



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-06964
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 25, 2010

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

While holding a security clearance for her duties with a defense contractor, Applicant used cocaine from January 2006 until August 2006, when she was arrested for possession of cocaine and risk of injury to a minor. She relapsed twice in 2007 while she was in counseling, including one time after she had completed a court-ordered pretrial drug education program. She intends to maintain a lifestyle free of illegal drugs, but the drug involvement and related personal conduct concerns are not fully mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 20, 2007. On May 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant answered the SOR on July 9, 2009, and requested a decision based on the written record without a hearing. On August 6, 2009, the case was assigned to me to conduct a hearing and to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> On August 12, 2009, I scheduled a hearing for September 15, 2009. Due to a schedule change, I rescheduled the hearing for September 16, 2009, with the agreement of the parties.

I convened the hearing as rescheduled. Five government exhibits (Ex. 1-5) and five Applicant exhibits (Ex. A-E) were entered into evidence without any objections, and Applicant testified, as reflected in a transcript (Tr.) received on September 25, 2009.

### **Findings of Fact**

DOHA alleged under Guideline H (drug involvement) that Applicant used cocaine from about January 2006 to at least March 2007 (SOR 1.a); that she purchased cocaine (SOR 1.b); that she was charged in about August 2006 with possession of cocaine and risk of injury to a minor (SOR 1.c), for which she completed ten hours of drug education classes and 32 hours of community service before the charges were nolleed [sic] (SOR 1.c); and that she received treatment from August 2006 to about November 2006 (SOR 1.d), and from September 2006 to March 2008 (SOR 1.e), for diagnosed cocaine abuse. Applicant's use and purchase of cocaine and her arrest for possession of cocaine were cross-alleged under Guideline E (SOR 2.b). DOHA also alleged under Guideline E that Applicant used cocaine after she had been granted a security clearance in about 1994 (SOR 2.a).

Applicant admitted the allegations under Guidelines H and E, clarifying that she used cocaine from January 2006 to August 2006, and relapsed twice, once in January 2007 and once in March 2007. Applicant denied the implication that she was unreliable and untrustworthy because of her illegal drug involvement, and averred that she was completely truthful on her security clearance paperwork and during her subject interview. She maintained she had been abstinent for the past two plus years and intended to maintain that lifestyle. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 43-year-old senior electrical engineer who has worked for her employer, a defense contractor, since February 1988, when she was still pursuing her undergraduate degree. She seeks to retain the secret security clearance that she has held since October 1994 (Ex. 1).

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<sup>1</sup>There is nothing in the record to indicate when a hearing was requested. She did not object when she received the Notice of Hearing and agreed to a change in the hearing date.

Applicant, who drank to excess on the weekends in college, also used cocaine during her senior year on occasion (“just a night out type thing”) (Ex. 4, Tr. 62). In June 1989, she was awarded her bachelor of science degree in electrical engineering (Ex. 1). In April 1992, Applicant and her now ex-spouse married, and they had a daughter in 1995 (Exs. 1, 4).<sup>2</sup> By the mid to late 1990s, Applicant was drinking and gambling at a local casino, which caused some problems in her marriage (Ex. 4). Following a driving under the influence offense in September 1998, Applicant stopped going to the casino, and in 1999, she completed inpatient and intensive outpatient treatment for alcohol abuse. She also began attending Alcoholics Anonymous (AA) meetings on a weekly basis, even though her spouse was not supportive of her AA involvement, and she stopped drinking alcohol (Exs. 3, 4). Applicant and her spouse later had a son in June 2001 (Ex. 1).

Following a car accident in March 2004 (Ex. A, Tr. 61), Applicant began to suffer chronic pain due to spinal stenosis and degenerative disk disease. Surgery was contraindicated (“last option”) due to other medical issues. In September 2004, she started taking a prescribed narcotic (Vicodin) for post-procedure pain after steroid injections for her lumbar discomfort (Ex. A, Tr. 26, 32). At the recommendation of an orthopedist, she received treatment from a chiropractor for ten weeks and then from a physical therapist for another ten weeks, but these treatments failed to alleviate her pain (Tr. 32). Her Vicodin dose was increased over time as her pain became overwhelming (Tr. 30-31). As of mid-January 2005, she was taking 5 milligrams of Vicodin two to three times a day (Ex. A). She remained abstinent from alcohol, although in 2005, she stopped going to her weekly AA meeting because she felt guilty attending AA when she was addicted to Vicodin (Exs. 2, 3, 4, Tr. 73). Additional steroid injections in the fall of 2005 provided no significant lasting relief from her pain (Ex. A).

Applicant used cocaine at a New Year’s Eve party on December 31, 2005, or January 1, 2006 (Tr. 63). Feeling stress because of her failing marriage and her medical problems, and dependent on Vicodin, Applicant began to use cocaine in January 2006 to reduce her stress, relieve her pain, and because it was “fun” (Ex. 2, Tr. 64). She used the drug while socializing with friends and also at home alone. She purchased cocaine about ten times from the same person, who worked at a local bar (Tr. 66-67). She continued to snort the drug after two surgeries. Her first surgery, which was in March 2006, left her in worse pain and unable to work. Her dosage of Vicodin was increased. In late May 2006, she had surgery for her herniated disks, which led to a reduction in her pain, and consequent decrease in her Vicodin dose (Exs. 2, 3, 4, A, Tr. 26). In early July 2006, she returned to work for the defense contractor (Ex. A). Applicant continued to use and purchase cocaine, knowing that it was illegal. She gave no thought at the time to whether it was against her employer’s drug policy and DoD security guidelines (Tr. 68-69).

About four hours after snorting cocaine in August 2006, Applicant took her children and one of their friends to the local mall where she lost her wallet containing

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<sup>2</sup>The date of her daughter’s birth is incorrect on the e-QIP. Her youngest child was born in 2001. See Ex. 4.

cocaine. Mall security acquired possession, and found three small packs of cocaine, each containing about a half gram of the drug. Local police were called, and Applicant was arrested and charged with possession of cocaine and with felony risk of injury to a minor (Exs. 2, 3, 4, Tr. 79). At the referral of her attorney, Applicant was evaluated by a clinical psychologist in August 2006, who diagnosed her with major depressive disorder, recurrent, moderate level, with opioid dependence, and with cocaine abuse (Ex. 4, Tr. 80). Applicant attended weekly treatment sessions with the clinical psychologist starting August 25, 2006 (SOR 1.d), and she resumed weekly AA meetings. She was spending about \$150 per week on lottery tickets, but managed to avoid casino gambling, and she abstained from the use of cocaine. By the time she appeared in court in late September 2006, she had weaned herself off her narcotic analgesic medication under a plan devised with the consultation of the clinical psychologist and her physician (Exs. 3, 4, A, Tr. 28). The court approved her application to enter a pretrial drug rehabilitation program, and continued her case until July 2007 pending her completion of 32 hours of community service and the drug program (Exs. 2, 3, B).

In addition to her weekly AA meetings and sessions with the clinical psychologist, on September 20, 2006, Applicant began attending a weekly relapse prevention group, and biweekly individual mental health and substance abuse counseling sessions with a licensed alcohol and drug counselor (LADC) employed as a clinical supervisor at the counseling center (SOR 1.e) (Exs. 4, 5, Tr. 28). A psychiatrist affiliated with the center started Applicant on a second medication for bipolar issues to supplement the antidepressant that she had been taking since 2001 (Exs. 4, 5).

Following an incident of domestic violence against her in October 2006, Applicant and her spouse decided to divorce. With the social supports of AA and the relapse prevention group, and with her divorce progressing smoothly, Applicant was not gambling, or using any illegal drugs as of her last session of record with the clinical psychologist on November 6, 2006. The clinical psychologist assessed her prognosis as very good to excellent (Ex. 4).

Despite her ongoing individual counseling and group sessions at the counseling center (Ex. 1), and weekly AA attendance (Tr. 29), Applicant relapsed and used cocaine at a party on January 1, 2007 (Ex. 2, Tr. 70). A friend gave her the cocaine (Ex. 2). In February 2007, Applicant completed the court-ordered 12-hour pretrial drug education class at a local alcohol rehabilitation center (Exs. 3, B, Tr. 28-29). Yet, she used and purchased cocaine while at a bar with a friend on March 17, 2007 (Ex. 2, Tr. 71). In July 2007, Applicant completed the community service hours required by the court, and the drug charge was dismissed.<sup>3</sup> The felony risk of injury charge was nolle prossed (Ex. 3). In August 2007, Applicant's divorce was final (Ex. 1).

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<sup>3</sup>Community service records indicate Applicant was required to complete 32 hours of community service by July 6, 2007. She completed her hours between July 13, 2007, and July 20, 2007. Despite her belated compliance, the court dismissed the drug charge and the state dropped the felony risk of injury to a minor charge.

Applicant completed an e-QIP on November 20, 2007, for a periodic reinvestigation of her security clearance. She listed her past counseling with the clinical psychologist, and her ongoing counseling with the LADC and psychiatrist affiliated with the substance abuse counseling center. In response to inquiry concerning her police record, she disclosed her August 2006 drug offense. Concerning illegal drug use in the past seven years, she indicated that she used cocaine five times from April 2006 to August 2006, which led to her arrest in August 2006 (Ex. 1). She did not disclose the full extent of her cocaine abuse, including her relapses in 2007. Applicant's explanation is that she guessed about the extent of her cocaine use, "based on [her] best recollection of what [she] could remember" (Tr. 81).

On February 6, 2008, Applicant was interviewed by a government investigator about her cocaine use. She indicated that she snorted cocaine every other weekend from January 2006 until her arrest in August 2006, and she disclosed her relapses in January 2007 and March 2007. Applicant denied any use of cocaine after March 17, 2007, and any intent to use cocaine in the future (Ex. 2).

On March 4, 2008, Applicant was discharged from her counseling with the LADC. Applicant was considered stable in her recovery from "co-occurring Bipolar disorder and Cocaine and Alcohol Abuse diagnosis." She had been compliant with treatment, including taking her antidepressant and bipolar medications and maintaining sobriety as evidenced by drug screens. The LADC recommended that Applicant continue her medication regimen and AA/NA for support with her recovery. In an undated letter, the counselor recommended to DOHA that Applicant maintain her security clearance based on her observations that Applicant had maintained sobriety and remained stable in her recovery program (Ex. 5).

Applicant continued to attend AA on most Sundays through late August 2009. She had not attended an AA meeting in the two weeks preceding her September 16, 2009, hearing, and gave no reason for her failure to attend ("Don't particularly know.") (Tr. 73-74). She intends to continue her current level of commitment to AA (Tr. 44). Applicant has had two sponsors in AA. She obtained a sponsor when she first went to AA for help in maintaining sobriety from alcohol. When she returned to AA after her arrest in 2006, she acquired a new sponsor. Applicant did not call her sponsor as often as she should have, and she terminated the sponsorship after only six weeks (Tr. 90).

On her discharge from her counseling in March 2008, Applicant began a therapeutic relationship with a new psychiatrist, primarily for monitoring of her medications, although also for help controlling urges, including to gamble and to use alcohol and cocaine (Tr. 56-57, 84). While she had not gambled at an establishment in the last five years, she had a problem in the past with overspending on the lottery (scratch tickets) (Tr. 56-57). Applicant met with the psychiatrist once a month until July 2009, when he reduced the frequency of their sessions to once every three months (Tr. 44-45, 48-49). At the recommendation of the psychiatrist, Applicant began counseling with someone in his practice in the spring of 2008. Applicant did not feel comfortable and only went to two sessions with the counselor (Tr. 86-87). After she expressed concerns about an increase in stress and pressure at work, the psychiatrist suggested

that she might want to seek counseling with someone else, but she chose not to (Tr. 87).

Applicant has been abstinent from illegal drugs since her last use on March 17, 2007 (Tr. 71). At times, including as recently as September 2009, she has had thoughts of using cocaine to cope with stress from her children and work (Tr. 84-86). She has no plans to use cocaine (Tr. 85). She has not consumed any alcohol since February 1999 (Tr. 30, 76). Her intent is to maintain a lifestyle free of illegal drugs and alcohol (Tr. 43). Applicant is still friendly with someone with whom she used cocaine in the past. They get together about once a month. Applicant testified that this friend no longer uses cocaine, although she was unable to testify as to when her friend last used cocaine. Applicant has not been in the presence of someone using cocaine since March 2007 (Tr. 77). She no longer goes to the bar where she bought cocaine in the past (Tr. 78).

Applicant's cocaine abuse did not impair her work performance with the defense contractor. She exceeded job requirements for the appraisal periods March 2007 to March 2008 (Exs. 3, D), and March 2008 to March 2009 (Ex. D). The manager of engineering for her department, her second level supervisor, has had a professional association with her since 1994. He attests to Applicant having responsibility for technical and task management of diverse development and testing projects. She demonstrated a commitment to completing requirements and a record of appropriate attentiveness and accountability in handling classified assignments over the years. The engineer who directly supervised Applicant in the first phase of her career, and then from about 2005 through at least March 2009, considers her to be "a long-time and values [sic] asset" to the engineering department, and he recommends that her clearance be continued (Ex. C). Applicant informed both supervisors of her arrest for possession of narcotics. She did not tell them that the drug involved was cocaine or that she had ever used cocaine (Tr. 70).

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 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 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 that 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**

### **Drug Involvement**

The security concern about 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.

(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.

Applicant used cocaine approximately every other weekend from January 2006 until August 12, 2006, when she was arrested for possession of cocaine. She relapsed twice while in counseling with a LADC and attending weekly AA and substance abuse relapse prevention meetings. She snorted cocaine at a party on January 1, 2007, and at a bar on March 17, 2007. AG ¶ 25(a), “any drug abuse,” applies. Applicant purchased cocaine at least ten times in 2006 and again on March 17, 2007, and had possession of the drug when she used it and when she was arrested on August 12, 2006, so AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” is implicated. Furthermore, AG ¶ 25(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence,” and AG ¶ 25(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,” are also pertinent. The clinical psychologist who treated Applicant in 2006 diagnosed her with cocaine abuse and opioid dependence.<sup>4</sup> The LADC, who counseled Applicant from September 2006 until March 2008, indicated on Applicant’s discharge that Applicant had “exhibited improved social functioning with management of co-occurring Bipolar disorder and Cocaine and Alcohol abuse diagnosis.”<sup>5</sup> AG ¶ 25(g), “any illegal drug use after being granted a security clearance,” also applies in light of the fact that all of Applicant’s cocaine use occurred while she held a secret security clearance.<sup>6</sup>

Applicant has not used any cocaine since March 17, 2007. However, her abuse of cocaine was not limited to the five times she reported on her e-QIP. She told a government investigator in February 2008 that she used it every other weekend from January 2006 until her arrest on August 12, 2006, and she relapsed twice in 2007. Applicant did not detail the frequency of her involvement when she was questioned at her September 2009 hearing. But she admitted she had purchased cocaine about ten times, and she used the drug when home alone as well as with friends. AG ¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such

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<sup>4</sup>This clinical psychologist also diagnosed Applicant with opioid dependence, presumably because of her addiction to the narcotic analgesic Vicodin. Yet, absent evidence that Applicant abused her prescription by using the drug in a manner that deviated from approved medical direction, her use of Vicodin is not drug abuse within AG ¶ 24.

<sup>5</sup>In ISCR Case No. 07-00558, decided on April 7, 2008, the DOHA Appeal Board cautioned against an overly strict definition of the terms medical professional and licensed clinical social worker. Although that case involved the alcohol consumption guidelines AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” and AG ¶ 22(e), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” the issue is whether the person is qualified to diagnose substance abuse problems, alcohol or illegal drugs or both. The clinician in question here is a LADC who serves as a clinical supervisor at a state human service and community development agency.

<sup>6</sup>DOHA alleged Applicant’s use of cocaine while she held a security clearance under Guideline E. Department Counsel conceded in her closing argument that the use of drugs after being granted a security clearance more appropriately raises Guideline H concerns, but she did not move to amend the SOR. Nonetheless, the circumstances under which Applicant used the illegal drugs covered under SOR 1.a must be considered in determining the applicability of Guideline H’s disqualifying and mitigating conditions.



circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot reasonably be applied.

Concerning whether Applicant has demonstrated an intent to forego future drug abuse sufficient to satisfy AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," Applicant maintains an active friendship with one of the women with whom she used cocaine in the past, but this friend has not used cocaine in her presence in the past few years and Applicant believes her friend is no longer using illegal drugs. Since Applicant is no longer associating with persons whom she believes use drugs at present, AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts," is a factor that must be considered in her favor in assessing whether she has made the necessary changes to maintain a lifestyle free of substance abuse. AG ¶ 26(b)(2), "changing or avoiding the environment where drugs were used," applies in that she no longer frequents the bar at which she purchased cocaine. I cannot apply AG ¶ 26(b)(3), "an appropriate period of abstinence," because of her relapses in 2007 while she was in counseling, and her ongoing urges, albeit not acted on, to use cocaine to cope with stress as recently as September 2009. Applicant has repeatedly expressed her intent to abstain from illegal drugs, orally to a government investigator in February 2008 (Ex. 2) and at her hearing (Tr. 43), and in writing when she answered the SOR. AG ¶ 26(b)(4) requires a written commitment to abstain under the penalty of automatic revocation of clearance for any violation. Applicant's notarized statement of intent to maintain a drug-free lifestyle is not sufficient to apply AG ¶ 26(b)(4).

Applicant's efforts to deal with her cocaine abuse problem are consistent with a credible intent to abstain. Her initial counseling with the clinical psychologist cannot be considered completely voluntary because she was facing serious criminal charges for cocaine possession and felony risk of injury to a minor. However, Applicant participated in treatment well beyond the pretrial drug education program required by the court. She completed 18 months of counseling with the LADC, who presumably had a favorable assessment of Applicant's prognosis since she recommended to DOHA that Applicant retain her security clearance because of her sobriety and stability in her recovery program. Applicant followed up with recommended medication management with a new psychiatrist, and she attended AA on most Sundays. There is no evidence of recurrence of drug abuse since March 17, 2007, when Applicant abused cocaine while in treatment.

But I cannot apply AG ¶ 26(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." Family and work-related stress have led Applicant to think about using cocaine and alcohol as recently as the week before her hearing in September 2009. Her treating psychiatrist in summer 2009 reduced the frequency of their sessions from once a month to once every three months. While it would indicate a stability in her medications, Applicant is without any professional counseling for significant periods. The psychiatrist had recommended in 2008 that she obtain counseling, but she went to only two sessions because she did not feel comfortable with the clinician. AA could provide Applicant with the necessary support to maintain her sobriety. Yet, despite being a frequent attendee at AA meetings over the past three years, Applicant has not

had a sponsor in AA since late fall 2006. As of her hearing in September 2009, Applicant had not attended AA in two weeks despite recent stress, and she offered no explanation for her absence from AA. Based on the record evidence before me, I cannot safely conclude that her drug abuse is safely in the past.

## **Personal Conduct**

The security concern for personal conduct is set out in Guideline E, 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.

Applicant exercised poor judgment within the context of AG ¶ 15. She used and purchased cocaine while she held an active security clearance. She may not have been thinking about her clearance obligations, or that cocaine use was against DoD policy when she used the drug, but she knew she was violating the law by doing so. Applicant risked the health and safety of her children and one of their friends by using cocaine before taking them to a local mall in August 2006. Furthermore, AG ¶ 16(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," is pertinent. Cocaine abuse is conduct which, if known, could affect her reputation at work. The two supervisors, who attested favorably to her character and work performance (Ex. C), are not aware that she used cocaine or that her arrest involved cocaine.

Applicant was also not completely forthright about the extent of her cocaine abuse when she completed her e-QIP. She reported that she used cocaine only five times between April 2006 and August 2006. During her subject interview, she indicated that she used the drug every other weekend from January 2006 until her arrest in August 2006, and she relapsed twice in 2007. At her September 2009 hearing, she admitted she purchased cocaine on about ten occasions, and there is no evidence that she bought the drug for someone else's consumption. It is simply not credible that Applicant would fail to recall in November 2007 that she had used cocaine in January 2007 and again in March 2007. Deliberate omission of such recent drug involvement would implicate AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," but the government did not cite falsification of her e-QIP as a basis to revoke her security clearance. Applicant's minimization of her illegal drug involvement is nonetheless relevant in assessing her security worthiness under the whole-person concept, *infra*.

Applicant's cocaine abuse, especially while she held a security clearance, is too recent and serious to satisfy mitigating condition AG ¶ 17(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." By the summer of 2006, Applicant was using cocaine primarily for fun and to cope with emotional stress rather than to alleviate debilitating pain.

AG ¶ 17(d), "the person 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," applies in part. Since her arrest for possession of cocaine, Applicant has been in treatment for her admitted cocaine abuse problem, and for mental health issues. But as discussed under Guideline H, *supra*, she has not strengthened her commitment to AA or followed through with the counseling recommended by her psychiatrist despite ongoing stressors. Her lack of candor about her cocaine abuse on her e-QIP raises doubts about the extent to which she is willing to acknowledge her behavior.

Furthermore, while Applicant cannot reasonably be expected to inform all of her coworkers about her cocaine abuse, she continues to conceal her cocaine abuse from those supervisors who authored character reference letters on her behalf. Issues of vulnerability to pressure or exploitation have not been adequately mitigated. AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate Applicant's eligibility for a security clearance by considering the totality of her conduct and all the circumstances in light of 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant showed extremely poor judgment in using and purchasing cocaine in knowing disregard of its illegality. She used the drug for fun while she held a security clearance, after a court had accepted her application for a drug rehabilitation program, and the state had agreed not to prosecute her for the felony risk of injury charge if she completed the program. Her extended counseling with the LADC was voluntary and reflects favorably on her, as does her good work record for the defense contractor. But concerns persist about whether she has the level of support necessary for her to maintain her sobriety. She receives no professional counseling at present other than what the psychiatrist provides once every three months. Her commitment to AA at this point is questionable, given her lack of any effort to obtain a sponsor since 2006. Applicant's minimization of her cocaine abuse on her e-QIP, and her failure to provide a credible explanation for the inaccurate disclosure, also cast doubt about whether she can be counted on to put her obligation of candor before her self-interest. Based on the record before me for review, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's access to classified information at this time.

### **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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant <sup>7</sup>
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.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 security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski  
Administrative Judge

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<sup>7</sup>Treatment itself is viewed favorably. Her cocaine abuse problem, which necessitated the treatment, is covered under SOR 1.a-1.b.