



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09216
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro se*

September 24, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant's addiction to prescription painkillers, developed while recovering from a back injury in 2003, generates a security concern under Guideline H, Drug Involvement. In 2004, he enrolled in an outpatient substance abuse program that he successfully completed. Recently, he suffered another injury that required treatment with prescription painkillers. According to the prescribing physician, he used them responsibly, without relapse. Applicant has mitigated the Guideline H security concern.

On December 23, 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. 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 January 29, 2009, admitting all of the allegations, and requested a hearing. The case was assigned to me on June 11, 2009. On June 23, 2009, a notice of hearing was issued scheduling the case for July 16, 2009. The hearing was conducted as scheduled. I received five government exhibits and four Applicant exhibits. At the close of the hearing, I left the record open at Applicant's request to allow him to submit an additional exhibit. Within the time allotted, he submitted another exhibit that I incorporated into the record as Applicant's Exhibit E. The transcript was received on July 23, 2009.

### **Findings of Fact**

Applicant is a 34-year-old married man with four children ranging in age from three to nine. He is a licensed electrician (Tr. 20). As part of his licensing requirements, he completed a four-year apprenticeship at a technical education center (Tr. 20).

Since April 2007, Applicant has worked for a defense contractor as a facilities estimator (Tr. 20). His duties include helping his client, a government agency, estimate the projected cost of various projects to enhance its contract bid preparation efforts (Tr. 21). According to Applicant's project manager, he displays "the highest levels of competency, integrity, and professional acumen" (Exhibit B).

Over the years, Applicant has suffered from recurrent bouts of depression, anxiety, and post-traumatic stress disorder stemming from sexual abuse he suffered as a child (Exhibit 2 at 7). He has been receiving treatment and undergoing counseling intermittently for these problems since 2001 (*Id.*).

In August 2003, Applicant suffered a serious back injury which required emergency room treatment (Tr. 23; Exhibit 2 at 3). The emergency room physician prescribed a pain-relieving medication and a muscle relaxant (Exhibit 2 at 3). A few days later, Applicant was evaluated by his treating physician who continued this course of treatment.

At or about the time Applicant hurt his back, he experienced a recurrence of the psychological symptoms relating to his childhood sexual abuse (Exhibit 2 at 5). Because the pain relievers gave him a euphoric feeling, he began using them to mask his feelings of depression and anxiety (*Id.* at 2). Consequently, he became drug-dependent, increased the dosage without his physician's knowledge, used the painkillers after his back problem resolved, and feigned various physical injuries so that his physician would prescribe more painkillers (Tr. 25, Exhibit 2 at 3).

Applicant's prescription painkiller abuse continued from August 2003 to September 2004 (Answer). Applicant's wife grew suspicious after she discovered Applicant was using painkillers that her physician had prescribed her after a surgery (Tr. 25). She then confronted Applicant. In response, he contacted his employee assistance program and was referred to a 20-day outpatient treatment program (*Id.* at 4). Applicant also informed his treating physician of his problem (Tr. 33).

While enrolled in the treatment program, Applicant was diagnosed with opioid addiction and chronic pain syndrome (Answer; Tr. 27). He received group counseling four days per week, for three hours per session ( Exhibit 2 at 4). He also attended weekly Narcotics Anonymous meetings (*Id.*). Applicant successfully completed the program in November 2004 (*Id.* at 7).

After Applicant's discharge, his treating physician prescribed him a medication to counter "opioid withdrawal/cravings symptoms" (Exhibit D - Social Worker's Evaluation). Applicant also underwent counseling with a social worker to address his depression (*Id.*). The social worker was aware of the relationship of Applicant's depression to the issue of his painkiller abuse (*Id.*). Currently, Applicant's symptoms of depression are "much more muted, if not resolved" (Exhibit D).

Applicant used marijuana twice in 2006 (Tr. 27). Before then, he had not used it since high school (Tr. 43). Both episodes occurred at his home when out-of-town friends were visiting (Tr. 28). Applicant disclosed the marijuana use to his therapist (Tr. 56). He has not used any marijuana since 2006 and he no longer associates with friends who use marijuana (Tr. 53).

In July 2008, Applicant underwent surgery for a dislocated shoulder (Tr. 38). His treating physician again prescribed prescription painkillers as part of the healing process (Exhibit A - Physician's Statement). According to his physician, he was "very compliant, and even pro-active, in effective and prompt tapering of his opioid analgesics" (*Id.*). Applicant discontinued the use of the prescription painkillers in approximately February 2009 consistent with the pain management program his physician developed (Tr. 40). Applicant's physician is "confident in [Applicant's] ability to properly utilize opioid medicine without abuse or misuse" (Exhibit A).

Applicant no longer attends support group meetings as much as he did earlier (Tr. 35). He remains in contact with friends who he met while in treatment, and they "help each other through support" (*Id.*). On July 17, 2009, Applicant executed a signed, statement of intent not to abuse drugs in the future (Exhibit E).

### **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. 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.”

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.

## **Analysis**

### **Guideline H, Drug Involvement**

Under this guideline, “use of an illegal drug or 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” (AG ¶ 24). Applicant’s prescription drug abuse led to a diagnosis of opioid addiction. Approximately two years later, he used marijuana on two occasions. AG ¶¶ 25(a), “any drug abuse,” and 25(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence,” apply.

Applicant did not begin using prescription painkillers for recreational purposes. Instead, a physician prescribed them after he injured his back. At or about the same time, he experienced a recurrence of psychological symptoms related to childhood sexual abuse, which he discovered he could alleviate by using the prescription painkillers in a manner that his physician did not prescribe. With his wife’s help, he acknowledged his addiction and enrolled in a drug treatment program that he successfully completed. His physician provided a favorable prognosis, and his social worker, who counseled him with issues involving the childhood trauma, stated that the psychological symptoms that provoked the prescription painkiller abuse are under control. Most importantly, Applicant recently suffered another injury that required treatment with prescription painkillers, and used them responsibly, without relapse.

I was concerned with Applicant’s decision to smoke marijuana after receiving treatment for prescription painkiller abuse. His use of marijuana, however, was limited to two occasions approximately three years ago. He no longer associates with his friends who used the marijuana with him, and he provided a signed statement of intent not to abuse any drugs in the future. Approximately two years after Applicant’s marijuana use, he experienced another medical problem that required treatment with, among other

things, prescription painkillers. Applicant used them, as prescribed, without a recurrence of abuse.

I conclude the following mitigating conditions apply:

AG ¶ 25(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 are used;<sup>1</sup>
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for and violation.

AG ¶ 25(c) - abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and the abuse has since ended.

AG ¶ 25(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.

### **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.

Applicant's prescription drug addiction developed when he discovered that the medication also masked the feelings of recurrent depression and anxiety he periodically experienced related to childhood sexual abuse. He successfully completed therapy for the prescription drug abuse through outpatient drug treatment and successfully addressed the psychological symptoms through counseling. His last use of marijuana

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<sup>1</sup>AG ¶ 25(b)(2) is not relevant.

occurred five months before he began his current job. The negative security inference generated by his two-time marijuana use is outweighed by the time that has elapsed since the last usage, and Applicant's responsible use of painkillers that a physician prescribed approximately two years after the last episode of marijuana use. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the drug involvement security concern.

### **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.c:	For Applicant

### **Conclusion**

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

MARC E. CURRY  
Administrative Judge