



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07508
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

June 2, 2010

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (e-QIP), on January 8, 2008. On October 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 G, Alcohol Consumption. 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) which were effective within the Department of Defense for SORs issued after September 1, 2006.

On November 10, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 7, 2010. The case was assigned to me on January 15, 2010. On March 1, 2010, a Notice of Hearing was issued scheduling the hearing for March 23, 2010. The hearing was held, as scheduled. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. The Applicant testified and offered eight exhibits which were admitted as Applicant Exhibits (AE) A - H. The transcript (Tr.)

was received on April 1, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

During the hearing, Department Counsel moved to amend the SOR pursuant to paragraph E3.1.17 of the Directive. Applicant did not object to the motion to amend. (Tr. 60-63)

SOR ¶ 1.a(1) was amended to read as follows: “(1) marijuana – about 1000 times, at times including daily use, from 1998 to July 2008;”

SOR ¶ 1.a(6) was added which reads: “(6) hallucinogenic mushrooms (psilocybin) on multiple occasions between 1999 and 2008.”

SOR ¶ 2.d was added which reads: “d. You operated a motor vehicle while impaired or intoxicated by alcohol on two occasions in 2009.”

### **Findings of Fact**

In her Answer to the SOR, Applicant admits to all of the allegations including the amendments to the SOR.

Applicant is a 26 year old employee of a Department of Defense contractor seeking a security clearance. She is a licensing analyst and has worked for her current employer since December 2007. Applicant has a bachelor of science degree in packaging science. This is her first time applying for a security clearance. She is engaged to be married and has no children. (Tr. 4-5, 26-27, 55; Gov 1)

Applicant has a history of illegal drug abuse beginning when she was in high school. She began to use marijuana at age 15. She estimates that between 1998 and July 2008, she used marijuana 1,000 times. She smoked marijuana on a daily basis during the first four years of college. In 2006, she moved back home and would only smoke about three to four days a week. She stopped smoking marijuana in October 2007 when she began interviewing for jobs. She last used marijuana in July 2008, seven months after completing her application for a security clearance. Applicant was at a concert with some friends and they smoked marijuana and took hallucinogenic mushrooms (psilocybin). Her July 2008 marijuana use was the only time she used marijuana after being hired by her current employer. (Tr. 25, 33; Gov 1; Gov 2)

Between 1998 and 2008, Applicant used hallucinogenic mushrooms about ten times. Applicant first tried ecstasy in 2000 while still a high school student. She used ecstasy approximately 60 times between January 2003 and January 2005. Applicant used to attend rave parties and ecstasy was the substance of choice. (Tr. 35, 39; Gov 1; Gov 2) Between January 2001 and January 2002, she used LSD on at least three occasions. (Tr. 39-40; Gov 1, section 24)

Applicant used cocaine approximately 60 times between November 2006 and November 2007. She befriended a cocaine dealer. She purchased cocaine a couple times. In 2007, Applicant tested positive for cocaine use during a pre-employment drug test. The company withdrew their employment offer. The last time Applicant used cocaine was around Thanksgiving 2007 when her friends threw her a farewell party before she moved to begin her current job. (Tr. 36-38, 46-47, 54; Gov 2)

Applicant admits to being aware that her drug use was illegal. She was also aware of her current employer's policy prohibiting illegal drug use. She claims that she used illegal drugs after applying for a security clearance because she was stupid and immature. (Tr. 41-42, 47)

Applicant considers herself to be an alcoholic. During her background investigation interview on May 6, 2008, Applicant indicated that she started to drink alcohol while in high school. She would drink several times a week to the point of intoxication. She becomes violent when she becomes intoxicated. She told the investigator that she wanted to stop drinking, but took no steps to do anything about it as of the date of the interview. (Tr. 45; Gov 2)

On two occasions, Applicant was arrested and charged with Domestic Assault after getting into a physical argument with her then boyfriend. She was intoxicated on both occasions when she was arrested. In December 2007, after a night of drinking at a bar, Applicant and her boyfriend got into an argument at another couple's apartment. They left the apartment and continued fighting in the parking lot of the apartment complex. They realized the police would be called so they got into a car and began to leave. The police detained them before they could leave. Applicant was charged with Domestic Assault. Her boyfriend was charged with possession of drug paraphernalia. The charges against Applicant were dismissed because her boyfriend refused to testify against her. She admits to the conduct even though the charges were dropped. (Tr. 28; Gov 1, section 23; Gov 2; Gov 3)

On April 14, 2008, Applicant got into a fight with her boyfriend at their apartment. She was intoxicated. The neighbors called the police. Applicant's boyfriend told the police that she had physically assaulted him. The police noticed red marks on her boyfriend's face. Applicant was arrested and charged with Assault by Contact - Family Violence. On June 11, 2008, Applicant received a deferred sentence. She was given the choice to pay a \$515 fine or complete an anger management course. She chose to complete the anger management course and completed the course on October 2, 2008. (Tr. 28; Gov 2)

In her answers to interrogatories dated January 12, 2009, Applicant indicated the anger management classes allowed her to explore her codependency issues with alcohol. She admitted that she was still drinking. She has only gone to bars about twice a month since July 2008. She only had one to two drinks each time. She indicated that

she did not buy alcohol to drink at home, and that she does not drink in her house. (Gov 2)

During the hearing, Applicant testified that she did not realize the severity of her alcohol problem. Three events made her realize the seriousness of her problem. On the first occasion, she blacked out after driving home from a bar in the winter of 2009. The second event was when she made a fool of herself when she was out drinking with friends and coworkers. Her breaking point was on May 2, 2009. She was drinking at a coworker's concert. She became upset and anxious and drove herself to a hospital and checked herself into the hospital. She was treated for depression, anxiety, and alcohol and drug addiction for three days. During her stay in the hospital she received counseling from a psychiatrist and attended Alcoholics Anonymous (AA) meetings. She did not attend AA meetings after she left the hospital. (Tr. 22, 47)

When Applicant was hospitalized, she claims that she was treated for depression. She is not aware of being diagnosed with substance abuse or alcohol abuse. Her drug and alcohol issues never interfered with her work. She provided a copy of her college transcripts which reveal that she had a good grade point average. (Tr. 20, 29; AE A)

After she was released from the hospital, she found a Christian counselor and attended several therapy sessions. She also became active in the singles group of her church home. Her church helped her commit to a more sober life style. She has not drank alcohol since May 2, 2009. She takes no prescription medication and is doing well. She no longer associates with her drug using friends. She took a voluntary drug test on November 6, 2009, which tested negative for illegal drugs. (Tr. 23-25; AE D; AE E; AE G; AE H)

During the hearing, Applicant provided a written statement indicating that she has been sober since May 3, 2009, and she does not intend to consume alcoholic beverages in the future. (AE D) She also provided a written statement that she has not used illegal drugs since July 21, 2008, and she does not intend to use illegal drugs in the future. She has disassociated herself from her friends who use illegal drugs and alcohol. (AE H)

The leader of the singles group at Applicant's church wrote a letter on her behalf. He and his wife met Applicant in 2008 when they started the group. Applicant attended their meetings regularly. Applicant was one of their most faithful attendees and was an integral part of the church group. Applicant confided that she wanted to separate herself from the mistakes of her past. He and his wife can attest to her change of heart and life. (AE F at 1)

Applicant's co-worker wrote a letter on her behalf indicating that she met Applicant in February 2009 when she began her employment at the same company. Applicant showed her around and introduced her to the other coworkers. They joined an intramural softball league. They went to happy hour on a few occasions. She observed

that alcohol did not always have the best effects on Applicant. Applicant's mood would change in a negative way and she did not seem to know when to stop drinking. They eventually became good friends and Applicant confided to her that she did not like how she acted after drinking alcohol. Applicant told her that she was going to quit drinking alcohol in May 2009. The co-worker has not seen her drink alcohol since that time. To avoid drinking, Applicant would go home after softball games. Her co-worker says that Applicant has changed and her overall happiness and quality of life is greatly improved. (AE F at 2)

Applicant's sister wrote a letter indicating Applicant first revealed her struggles with substance abuse in early 2008. Once Applicant admitted that she had a problem, her life began to improve incrementally. She was willing to take steps necessary to overcome her problems. She sought help from her family, home church, and from a professional therapist. She avoided friendships and situations that previously compromised her decision to live productively. Her sister says with great confidence that Applicant has achieved a level of stability and integrity. (AE F at 3)

Applicant's performance reports from 2008 and 2009 are favorable. (AE B)

### **Policies**

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 must be considered when 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.

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 for 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 of 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 raised under 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply:

AG ¶ 25(a) (any drug abuse);

AG ¶ 25(b) (testing positive for illegal drug use); and

AG ¶25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

Applicant abused illegal drugs over a ten year period, often using illegal drugs on a daily basis. The level of her drug use was not experimental. In 2007, she tested positive for cocaine in a pre-employment drug screening.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement. One mitigating condition potentially applies to Applicant's case.

AG ¶ 26(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; and (4) a signed statement of intent with automatic revocation of clearance for any violation.) potentially applies. Applicant no longer associates with her drug-using friends. She broke up with her boyfriend. She avoids situations where drugs are likely to be used. She has not used illegal drugs since July 2008. She expressed an intent to no longer use illegal drugs.

While Applicant appears to meet the application of AG ¶ 26(b), it does not fully mitigate the drug involvement concern based on Applicant's long history of substance abuse. Her statement that she intends to abstain from illegal drug use in the future, while sincere, is given less weight because she previously stated that she quit using illegal drugs in November 2007 only to use again in July 2008. Her illegal drug use in July 2008 occurred after she submitted her security clearance questionnaire in January 2008, and after she was interviewed by an investigator in conjunction with her background investigation in May 2008. Applicant was also aware of her company's policy prohibiting illegal drug use.

Additional concerns remain because although Applicant attended some AA meetings when she was hospitalized in May 2009 and subsequent counseling through her church, she no longer attends counseling after relocating to another state. She testified that she has family members in the area for support and believes she can handle the situation on her own. Given her history of drug and alcohol abuse, I am not confident that she will be successful in her efforts to remain sober without some professional help. While I find it encouraging that Applicant has been drug free since July 2008, I believe more time is needed to prove that Applicant will remain drug free based on the extent of Applicant's illegal drug use, the fact that she abused illegal drugs for over 10 years, and her relapse in July 2008 after applying for a security clearance.

The drug involvement concerns are not mitigated.

### **Guideline G, Alcohol Consumption**

The security concern raised under the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several disqualifying conditions that could raise security concerns. The following alcohol consumption disqualifying conditions apply to Applicant's case:

AG ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent) applies with respect to Applicant's two arrests for Domestic Violence in December 2007 and April 2008. On both occasions Applicant got into a physical argument with her boyfriend after a night of drinking. She admits to getting violent when she is intoxicated. Applicant also admits to blacking out while driving home after a night of drinking in the winter of 2009. She admits to driving her car while on intoxicated on two occasions in 2009 even though she was never arrested for these incidents.

AG ¶ 22(c) (habitual or binge consumption to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent) also applies. Applicant admits that she is an alcoholic. When she drinks alcohol, she drinks to the point of intoxication. Her co-worker and friend noticed the negative adverse effect alcohol had on Applicant's personality. Applicant experienced several incidents where her judgment has been impaired as a result of her drinking alcohol. She was arrested on two occasions after arguing with her boyfriend after a night of drinking. In the winter of 2009, she suffered an alcoholic black out while driving home after a night out drinking. She admits to making a fool of herself after a night of drinking with friends and co-workers.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. The following mitigating conditions are relevant to Applicant's case:

AG ¶ 23(a) (so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and

AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)).

Applicant admits to having issues with alcohol and believes that she is an alcoholic. She has remained alcohol-free since May 2009. However, she currently does not attend alcohol counseling. She initially told the government on her security clearance questionnaire that she had not consumed alcohol since December 16, 2007. She eventually resumed drinking alcohol which resulted in her second arrest for Domestic Violence in April 2008. Her alcohol use escalated to the point that she blacked



out while driving home after a night of drinking in winter 2009 and she felt that she made a fool of herself in front of her co-workers. Not enough time has passed to verify that Applicant will maintain her sobriety.

Guideline G is found against Applicant.

### **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 commonsense 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. I considered Applicant's favorable performance evaluations with her current employer. I considered her favorable reference letters. While I believe Applicant is sincere when she states that she intends to remain alcohol and drug free, at this time I believe the potential for relapse remains because Applicant is currently not in a counseling program. She has a ten year history of alcohol abuse and illegal drug abuse. Her last use of illegal drugs occurred in July 2008, seven months after applying for a security clearance and while aware of her employer's policies against illegal drug use. While the evidence reveals that she has remained sober for over a year, it is too soon to conclude Applicant will remain alcohol and drug free in the future based on her ten-year history of substance abuse. I find Applicant did not mitigate the security concerns raised under the drug involvement and alcohol consumption guidelines.

### **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
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d	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.

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ERIN C. HOGAN  
Administrative Judge