



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



In the matter of: )  
)  
) ISCR Case No. 09-05343  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

September 8, 2010

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. Her eligibility for a security clearance is denied.

On April 1, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guidelines for Drug Involvement and Personal Conduct. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On March 23, 2010, Applicant answered the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to me on May 7, 2010, and issued a Notice of Hearing on June 18, 2010. I convened the hearing as scheduled on July 28, 2010. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which were admitted without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on August 9, 2010.

### **Findings of Fact**

In her Answer, Applicant admitted all allegations contained in the SOR, except those contained in ¶ 2.c. Those admissions are incorporated into the findings herein.

Applicant is 43 years old and divorced since 1994. She has two children, ages 22 and 12. Her 12-year-old child lives with her. She completed a year of college. In 1998, she began working as a general clerk for a defense contractor.

Applicant has a history of illegal drug abuse. Between 1992 and early 1993, she used crack cocaine about eight times. She was 25 years old and married at the time. (Tr. 15.) She voluntarily entered a 28-day drug rehabilitation program at the end of December 1992 for substance abuse and depression. (Tr. 27.) She subsequently participated in 12-Step meetings for narcotics and alcohol abuse for the next three years and then stopped. She admitted that she has an alcohol and drug problem. (Tr. 18.) She was arrested and charged with Driving Under the Influence (DUI) in 1993, 1995, and 1999.

On September 18, 2003, Applicant sought pain management treatment for cervical and lumbar spinal problems. According to the medical record from that date, she denied a history of alcohol or substance abuse. Since then, she has received treatment for back and hip pain, degenerative disc disease, and arthritis. As a condition of treatment, her physician required monthly drug screenings for non-prescribed controlled substance abuse before dispensing or prescribing another month's supply of medication. On February 3, 2009, Applicant tested positive for cocaine. All subsequent screenings up to July 2010 have been negative and she has continued receiving treatment from her physician. (Tr. 19.)

Applicant acknowledged her mistake and lapse in judgment on February 1, 2009, the night she used cocaine. She was at a party with her cousin and was consuming alcohol beforehand. She stated that she "didn't get myself out of [a] situation when I should have." (Tr. 17.) She has not sought counseling or treatment since that incident. (Tr. 18, 27.) She no longer associates with that cousin or other people who use illegal drugs. (Tr. 47.)

In response to Section 24: *Illegal Use of Drugs or Drug Activity* on the April 2009 e-QIP, Applicant did not disclose that she illegally used cocaine within the last 7 years, viz., in February 2009. On May 27, 2009, a government investigator interviewed Applicant about her answers in the e-QIP. Applicant disclosed her 1992 to 1993 illegal

drug use, but did not disclose the February 2009 incident. She admitted that she made a serious mistake and should have disclosed it. (Tr. 20-21, 33.) As stated earlier, she did not disclose her previous drug and alcohol abuse history to her physician during the course of treatment because she had previously ceased using alcohol and illegal substances when she started attending the pain management program in 2003. (Tr. 22.)

Applicant expressed sincere regret and sadness over the February 2009 incident. She acknowledged that she had not used an illegal substance for about 16 years prior to that night. She is remorseful about her conduct. She stated, "I take full responsibility for wrong actions. I'm doing the best I can do to overcome these things and get past them." (Tr. 41.) She recognized that she continues to suffer from depression, in addition to physical conditions. She has not sought psychiatric treatment for the depression because she has not had enough money for additional medical care or psychotherapy. She would like to obtain it in the future. (Tr. 39.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) 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 AG ¶ 2(a), describing 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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."

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 an 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.

## **Analysis**

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

The security concern pertaining to 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.

This guideline notes several conditions that could raise security concerns. Based on Applicant's admissions that she illegally used cocaine between 1992 and 1993, and in February 2009, the Government raised a disqualifying condition under AG ¶ 25(a), "any drug abuse (see above definition)."

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 26 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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.

Applicant illegally used cocaine from 1992 to early 1993, and again in February 2009. As a result the February 2009 incident, a break in that 16-year period of abstinence, AG ¶ 25(a) does not apply because the recent relapse calls into question her good judgment. Since February 2009, Applicant's monthly drug screenings for illegal substance abuse have been negative. That is some evidence of her intent not to use illegal drugs, along with her statement that she no longer associates with her cousin, warranting a limited application of AG ¶ 25(b). The record does not contain any evidence to support the application of AG ¶¶ 25(c)(1) and (3). Applicant completed a rehabilitation program in 1993, but has not participated in any substance abuse treatment since February 2009 or documented a favorable prognosis, which is necessary to trigger the application of AG ¶ 25(d).

#### **Guideline E, Personal Conduct**

The security concern pertaining to this guideline is set out in 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.

The Government alleged in ¶ 2 of the SOR that Applicant's history of cocaine use and deliberate concealment of it to the Government and to her physician may raise a disqualification under AG ¶ 15.

AG ¶ 16 sets out seven conditions that could raise security concerns and be disqualifying. Two of them are applicable:

(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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant admitted that she intentionally concealed using cocaine in February 2009 on the April 2009 e-QIP. That evidence raised a potential disqualification under AG ¶ 16(a). She admitted that she failed to disclose that incident and a subsequent positive drug screening to a government investigator during a May 2009 interview. She denied that she intentionally concealed her history of alcohol and substance abuse from her physician, beginning in 2003. However, her explanation that she did not feel that it was necessary because the abuse was in the past is not credible. These facts raise disqualifications under AG ¶ 16(b).

AG ¶ 17 includes six conditions that could mitigate security concerns arising under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual 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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not provide sufficient evidence to trigger the application of any mitigating conditions listed under AG ¶ 17. She did not make an attempt to disclose the information prior to being interviewed about it, as required under AG ¶ 17(a). While her drug use between 1992 and 1993 is not recent, she acknowledged that she made a grave mistake when she used cocaine in February 2009, calling into question her current judgment. Hence, AG ¶ 17(c) does not apply. Although she acknowledged her lapse of judgment, she did not obtain counseling for her problems or take other rehabilitative steps to alleviate the possibility of a recurrence. AG ¶ 17(d) does not apply. There is insufficient evidence to support the application of AG ¶¶ 17(b), (e), or (g). AG ¶ 17(f) is not relevant.

### **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 relevant 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.

According to 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. Applicant is a 43-year-old woman, who has worked for a federal defense contractor since 1998. Despite a 16-year period of abstinence from illegally using cocaine, she relapsed in February 2009 after consuming alcohol. She exhibited sincere remorse and embarrassment over her conduct. Unfortunately, she has not participated in any form of rehabilitative treatment

since the incident, which could mitigate some of the security concerns and diminish the likelihood of a recurrence.

An equal security concern is Applicant's intentional failure to divulge her past illegal cocaine use on the e-QIP application, and the February 2009 incident during an interview. Her reticence to disclose her substance abuse issues from her physician also raises concerns, not only of a security nature, but also in terms of her physician's ability to render effective treatment. The Government imposes a special trust in one who holds a security clearance and relies on a person to be honest and truthful regardless of the consequences.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her drug involvement and personal 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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	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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SHARI DAM  
Administrative Judge