

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a project manager for a defense contractor. He abused prescription drugs from 1994 to 1997. In 1997, he entered a drug rehabilitation program and informed his employer of his drug abuse problem. He passed drug tests until 2000 when he again started to abuse the same prescription drugs. He abused the drugs until 2002 when he again entered the drug treatment program. He has since completed the program, and obtained a clean bill of health from medical professionals with an excellent prognosis for no future drug abuse. He has been drug-free for over 30 months with clean random drug tests. He initially did not list his drug abuse on his security clearance application, but has since fully disclosed the issue. Applicant mitigated security concerns for drug involvement and personal conduct. Clearance is granted.

CASENO: 04-01634.h1

DATE: 09/30/2005

DATE: September 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-01634

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Jeff A. Nagel, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a project manager for a defense contractor. He abused prescription drugs from 1994 to 1997. In 1997, he entered a drug rehabilitation program and informed his employer of his drug abuse problem. He passed drug tests until 2000 when he again started to abuse the same prescription drugs. He abused the drugs until 2002 when he again entered the drug treatment program. He has since completed the program, and obtained a clean bill of health from medical professionals with an excellent prognosis for no future drug abuse. He has been drug-free for over 30 months with clean random drug tests. He initially did not list his drug abuse on his security clearance application, but has since fully disclosed the issue. Applicant mitigated security concerns for drug involvement and personal conduct. Clearance is granted.

## **STATEMENT OF THE CASE**

On April 1, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on April 13, 2005. The SOR alleges security concerns under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on April 29, 2005. He admitted all of the allegations under Guideline H with minor amendments as to dates, denied two and admitted two of the allegations under Guideline E, and denied the allegation under Guideline J. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on July 7, 2005. Applicant received a complete file of

relevant material (FORM) on July 19, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided a response to the FORM on August 13, 2005. The case was assigned to me on August 25, 2005.

## FINDINGS OF FACT

Applicant is 50 years old and has worked as a project manager for a defense contractor for over 20 years. He is a college graduate with a master's degree. He has been married for over 27 years, but there are no children from the marriage. Applicant has held a security clearance since August 1991. He submitted periodic updates of his security clearance application in 2002, [\(1\)](#) and 1997. [\(2\)](#)

Applicant injured his back in 1991 and was prescribed pain medication and muscle relaxants. He re-injured his back in 1993 and was again prescribed the same medications. Applicant became addicted to the drugs in 1994, and visited several doctors to falsely get prescriptions for the medications. He reached a peak of addiction in 1997, taking eight to 12 pills of each medication a day. He admitted to also taking the drugs while at work. [\(3\)](#)

In 1997, Applicant checked himself into a medical treatment facility for drug abuse. He received in-patient treatment for approximately five days, and was an outpatient for approximately three weeks. Applicant did not agree with the 12-step rehabilitative process prescribed by the medical treatment facility, and was discharged with instructions to follow another rehabilitative program. [\(4\)](#) Applicant notified his employer of his drug problem, and entered another drug treatment program administered by his employer. His employer required him to undergo consultation and periodic drug testing. The drug tests had negative results until July 2000. [\(5\)](#)

Applicant started abusing the pain medications again in July 2000. Applicant's wife had a medical problem similar to Applicant's, and pain medications were provided her by her physician. Unbeknownst to his wife, Applicant took some of her medication for his own use. He also took other medications prescribed for his wife to help him sleep. He never took the medication at work or reported to work under the influence of the medication. [\(6\)](#) Applicant again reported his drug abuse, and was referred by his employer in February 2003 to another medical professional for drug abuse counseling.

Applicant's wife also started to abuse the drugs, and started to see the same medical professional for drug abuse in July 2003. The medical professional referred both to a recovery program. Applicant and his wife started attending the program in 2003, and they are attending weekly meetings. Applicant also continues in his employer's counseling program on a monthly basis, and his monthly random drug tests have been negative. [\(7\)](#)

Applicant answered "NO" to questions 24a and 24b on his April 1997 security clearance application asking if he had illegally used any controlled substance or prescription drug in the last seven years , or while holding a security clearance. <sup>(8)</sup> Applicant abused prescription drugs since 1994 and was abusing the drugs in April 1997. He held a security clearance since 1991.

On his February 2002 security clearance application, Applicant answered "NO" to question 21 asking if in the last seven years he had consulted with a mental health professional or with a health care provider about a mental health problem. Applicant answered "YES" to question 24a asking if he had in the last seven years illegally used any controlled substance or prescription drugs. But Applicant answered "NO" to question 24b asking if he ever illegally used a controlled substance while possessing a security clearance. <sup>(9)</sup> Applicant admitted to periodically abusing a prescription drug from 1994. Applicant received both in-patient and out-patient mental health consultations in December 1997.

In his response to the FORM, Applicant stated that he has made an effort to correct his erroneous answers concerning drug abuse on the April 1997 security clearance application. Applicant stated that when he entered the in-patient drug abuse program in December 1997, he informed his employer of the problem and asked them to contact the security office. He was informed that his project supervisor was aware of his treatment for drug dependency. In December 1999, he learned the security office had not been informed of his drug abuse, so he sent the security office a letter informing them of his December 1997 hospitalization for drug abuse. He also received a security polygraph examination shortly thereafter and informed the examiner of his drug abuse. <sup>(10)</sup> Applicant also notified his employer and the security office in February 2003 of his relapsed back to drug abuse. He entered a drug abuse mental health program in 2002 and completed the prescribed drug treatment program in December 2004. The treating mental health professional wrote:

Throughout our work together, (Applicant) has shown high emotional stability in spite of high stress. To my knowledge he has continued to make correct choices and is not currently addicted to any medication. He has been randomly drug tested by his company (drug counseling program) since February 2003 with no test failures, and has volunteered to continue drug testing indefinitely to demonstrate that he has not relapsed.

Having worked in the substance field for many years and [sic] have rarely come across someone who I would give a better prognosis for permanent recovery. He is insightful, open with his feeling and thoughts and sincerely motivated to not handicap himself through the use of drugs or alcohol. The importance to him of his job and career cannot be overstated. I feel confident as I can that he will continue to make sound judgments about the use of prescribed medication well into the future. <sup>(11)</sup>

Applicant stated that he answered "NO" to question 21 on his February 2002 security clearance application because he thought the question referred to psychological counseling for mental health issues and not for drug abuse treatment.

Applicant stated his answer to question 24b was an error. He answered "YES" to question 24a asking if he had used any illegal drug in the last seven years, but "NO" to question 24b asking if he used illegal drugs while holding a security clearance. Applicant stated he did not falsify his security clearance applications so he does not have a history of criminal activity. He believed the security office had been notified by his employer when he was hospitalized for drug abuse in 1997. He thought he would be interviewed by a security agent after his hospitalization but never was interviewed as he thought he should have been. [\(12\)](#)

## **POLICIES**

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." [\(13\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(14\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(15\)](#) An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. [\(16\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. [\(17\)](#) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(18)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(19)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(20)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(21)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(22)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

**Guideline H - Drug Involvement:** A security concern exists because illegal or improper involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

**Guideline J - Criminal conduct:** There is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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

## **CONCLUSIONS**

I carefully considered all of the facts on evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR. Since the allegations under Guideline J are based on some of the

similar allegations under Guideline E, these allegations will be discussed together.

The government has established its case under Guideline H. Applicant's illegal use of prescription drugs while holding a security clearance brings the matter under Drug Involvement Disqualifying Condition E2.A8.1.2.1 (*any drug abuse*). Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (23) Applicant admitted he became addicted to pain killers and muscle relaxants and he used them illegally because he deviated from the approved medical direction for use of the drug. He also admitted to taking drugs prescribed for his wife. Applicant admitted he received medical treatment for drug abuse from a credentialed medical professional bringing the matter under Drug Involvement Disqualifying Condition E2.A8.1.2.3 (*diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*). Applicant received counseling by his employer for drug abuse, attended, and was evaluated at a drug addiction program from February 2003 to December 2004, bringing the matter under Drug Involvement Disqualifying Condition E2.A8.1.2.4 (*evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*). The above disqualifying conditions have been established.

There is no information in the file to indicate Applicant received treatment from December 1997 to December 2002 at a drug abuse treatment facility. He did admit to receiving treatment for drug abuse, but that treatment was covered under allegation 1.d. There is no evidence he left that program before completing it, against medical advice, and that his recovery prognosis was poor. Accordingly, I find for Applicant on allegation 1.e.

Applicant raised Drug Involvement Mitigating Conditions E2.A8.1.3.1 (*the drug involvement was not recent*); E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*); and E2.A8.1.3.4 (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*). Applicant's drug abuse started in 1994 and lasted until 1997 when he self-admitted to a drug abuse treatment program. He remained drug free until 2000 when he started to abuse prescription drugs again. He abused the drug until February 2003 when he again sought medical treatment. He has been drug free since February 2003. While it is commendable that he has been drug free since February 2003, his drug abuse ended just over two years ago, so his drug abuse is recent. Applicant's attendance at the drug program, his willingness to continue random drug testing with negative results, and his active participation in drug treatment aftercare is a demonstrated intent not to abuse drugs in the future. He has satisfactorily completed a drug abuse program and has participated in all aspects of the program. The treating medical professional has given him high grades for his involvement in the program. The medical professional provides a most favorable prognosis for the drug abuse not to recur. Applicant has demonstrated his intent not to abuse drugs in the future. He successfully completed a drug treatment program, tested negative for drugs, and has highly favorable prognosis on no future drug abuse. Applicant has provided sufficient information to met his heavy burden to establish conditions to mitigate the security concerns for drug abuse.

The government has established its case under Guideline E. Applicant's false answers to questions on his 1997 and 2002 security clearance applications bring the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.3 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . determine security clearance eligibility or trustworthiness*). When completing his security clearance application in April 1997, Applicant

knew he had abused and was abusing drugs. He also knew he was abusing the drugs while holding a security clearance. He deliberately answered two questions falsely on this security clearance application. When completing his 2002 security clearance application, Applicant thought the question concerning consultation with a mental health professional pertained to a mental health problem and not drug abuse. This is a reasonable interpretation since the question asks about mental health and does not mention drug abuse. He did answer correctly when he answered "YES" to the question 24a asking if he used illegal drugs in the last seven years. His answer to the second part of that question, 24b, concerning using illegal drugs while holding a security clearance is inconsistent with his answer to the previous question and an obvious error. I conclude Applicant deliberately falsified material information on his 1997 security clearance application, but did not deliberately falsify information on his 2002 application.

Applicant raised Personal Conduct Mitigating Conditions E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). There is a distinction between Mitigating Condition 2 and Mitigating Condition 3. Mitigating Condition 2 is properly used in a case where the falsification is old and the applicant subsequently provide correct information to the government about other matters not covered by the old falsification. Mitigating Condition 3 applies when an applicant seeks to correct a falsification. (24) However based on the facts in this case, both mitigating conditions apply. Applicant falsified his April 1997 security clearance application by not noting his abuse of prescription drugs and while holding a security clearance. He informed his employer of his abuse eight months later in December 1997 when he went to drug rehabilitation, and asked them to inform the security office. He did receive counseling and participate in his employer's drug abuse program. After learning in December 1999 that the security office had not been informed of his drug abuse, he personally notified the security office. He also informed a polygraph examiner of his abuse. In February 2002, he submitted another periodic security clearance application and correctly answered the question concerning his drug abuse. (25) Mitigating Condition 2 applies because the falsification is old (1997), and Applicant provided all the correct information on his subsequent 2002 security clearance application as well as to his supervisors, his security office, and security examiners. Mitigating Condition 3 applies because Applicant corrected the information in December 1997 and again in December 1999 before being confronted with the facts. I conclude Applicant has mitigated the security concerns for Personal Conduct.

The government has established its case under Guideline J. Applicant's false answers on the April 1997 security clearance application brings the matter under Criminal Conduct Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). It is a federal felony criminal offense to provide false information on a security clearance application. (26) I have considered Criminal Conduct Mitigating Conditions E2.A10.1.3.3 (*the criminal behavior was not recent*); E2.A10.1.3.2 (*the crime was an isolated incident*); and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). The crime was committed over eight years ago. It is the only criminal offense of the the nature of providing false information. Even though it is a criminal offense to abuse prescription drugs and Applicant did abuse drugs as late as 2003, his felony violation of providing false information is an isolated incident. Applicant has presented sufficient information of participation in drug abuse counseling, successful random drug tests, participation in aftercare programs, and an excellent prognosis from a medical professional, to show he has been successfully rehabilitated and no longer has a drug abuse problem. Applicant has mitigated the security concern for criminal activity.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.



## **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

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3, Guideline J: FOR APPLICANT

Subparagraph 3.a.: For Applicant

**DECISION**

In light of all of the circumstances in the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Government Exhibit 4 (Security clearance application, dated Feb. 27, 2002).
2. Government Exhibit 5 (Security clearance application, dated Apr. 23, 1997).
3. Government Exhibit 6 (Applicant's statement, dated Oct. 20, 2003).
4. Government Exhibit 8 (Medical consultation history, dated Dec. 9, 1997).
5. Government Exhibit 6 (Applicant's statement, dated Oct. 20, 2003) at 2.
6. *Id.*
7. *Id.*, at 4.
8. Government Exhibit 5 (Security Clearance Application, dated April 23, 1997).
9. Government Exhibit 4 (Security Clearance Application, dated February 27, 2002).
10. Appellant's response to FORM, dated Apr. 29, 2005, at 3.
11. Applicant's letter to DOHA, dated Nov. 24, 2004, forwarding Letter from Psychologist, dated Nov. 24, 2004.
12. Applicant's response to FORM, dated Aug. 13, 2005 at 2.
13. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
14. Directive ¶ E2.2.1.

15. *Id.*
16. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
17. *See* Exec. Or. 10865 § 7.
18. Directive ¶ E3.1.14.
19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
21. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
22. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
23. Direction ¶ E2.A8.1.1.3.
24. ISCR Case No. 99-0557 (Appeal Board, July 10, 2000). *See*, ISCR Case No. 00-0671 (Appeal Board August 15, 2001).
25. His response to question 24b was inconsistent with his response to question 24a and an error.
26. 18 U.S.C. § 1001.