



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-02319
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esq.,  
Deputy Chief Department Counsel

For Applicant: *Pro se*

07/31/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant violated the trust placed in him, as a registered nurse, to safeguard medications containing controlled substances. He diverted those medications for his own use because of his opiate addiction. Although Applicant claims that he has completed drug rehabilitation and is now drug free, the nature and recency of his conduct precludes mitigation at this time. His request for a security clearance is denied.

**Statement of the Case**

On January 21, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly

consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

On August 7, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline H (Illegal Drug Involvement) and Guideline E (Personal Conduct).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On March 3, 2015, Department Counsel issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on March 16, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not respond to the FORM, and the case was assigned to me on June 25, 2015.

### **Findings of Fact**

Under Guideline H, the Government alleged that Applicant used opiates on a frequent basis between May 2012 and April 2013 (SOR 1.a); that he used marijuana on a frequent basis between March 2001 and April 2006 (SOR 1.b); and that his license to work as a registered nurse was suspended in July 2013 for “suspected diversion of medications” (SOR 1.c). Under Guideline E, the Government alleged that Applicant resigned from two hospital jobs in May 2013 (SOR 2.a and 2.b) and another in January 2013 (SOR 2.c) for “suspected diversion of medications.” In response to the SOR, Applicant admitted all of the SOR allegations. In addition to his admission, I make the following findings of fact.

Applicant is 39 years old and works as a welder at a shipyard in support of U.S. Navy construction and maintenance. He was hired for that job in January 2014 and he requires a security clearance as part of his assigned duties.

Applicant graduated from a nursing program in May 2010 and began a career as a registered nurse (RN). In June 2008, started working full time at the hospital referenced in SOR 2.c. In January 2013, he was fired from that job for poor performance and because he was suspected of having taken prescription medications from the hospital inventory for his own use. In May 2011, Applicant also started working part-time at the hospital referenced in SOR 2.b. In February 2013, after he was fired from the SOR 2.c hospital, Applicant found a full-time RN position at the hospital referenced in SOR 2.a. In May 2013, he resigned from both of his RN jobs because he was suspected of having taken prescription medications from both workplaces for his own use. In the case of the SOR 2.a hospital, Applicant admitted to his supervisor that he took dilaudid, a powerful morphine derivative drug in the opioid class of painkillers. In the other two instances, Applicant was summoned by his supervisor to answer questions about his suspected diversion of controlled substance medications, but he

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included four exhibits (Items 1 - 4) proffered in support of the Government's case.

resigned. Applicant knew he would be fired if he had not resigned first. (FORM, Items 3 and 4)

Applicant started abusing prescription painkillers in May or June of 2012. In addition to taking medications from the hospitals where he worked, Applicant also obtained and used vicodin and percocet without prescriptions. He had previously used marijuana from 2001 to 2006. After he resigned from or was fired from the three hospital jobs in 2013, his RN license was suspended. In his response to the SOR, Applicant acknowledged he has a drug problem, and that he self-referred for outpatient treatment for opiate addiction in February 2013. He further averred that he has been drug and alcohol free for over two years and that he has been fully compliant with his treatment program. Applicant did not provide any other information about his treatment or information about a prognosis for continued recovery. He also disclosed in his EQIP that, at the time he submitted the application for clearance, he was still engaged in some level of treatment for his addiction. (FORM, Items 2 - 4)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Drug Involvement

Applicant used marijuana from 2001 to 2006. In 2012 and 2013, he abused and became addicted to opiate-based prescription pain medications. He lost three hospital jobs and his RN license because he stole some of the medications he used from his workplace. This information raises a security concern that is articulated at AG ¶ 24 as follows:

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.

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<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

More specifically, the disqualifying condition at AG ¶ 25(a) (*any drug abuse (see above definition)*) applies. I have also considered that AG ¶ 25(d) (*diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*) applies based solely on Applicant's own statements about his treatment for addiction. However, this is limited because this record contains no other documentation of Applicant's treatment, or a clinical diagnosis.

I have also weighed the possible application of the following AG ¶ 26 mitigating conditions:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation 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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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.

None of these mitigating conditions apply. Although Applicant claims he has not used illegal drugs or abused prescription drugs for two years, there is no corroborative information regarding his treatment, his current circumstances, or any prognosis for recovery by a qualified medical professional. Without that information, it is too soon to assess the effectiveness of his recovery. Available information also shows that he still is suspended from working as an RN. On balance, Applicant has not mitigated the security concerns about his drug use.

## **Personal Conduct**

Applicant's theft and misuse of prescription pain medications also raises a security concern about his judgment, trustworthiness, and reliability. Ostensibly, as an RN he was entrusted with safeguarding medications containing controlled substances. Applicant betrayed that trust when he started taking some of those medications to feed his addiction. The security concern about his personal conduct is expressed at AG ¶ 15 as follows:

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.

Specifically, available information requires application of the following AG ¶ 16 disqualifying conditions:

(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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant was entrusted with the safekeeping of, and accountability for, powerful pain medications. His failure to live up to that trust in pursuit of his own interests and needs fundamentally undercuts the Government's confidence that he would be willing to properly act in a similar capacity with respect to classified information. The fact that Applicant lost three jobs and is barred from working in his chosen field is an indicator of the gravity of his misconduct.

Two of the six AG ¶ 17 mitigating conditions are potentially applicable here:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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.

AG ¶ 17(c) does not apply because Applicant's misconduct was frequent and was not minor. Although, Applicant has received treatment for his addiction, without

more information about the current state of his recovery, it is too soon to say if he will repeat his abuse of prescription drugs. Certainly his circumstances have changed, but only because he has lost his RN license and does not have the same access to the medications he used. On balance, it is too soon to conclude that Appellant has mitigated the security concerns about his trustworthiness and judgment.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines E and H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). In that regard, I note Applicant's candid disclosure of his drug and professional problems. It is also commendable that Applicant has received treatment for his addiction. But unless and until he provides more information about his recovery and additional time has passed, doubts about his suitability for access to classified information will persist. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the individual.

### **Formal Findings**

Formal findings 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
Subparagraphs 1.a - 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant

### **Conclusion**

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge