



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



In the matter of: )  
)  
) ISCR Case No. 08-02273  
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Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro Se*

October 21, 2008

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her drug involvement and personal conduct. Eligibility for access to classified information is granted.

On July 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on July 31, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on August 27, 2008, and reassigned to me on September 9, 2008. DOHA issued a notice of hearing on September 9, 2008, and the hearing was convened as scheduled on

September 23, 2008. DOHA received the transcript of the hearing (Tr.) on September 30, 2008.

## **Procedural and Evidentiary Rulings**

### **Notice**

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

### **Evidence**

The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through D, which were received without objection. Applicant's daughter was in the courtroom during the hearing. Applicant did not call her as a witness, but I requested that she testify after I heard Applicant's testimony. Department Counsel objected to her testimony on the basis that she had not been sequestered and was present during Applicant's testimony. The objection was overruled. The absence of sequestration goes toward the weight that is accorded her testimony. I granted Applicant's request to keep the record open to submit additional matters. Applicant submitted one document marked AE E, and admitted without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I.

## **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor. She attended college classes but has not obtained a degree. She has been married and divorced four times. She is not currently married. She has an adult daughter and a 12-year-old grandson who live with her.<sup>1</sup>

Applicant is a recovering alcoholic and drug abuser. She started drinking alcohol when she was about 13 years old. Her alcohol consumption increased until she was drinking heavily three to four times per week. She first smoked marijuana in about 1976, when she was about 23. She started smoking marijuana about three times per week. In about 1979, when she was about 26, Applicant became involved in a relationship with a man whom she later learned was a cocaine dealer. Marijuana and cocaine was readily available and her marijuana use increased to daily use and she began using cocaine about three times per week.<sup>2</sup>

Applicant terminated her relationship with the drug dealer in about 1981, and she also stopped using cocaine that same year. Her marijuana use continued at the rate of about once per week. She occasionally purchased marijuana when it was not otherwise

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<sup>1</sup> Tr. at 14, 28, 46-47; GE 1, 2.

<sup>2</sup> Tr. at 37; Applicant's response to SOR; GE 3.

available through her friends. Applicant stopped smoking marijuana in December 1989, as her employer initiated a random drug testing program. She continued to drink alcohol. She last consumed alcohol in March 1990, on her daughter's fifteenth birthday. When she became sober, she changed her friends, where she went, and her lifestyle. She attended Alcoholics Anonymous (AA) meetings on a daily basis in the 1990s. By 2004, her attendance at AA meetings was down to about four to six times a year. Applicant remained completely sober and drug-free until March 2006.<sup>3</sup>

Applicant submitted a Security Clearance Application (SF 86) on January 14, 2004. She did not have a security clearance at the time. This was her first application. She did not list her drug use that ended in 1989, as it was outside the parameters of the questions. She was interviewed for her background investigation on October 21, 2004. She volunteered that she was a recovering alcoholic. Her drug use was not discussed.<sup>4</sup>

Applicant had cancer which was discovered in late 2004, and diagnosed in about March 2005, after a surgical procedure to remove tissue and a biopsy was performed. She was required to undergo cancer treatment and is still on medication.<sup>5</sup>

Applicant has not lived in the state where she lived while she was drinking and doing drugs in more than ten years. In March 2006, she attended a conference in the state where she used to live. She met some old friends that she knew from her job in the 1980s. Applicant used marijuana several times with her friends over the course of two nights. She smoked on more than one occasion on each night. Applicant does not consider it an excuse and admits that she exhibited extremely poor judgment when she smoked marijuana, but she explained that her cancer was discussed and she was emotionally upset. As a result of her marijuana use, Applicant tested positive in March 2006 for marijuana use during a random drug screening test performed by her employer.<sup>6</sup>

Applicant's security clearance was granted in late March 2006, after she had used the marijuana. Even though she did not yet have a clearance, she clearly knew that marijuana use was illegal and against Department of Defense policy. Her company did not terminate her. It suspended her for two days, relocated her, directed that she not work on the program that she was working on, and she was ordered to attend counselling and sign a non-disclosure agreement. Apparently the company considered her a valuable asset, but did not want other employees to know that the company granted her lenience on their zero drug policy. She was moved to a different sub-division of the company in September 2006.<sup>7</sup>

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<sup>3</sup> Tr. at 11, 37; Applicant's response to SOR; GE 1.

<sup>4</sup> Tr. at 24-26, 29; GE 1, 3.

<sup>5</sup> Tr. at 20; AE D.

<sup>6</sup> Tr. at 33-36, 40, 44-45, 47; Applicant's response to SOR; GE 1-3.

<sup>7</sup> Tr. at 24-26, 29-32; GE 3; AE A-C.

Applicant has been open and honest about her marijuana use since she tested positive. Because of the non-disclosure agreement she is unable to discuss it with her co-workers, but she has told her daughter and her close friends. She also told her 12-year-old grandson because she thinks that it is important that he remembers what she went through when the time eventually comes that he is offered drugs. She listed the marijuana use on a SF-86 submitted in May 2006. She credibly testified that she listed it as one use because she considered it as one event. She fully discussed the drug use with a background investigator in June 2007.<sup>8</sup>

Applicant attended counselling through her employee assistance program (EAP) for about nine weeks between April and June 2006. The counselling consisted of 45 minute sessions about every other week. She continues to attend AA meetings about four to six times a month. She accepts that her marijuana use was a break in her sobriety, the same as if it was alcohol. Because the break in sobriety was relatively short, it is considered more of a “slip” than a “relapse,” although the only real difference is duration of the break. She has made one trip to the state where she smoked marijuana in 2006. She did not meet any of her old friends on the trip. She testified that she is totally committed to sobriety, which includes refraining from any illegal drug use. She did not sign a statement of intent with automatic revocation of clearance for any violation before the hearing. I directed her attention to Drug Involvement Mitigating Condition AG ¶ 26(b)(4), and she provided a signed statement of intent with automatic revocation of clearance for any violation after the hearing.<sup>9</sup>

Applicant submitted three letters from managers and supervisors. Two of the supervisors/managers are unaware of her 2006 drug use because of the non-disclosure agreement. They have both worked with Applicant since September 2006. One supervisor believes Applicant has consistently demonstrated the highest ethical conduct, is an extremely productive member of the workforce, and the supervisor has never observed behavior that would cause him to think she is not trustworthy or exercising poor judgment. Another manager wrote that Applicant is extremely detail oriented and has demonstrated excellent managerial and decision making skills. The last manager is aware of Applicant’s drug history. He has known Applicant since 2003, and wrote that she is “of the highest moral and ethical character.”<sup>10</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

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<sup>8</sup> Tr. at 14-15; GE 1, 3.

<sup>9</sup> Tr. at 38-40, 45-49; Applicant’s response to SOR; GE 3; AE E.

<sup>10</sup> AE A-C.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, Administrative Judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 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. 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse 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**

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

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may

impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Four are potentially applicable in this case:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant's drug possession, use, and positive drug test are sufficient to raise AG ¶¶ 25(a), (b), and (c) as disqualifying conditions. She had not yet been granted a security clearance when she used marijuana so AG ¶ 25(g) is not applicable. SOR ¶ 1.e alleges that Applicant "attended counseling for [her] drug use." Counseling is a positive reaction to drug abuse and can lead to mitigation. It does not raise a disqualifying condition. SOR ¶ 1.e is concluded for Applicant.

Three Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

- (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) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence;
  - (4) a signed statement of intent with automatic revocation of clearance for any violation; and
- (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 is a recovering alcoholic and drug abuser. She stopped taking drugs in December 1989, and stopped drinking in 1990. She disassociated herself from her drug-using associates and contacts; changed the environment where drugs were used; and threw herself into Alcoholics Anonymous. She remained completely sober and drug-free for 16 years. She returned to the state where she used drugs for a business trip in March 2006. She met old friends and smoked marijuana several times over the course of a few days. Whether defined as a “slip” or a “relapse,” this was a loss of sobriety and a huge step backwards for Applicant. She acknowledged her problem, attended the company’s EAP counseling, and rededicated herself to sobriety and remaining drug-free. She has now been sober and drug-free for about two and a half years. She does not rate the full benefit of AG ¶ 26(a) because she used illegal drugs in March 2006, after being drug-free for more than 16 years. She does not live in the state where she used drugs and she did not meet her old drug-using friends when she again traveled to the state after March 2006. She signed a statement of intent with automatic revocation of clearance for any violation. AG ¶ 26(b) is applicable. Applicant attended drug counseling through her employee assistance program after her positive drug test. AG ¶ 26(d) requires a favorable prognosis by a duly qualified medical professional. There is no such prognosis in this case. AG ¶ 26(d) is not applicable.

#### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 conditions that could raise a security concern and may be disqualifying. 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; and

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing.

Applicant's personal conduct was also alleged under the Drug Involvement guideline, as addressed above. She used marijuana in March 2006, after submitting a security clearance application and being interviewed for her background investigation. She was well aware that drug use was wrong, illegal, and against DoD and her company's policy. She exercised extremely poor judgment. This constitutes credible adverse information in another adjudicative issue area that may not be 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, and unwillingness to comply with rules and regulations. It is also personal conduct that could create a vulnerability to exploitation, manipulation, or duress. AG ¶¶ 16(c) and 16(e) are applicable.

Conditions that could mitigate Personal Conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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;

(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.

The discussion under the guideline for Drug Involvement is equally appropriate for this guideline. Applicant has obtained counseling for the problem and regularly attends AA meetings. I find that the behavior is unlikely to recur. Additionally, Applicant has been open and honest about the conduct which has reduced any potential vulnerability to exploitation, manipulation, and duress. AG ¶¶ 17(d) and 16(e) are applicable.

### **Whole Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of



rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon 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. Applicant is 55 years old. She is a recovering alcoholic and drug abuser. She made extensive changes in her life in 1989 and 1990, and remained drug and alcohol free for 16 years. Like any recovering alcoholic, her struggle against alcohol and drugs is a series of on-going battles. In March 2006, she lost a battle for her sobriety, and smoked marijuana several times over the course of a few days. This was extremely poor judgment and for security clearance purposes is worse than if she drank alcohol, because while alcohol is like poison to her, it is legal while marijuana use is illegal. A break in sobriety, whether called a “slip” or a “relapse” is not unusual for a recovering alcoholic. She pulled herself together and rededicated herself to being sober and drug-free. She has won the battle for the last two and a half years and remained sober and drug-free. I have considered the favorable character evidence which has limited weight because two of the letter-writers are not totally aware of Applicant’s drug use. The letters are of value in that they show that Applicant has maintained superior job performance. Applicant will continue to struggle for her sobriety. She has convinced me that she is on the right track to win that struggle.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her drug use and personal conduct.

### **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-1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge