



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-02421
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer Goldstein, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

December 10, 2009

---

**Decision**

---

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on February 12, 2007. On May 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H, E and J for Applicant. 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 acknowledged receipt of the SOR on June 2, 2009. She answered the SOR in writing through counsel on June 16, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on July 30, 2009, and I received the case assignment the same day. I granted Applicant's request for a delay until September of 2009, in order for her counsel to be available. DOHA issued a notice of

hearing on August 4, 2009, and I convened the hearing as scheduled on September 16, 2009. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on her own behalf, as did five witnesses, and submitted Exhibits (AppXs) A through P, and R and S, without objection. DOHA received the transcript of the hearing (TR) on September 23, 2009. The record closed on September 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant made a general denial of all of the allegations.

#### **Guideline H - Drug Involvement**

1.a.~1.e. The Applicant used methamphetamine, with varying frequency and to the point of addiction, from about 1999 until her last usage in February of 2006 (TR at page 83 lines 4~16). Her initial usage was very infrequent, but "it increased to a daily habit at the tail end of 2002 and [the] beginning of 2003" (TR at page 99 line 23 to page 101 line 15). Just before she went into rehabilitation treatment in December of 2003, the Applicant "was using every day . . . a gram and a half a day at that point" (TR at page 102 lines 3~12).

From December of 2003 until January of 2004, the Applicant received inpatient treatment for her addiction (TR at page 83 line 17 to page 84 line 9, and at page 103 line 4 to page 104 line 9). After her inpatient treatment, she was in an after care program for about two months (TR at page 107 line 9 to page 108 line 9). However, about three months later, the Applicant again began to use methamphetamine (TR at page 110 line 16 to page 111 line 1). This usage continued until her arrest in February of 2006, in part, for Possession of a Controlled Substance - Methamphetamine (GX 5). Although this charge was ultimately dismissed, the Applicant admits possessing the drug (TR at page 111 line 2 to page 113 line 5). During the period of her usage, the Applicant also purchased methamphetamine on numerous occasions, at times spending about \$150 a week on the drug (TR at page 101 line 16 to page 102 line 2).

1.f.~1.i. During the period of her drug usage, the Applicant also used cocaine, marijuana, Ecstasy (MDMA), and Psilocybin mushrooms, each drug on at least three separate occasions (TR at page 91 line 18 to page 92 line 5, at page 97 line 12 to page 98 line 14, at page 99 line 6 to page 102 line 2).

Most recently, in June of 2009, the Applicant submitted a Statement of Intent (AppX S). In that Statement, the Applicant averred the following:

I. I am submitting that statement as intent never to never use illegal drugs again.

2. Should there be any violation with regard to illegal drug use, I hereby consent to automatic revocation of my security clearance (*Id*).

### **Guideline E - Personal Conduct**

2.a. Section 23 of Applicant's February 12, 2007, e-QIP, styled **Your Police Record**, has the following introductory instructions:

For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order . . . (GX 1 at page 36).

Question 23.f. asks "[i]n the last 7 years have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, or e above?" (GX 1 at page 37). The Applicant responded "Yes" and listed that she had been arrested for "resisting the arrest of a felon" (*Id*). She did not list that she was also arrested for "Possession of a Controlled Substance - Methamphetamine," in February of 2007, because she avers in her subsequent inquiries with the court, where the charge was dismissed, she thought her dismissal was a form of expungement (TR at page 92 line 11 to page 93 line 24, and at page 115 line 13 to page 118 line 6). This explanation is believable; and as such, I find no wilful falsification here.

2.b. and 3.a. Section 24 of Applicant's February 12, 2007, e-QIP, styled **Your Use of Illegal Drugs and Drug Activity**, posits the following question under subparagraph a.:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs? (GX 1 at page 38).

To which the Applicant checked "Yes", from "02/2001 (Estimated)" to "12/2003 (Estimated) . . . Methamphetamine," an "Unknown" number of times, with these additional comments: "I was using a long time and didn't stop until receiving help in a rehabilitation center . . ." (*Id*). I find this to be a wilful falsification, a violation of 18 U.S.C. Section 1001 (TR at page 131 at line 23 to page 132 line 25). The Applicant used methamphetamine, extensively, after her inpatient treatment in January of 2004, until her arrest in February of 2006.

## **Guideline J - Criminal Conduct**

3.b. The Applicant, admittedly, possessed methamphetamine, when she was arrested in February of 2006 (TR at page 111 line 2 to page 113 line 5). This constitutes criminal conduct.

3.c. In October of 1998, the Applicant was cited for being a Minor in Possession of Alcohol (TR at page 94 line 25 to page 95 line 11, and at page 127 line 7 to page 128 line 7). She was 19 years of age, and was fined as a result of this incident (*Id*).

### **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 useful in evaluating an applicant's eligibility for access to classified information.

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 over-arching 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 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 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 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 Paragraph 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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. In addition, “*diagnosis by a duly qualified medical professional . . . of drug abuse or drug dependence*” under Subparagraph 25(d) may be disqualifying. Here the Applicant used the Applicant used methamphetamine from about 1999 to her arrest in February of 2006. Her usage was to the point of addiction, which required inpatient treatment from December of 2003 until January of 2004. This is countered, however, by the mitigating conditions found in Subparagraphs 26(b)(3) and 26(b)(4). The Applicant has shown “*a demonstrated intent not to abuse any drugs in the future, such as: (3) an appropriate period of abstinence;*” and “*(4) a signed statement of intent with automatic revocation of clearance for any violation.*” The Applicant was last involved with methamphetamine in February of 2006, nearly four years ago. She has also signed a letter of intent not to abuse any drugs in the future. I find her statement of intent to be credible and sincere.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), "*deliberate omission, concealment, or falsification of relevant facts from an personnel security questionnaire . . . or similar form . . .*" Here, the Applicant falsified her answer to question 24.a. on her February 2007, e-QIP. She was involved with and used methamphetamine more than two years after her admitted usage.

### **Guideline J - Criminal Conduct**

Paragraph 30 of the new adjudicative guidelines sets out the security concern relating 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.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(c) provides that an "*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,*" may raise security concerns. The Applicant was arrested for possessing methamphetamine in February of 2006, and her falsification in answer to question 24.a. on her e-QIP is also a violation of 18 U.S.C. 1001. I find no countervailing Mitigating Conditions that 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. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Administrative Judge should also 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support

of her father, and of those who know her in the work place (Tr at page 38 line 11 to page 74 line 2, and AppXs C, D, H~J, and M~S). However, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. She was clearly less than candid with the Government as to the recency of her drug abuse. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her Personal Conduct and Criminal 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
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
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge