. However, in February

2013, Applicant attempted to attain Norco by telephoning in a prescription for this drug, conduct similar to conduct which led to his 2005 arrest, making AG ¶ 32(a) not applicable since Applicant took this action less than two years ago. His decision to look through a co-worker's desk or purse was clearly inappropriate, but given he did not take anything of value, it is not criminal.

Since his return to drug rehabilitation programs in 2013, and his continued active participation in narcotics anonymous, Applicant has made significant changes in his life. He understands the problems his drug use created for him and is determined to eliminate Norco from his life as shown by the actions he has taken to notify others about his addiction. He is considered a good employee, and his supervisor is aware of his addiction. With his upcoming divorce, he is removing himself from a situation where his wife cannot enable his drug use in the future as she did in the past. During this stressful time, it appears that he has not returned to using Norco to manage his stress. Rather, it appears that he has relied upon his new support system. The trustworthiness concern raised by his criminal conduct is mitigated under AG ¶ 32(d).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

Applicant's decisions to write prescriptions to obtain Norco for his use and to search his co-worker's purse or desk for Norco reflect questionable judgment and untrustworthiness. The decisions also showed a lack of integrity and raise security concerns under AG ¶ 16(c).

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 17(a) through ¶¶ 17(g), and the following are potentially applicable:

- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has taken full responsibility for his behavior and drug use. He voluntarily enrolled in an outpatient rehabilitation program. He successfully completed this program. Recognizing that he needed more, he voluntarily followed the recommendation of this program to participate in narcotics anonymous several times a week and to obtain one-on-one counseling. He has benefitted from these programs, which helped him accept his problem with addiction and showed him ways to avoid future temptation. Besides his counseling and participation in narcotics anonymous for the last 21 months, Applicant has taken steps to eliminate opportunities for him to obtain Norco. What remains problematic is his search of a co-worker's desk or purse and his decision to unlawfully use prescription pads, conduct which is a serious violation of the trust given to him by others. Trustworthiness concerns raised under the personal conduct guideline are only partially mitigated under AG ¶¶ 17(d) and 17(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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) 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the

evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served honorably in the military for 22 years and received an honorable discharge. He rose from the enlisted ranks to the officer ranks, retiring at the rank of captain. His work performance has always been acceptable or better. He is respected at his current job, and his supervisor is aware of his addiction.

Applicant's problems began when he discovered that he enjoyed the effects of Norco and sought to obtain the drug to continue to enjoy the effects of the drug. For more than seven years, he controlled his use of Norco. However, in 2005, the news of his mother's terminal illness changed his ability to control his use of Norco. His need for the drug and its pleasurable effects increased significantly. He started writing prescriptions for himself for Norco in February 2005. He continued this criminal conduct until he was caught five months later. Although his employer did not discipline him, the police arrested him for criminal conduct, the court convicted him of misdemeanor forgery, and the state nursing board directed him to seek rehabilitation. He complied with the direction of the state nursing board about rehabilitation. During his three years of court probation, he participated in various drug rehabilitation programs and remained drug free. When he completed probation, he stepped away from much of his rehabilitation.

Applicant encountered a second major crisis in January 2009, when he learned about his sister's terminal illness. He managed this stress by returning to Norco. He also returned to narcotics anonymous, not for assistance with eliminating his drug habit, but for help to control his addiction to Norco without any consequences to himself. This purpose showed a lack of commitment to rehabilitation in 2009 and for several more years. In 2010, he lost a job for his Norco seeking conduct. In 2013, he again lost a job for conduct directly traceable to his addiction.

With his second job loss, Applicant finally decided to take control of his addiction. He voluntarily sought treatment. He willingly obtained intensive counseling. He continues to actively participate in narcotics anonymous with a new goal of eliminating his use of Norco. The difference now is that he accepts that he has an addiction, and he acknowledges his addiction openly. He works on his recovery from his addiction one day at a time, as he is taught in narcotics anonymous. He continues to work on and towards his goal of remaining clean and sober each day and will do so for the rest of his life. He changed things in his life to help with his recovery, and he has developed a support system, which is important to his continued sobriety. At this time, however, trustworthiness and integrity concerns remain because less than two years ago, he

reverted to the same criminal conduct to obtain Norco. The record lacks exculpatory evidence which firmly establishes that he is on the road to achieving his goal of sobriety. Sufficient time has not passed to warrant a favorable trustworthiness determination.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his criminal conduct under Guideline J, but he has not mitigated the trustworthiness concerns arising from his drug involvement, and personal conduct under Guidelines H and E.

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
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a favorable trustworthiness determination. Eligibility for access to sensitive information is denied.

MARY E. HENRY
Administrative Judge