



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-01216
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

June 14, 2010

---

**Decision**

---

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on October 10, 2008. On August 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline J for the 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 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.

The Applicant acknowledged receipt of the SOR on August 10, 2009. She answered the SOR in writing on October 5, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on October 9, 2009, and the case was assigned to another Judge on November 16, 2009. It was reassigned to the undersigned on February 9, 2010. DOHA initially issued a notice of hearing on January

14, 2010, setting the case for hearing on February 10, 2010. As the Applicant was out of the country on a last minute business trip, the case was rescheduled and heard on March 11, 2010. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. The Applicant testified on her own behalf, as did her friend of 27 years. The Applicant submitted Exhibits (AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on March 23, 2010. I granted the Applicant's request to keep the record open until April 11, 2010, to submit additional matters. On April 1, 2010, she submitted Exhibit G, through Department Counsel, who forwarded it to the undersigned on April 9, 2010. It was received without objection. The record closed on April 11, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, the Applicant admitted the factual allegations in Subparagraph 1.a., of the SOR, with explanations. She denied, in part, the factual allegations in Subparagraph 1.b. of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

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

1.a. The Applicant was very close to her brother who suffered from asthma. (TR at page 31 line 17 to page 32 line 23.) In October of 1998, they shared an apartment; and while she was away, he suffered "a massive heart attack and upper respiratory failure," which led to his death. (*Id.*) She felt guilty, and opines "if I was home, maybe I could have saved him or maybe I could have kept him from dying alone." (TR at page 31 line 17 to page 32 line 23.) She was devastated, and was told by "a good friend of . . . [her] brother" that methamphetamine "would help . . . numb the pain." (TR at page 34 line 4 to page 39 line 4.) He supplied her with the drug, and soon thereafter became her boy friend. (*Id.*) Unbeknownst to the Applicant, he was an informant for the FBI. (TR at page 39 line 20 to page 47 line 25.) On four occasions, he sent her monies and asked her to mail him the drugs to another state where he lived, which she did. (*Id.*)

1.b. In June of 1999, per her "boy friend's" request, the Applicant brought him the drugs by airplane; and was later arrested at his apartment by the FBI. (TR at page 39 line 20 to page 47 line 25.) She made no profit from the drug transactions, she was a mere "middleman." (*Id.*) She was charged, in part, with Distribution of a Controlled Substance (5 counts). (TR at page 48 line 1 to page 52 line 10, and GX 3.) In August of 2001, she was found guilty of the Distribution charges, and sentenced to 48 months in prison, and to five years of supervised probation. (*Id.*) She, in fact, served 11 months in jail, and the period of her probation was reduced to 36 months and completed in May of 2007. (TR at page 48 line 1 to page 52 line 10, and GX 3, and AppX F at pages 1~3.)

Her last illegal drug involvement was in June of 1999. Since her release from jail, the Applicant has lived a stellar life. (TR at page 55 line 19 to page 56 line 14, at page 59 line 17 to page 62 line 20, at page 64 lines 1~23, and AppXs A~G.) She is now married, actively involve in both the workplace and in her community, and those who know the Applicant well have only positive comments as to how she has turned her life around. (*Id.*, and TR at page 22 line 14 to page 27 line 12.)

### **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 Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 J - Criminal Conduct**

Paragraph 30 of the 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(a) provides that “*a single serious crime or multiple lesser offenses*” may raise security concerns. She was convicted for the distribution of methamphetamine in August of 2001. 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 also raise security concerns. She used methamphetamine after the death of her brother in October of 1998 until her arrest in June of 1999. Here, these are clearly countered by the mitigating condition in Subparagraph 32(a) as “*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.*” The Applicant’s arrest and drug involvement was more than ten years ago. She has long since paid her debt to society with her incarceration, and her probation was successfully completed in May of 2007, three years ago.

### **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 Paragraph 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 Paragraph 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 those who know her in the work place and in her community (AppXs A~G). The record evidence leaves me with no questions and 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 Criminal Conduct, which occurred more than a decade ago.

### **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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

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

Richard A. Cefola  
Administrative Judge