



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-03920
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: Christopher Graham, Esquire

09/21/0212

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On or about January 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated March 1, 2012, Applicant admitted all allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on August 1, 2012. The parties agreed to a hearing date of September 7, 2012, 2012, a notice to that effect was issued on August 17, 2012. I convened the hearing as scheduled.

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<sup>1</sup> Tr. 6-7. The SOR was undated, but an accompanying cover letter was dated January 3, 2012.

Applicant gave testimony and referenced a statement of intent not to use drugs in the future that was previously submitted with his answer to the SOR.<sup>2</sup> He was given until September 19, 2012, to forward any additional documents for consideration. Department Counsel offered four documents, which were admitted without objection as exhibits (Exs.) 1-4. To comport the allegations with the evidence, SOR allegation ¶1.d was amended to read, "You illegally purchased morphine, oxycodone, heroin, and marijuana on multiple occasions from about 1998 to April 2001."<sup>3</sup> For similar reasons, SOR allegation ¶ 1.e was amended as, "You purchased, transported, and delivered illegal drugs to others on multiple occasions from about 1998 to April 2001."<sup>4</sup>

The transcript (Tr.) of the proceeding was received on September 17, 2012. On September 18, 2012, Applicant forwarded three additional documents, which were accepted into the record as Exs. A-C, and the record was closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to personal conduct and drug involvement. Clearance is granted.

### **Findings of Fact**

Applicant is a 29-year-old electronics engineer and mechatronic specialist who has worked for the same defense contractor since September 2008. He earned a bachelor of science degree in electronic engineering technology in December 2008. Applicant is single and has no children.

Applicant was born in late 1982.<sup>5</sup> In 1996, when Applicant was about 14 years old, his parents initiated a contentious divorce. During this period, Applicant was used by his parents as a middleman in their domestic battles. He began illegally using the prescription drugs morphine and oxycodone, which he found available at home, for recreational purposes. In 1998, at about age 16, Applicant also began using marijuana and he tried heroin on multiple occasions until about 2000.<sup>6</sup> To obtain these drugs, he illegally purchased the substances on occasion, and, at times, shared them with others.

During this time, Applicant twice attended an in-house drug treatment or counseling program, in 1996 and 1997, respectively. It was at these facilities that Applicant learned where he could buy drugs.<sup>7</sup> In describing the programs as unsuccessful, Applicant also noted that it was at these juvenile programs that he

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<sup>2</sup> That document is hereinafter referenced as "Statement of Intent."

<sup>3</sup> Tr. 57-60.

<sup>4</sup> Tr. 57-60.

<sup>5</sup> Ex. 1 (Security Clearance Application, dated Nov. 11, 2011) at 6 of 46.

<sup>6</sup> In addition, at some unspecified time during this period, Applicant tried cocaine. Tr. 40.

<sup>7</sup> Tr. 41.

learned “where and how to be a drug user.”<sup>8</sup> These experiences occurred at an age when he was unwilling to make a positive change in his life and they led to the worst period of his addiction, from 1997 to 2000.<sup>9</sup> During that time-frame, he made 30 to 40 trips into an urban area to procure drugs. He sometimes shared his drugs with others. He eventually hit rock bottom by the beginning of 2001.

In April 2001, after a trip into an inner city neighborhood to purchase drugs, Applicant was arrested and charged with “(1) manufacture/delivery/possession with intent to manufacture or deliver, a felony; (2) manufacture/delivery/possession with intent to manufacture or deliver, a felony; (3) possession of a controlled substance; (4) use/possession of drug paraphernalia; (5) recklessly endangering another person.” In August 2001, he pled guilty to charge number two and the remaining charges were *nolle prossed*. Applicant was sentenced to time served (four months), placed on probation for 23 months, and fined \$200. While in jail, he suffered from severe withdrawal symptoms.<sup>10</sup> At age 18, he tried attending Narcotics Anonymous (NA), but he was too immature to appreciate its methodology.

On November 18, 2001, shortly after his 19<sup>th</sup> birthday, Applicant was found asleep and intoxicated in a friend’s car by local police. He was charged with purchase of alcoholic beverage by a minor. A week later, he pled guilty to the charge and was fined. He suffered no serious repercussions in terms of his probation. At the time, however, his relapse into criminal behavior concerned him.<sup>11</sup> Thinking it would help get his life on track, he enrolled in a local community college.

On January 15, 2004, Applicant and others of legal drinking age were attending a college party where alcohol was served to underage attendees. Applicant and others were charged with selling or furnishing liquor to a minor, but the specific charge against Applicant was withdrawn the following month. Although he was trying to avoid pain medications, he started to develop genuine back pain issues in 2004. A peer reintroduced him to narcotic medications in 2005 or 2006. She also suffered from back pain and gave him the pills.<sup>12</sup> His use of pain medications slowly moved from pain management to addictive drug misuse. Nearing 25 years of age, Applicant’s grades plummeted. He started to truly appreciate the adverse effect narcotics were having on his life, studies, and career plans. The prospect of being dismissed from college after studying intensely and working hard to pay for his school tuition made him realize what was at stake if he continued abusing drugs. Applicant knew mere counseling would be insufficient to help him and he contemplated new, medically-based therapy. He then

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<sup>8</sup> Tr. 31.

<sup>9</sup> Tr. 30-31.

<sup>10</sup> Tr. 43.

<sup>11</sup> Tr. 22. Applicant’s use of alcohol is not an issue. There is no indication that it ever increased or affected his past drug use. See Tr. 54.

<sup>12</sup> Tr. 46.

concluded that he needed professional drug intervention, medical attention for his back, and a mature outlook. For the first time, he truly wanted to progress, not relapse.<sup>13</sup>

From April 2007 to May 2007, Applicant attended a medical therapy and Suboxone drug treatment program provided by a physician. Suboxone is medically used to treat opiate addiction. The doctor's treatment successfully treated Applicant's dependence on narcotic painkillers.<sup>14</sup> Following this course of prescription treatment, Applicant quit using all forms of pain medication despite persistent back pain issues, for which he now guardedly uses non-narcotic medications for relief only when needed.

Today, Applicant has been drug-free and withdrawal-symptom-free for five-and-a-half years, since April 2007. In the intervening years, Applicant completed his bachelor's degree while working his way through college, entered a profession, and started his current position, where he is a highly regarded employee. He bought a house, where he now lives a considerable distance from both his hometown and his former college campus. He started a new life there. Applicant's contact with former peers is minimal, incidental only to the fact he remains within the same state of residency. He does not actively seek out the company of past cohorts. Applicant eschews drugs, those who abuse them, and places where they are abused. Applicant is currently contemplating marriage to his girlfriend, who does not tolerate drugs.

Although the successful medical drug treatment he underwent between April and May 2007 ended years ago, Applicant continues to see his treating physician as his general practitioner. That medical doctor noted in September 2011 that Applicant "has done very well, has been free of addiction for several years, and has been fully compliant with me medically. I see no reason to preclude giving him security clearance for his job."<sup>15</sup> More recently, in September 2012, his medical doctor reexamined Applicant and confirmed that Applicant remains free of symptoms indicating opioid dependency and does not need further intervention.<sup>16</sup> Applicant no longer feels a need for drugs. He has no intention to ever use illegal drugs or illegally use prescription drugs in the future.<sup>17</sup>

Since quitting drugs, Applicant has undertaken efforts to improve his mind and body. He spends his free time at home, playing musical instruments and studying electronics. Soon to turn 30, he has started a health and exercise regimen to improve

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<sup>13</sup> Tr. 47.

<sup>14</sup> Applicant's physician uses the term "opioid dependency," indicating an addiction to or compulsion to use opiates. See Ex. 2, Interrogatories, Dr.'s Letter, dated Sep. 2, 2011. Elsewhere, the term "opoid dependence" is used to denote the same condition. Suboxone (buprenorphine) is an approved drug used as part of a medically-assisted therapy to help patients overcome withdrawal symptoms associated with opiate abuse and remain opiate free.

<sup>15</sup> Ex. 2, Interrogatories, Dr.'s Letter, dated Sep.2, 2011).

<sup>16</sup> Ex. A (Physician's letter, dated September 5, 2012).

<sup>17</sup> Tr. 62-63.

his overall health and condition. Otherwise, he devotes his time to his professional life. He has no desire to return to his former ways, preferring to maturely look forward. To that extent, he actively tries to put his past behind him and to not let it hinder his adult aspirations.<sup>18</sup> Applicant is valued at work, where he is considered a dependable and efficient employee.<sup>19</sup> A former professor who has known Applicant since 2006 noted the significant maturation Applicant experienced between 2006 and today.<sup>20</sup> Applicant attributes his success at becoming and remaining drug-free to maturation and a new focus for his life. To underscore his commitment to remaining drug-free, he signed and submitted a Statement of Intent reflecting the wording of AG ¶ 16(b)(4) and declaring his intent not to abuse any drugs in the future, noting that any future drug abuse shall constitute grounds for automatic revocation of any security clearance granted.<sup>21</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>22</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>23</sup>

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<sup>18</sup> Tr. 52.

<sup>19</sup> Ex. B (Letter, dated Sep. 16, 2012).

<sup>20</sup> Ex. C (Letter, dated Sep. 13, 2012).

<sup>21</sup> See Attachment (Statement of Intent), Answer to the SOR.

<sup>22</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>23</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>24</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>25</sup>

## Analysis

### Guideline H - Drug Involvement

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.<sup>26</sup> “Drugs” are defined as mood and behavior altering substances and include 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 inhalants and other substances.<sup>27</sup> “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.<sup>28</sup>

Applicant admitted abusing prescription narcotics during various periods between 1996 and April 2007. He also admitted using marijuana and heroin on multiple occasions between 1998 and 2000. Further, he admitted purchasing, transporting, and sharing illegal drugs with others on various occasions between about 1998 and April 2001. Although he received drug treatment and counseling as a teen, there is no evidence that he was then diagnosed as drug dependent or as a drug abuser. However,

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> AG ¶ 24.

<sup>27</sup> *Id.* at ¶ 24(a)(1-2).

<sup>28</sup> *Id.* at ¶ 24(b).

in 2007, he was diagnosed by his personal physician, who was then managing a Suboxone program, as opioid dependent. Such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*); 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*); and 25(d) (*diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of a drug abuse or drug dependency*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant first became involved with drugs in his early teens. Immaturity and poor influences undermined his chances of success at the two drug counseling programs he attended in his mid-teens. Indeed, bad influences at those programs only made him a more savvy drug abuser. A felony conviction and a brief stint in prison at age 19 may have been an eye opener for him in terms of the law, but it did little to help him face his drug abuse seriously. Within a couple of years, he was again abusing narcotics. However, by early 2007, as he approached 25 years of age, he started to appreciate how narcotics were adversely affecting his life. They were making him unhappy and ruining his academic career, for which he had worked hard to afford tuition and to achieve academically. He then sought the counsel of a medical doctor who enrolled him in a Suboxone treatment program. Through medical intervention and pharmaceutical therapy, he became drug-free.

Applicant has been drug-free without relapse for five-and-a-half years. He has no desire to again abuse drugs. He eschews drugs and those who use them. He continues seeing his treating medical doctor as his general practitioner. That physician expressed confidence that Applicant has overcome his addiction. To complement his drug-free life, Applicant has moved, made new friends, taken up hobbies, and he now focuses on his profession and health. Given his physician's prognosis, Applicant's considerable maturation, and his efforts to move forward with his life, Drug Involvement Mitigating Conditions AG ¶ 26(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*); AG ¶ 26(b)(1) (*disassociation from drug-using associates and contacts*); AG ¶ 26(b)(2) (*changing or avoiding the environment where drugs were used*); and AG ¶ 26(b)(3) (*an appropriate period of abstinence*) apply.

Finally, Applicant credibly articulated his intent not to use drugs again. He similarly gave logical reasons for moving forward with his life and not reverting to his immature abuse of drugs. He complemented these expressions by signing a statement of intent with automatic revocation of clearance for any future drug-related violations. Therefore, AG ¶ 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*) applies.

## **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.<sup>29</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>30</sup>

In this case, Applicant admitted his past drug use (1996-2007), which was discussed above. In addition, he pled guilty to his underage purchase of alcohol in November 2001 and, although the charge was later withdrawn, he was cited for furnishing alcohol to a minor at a college party in 2004. Given these facts, Personal Conduct Disqualifying Condition AG ¶ 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) applies.

The 2001 plea for underage drinking is over a decade old, and the 2004 charge for furnishing liquor to a minor at a college party was withdrawn. Neither is recent. Neither demonstrates either problematic misuse of alcohol today, or a reckless intent to push the limits of the law. Given that Applicant was then an undergraduate student, the incidents seem to be related solely to youthful indiscretion and immaturity. As for the drug use between 1996 and 2007, cross-alleged under Guideline H, the same considerations noted there apply here. The relevant facts previously cited give rise to both Personal Conduct Mitigating Conditions 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it wis unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*); 17(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*); and ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*).

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

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<sup>29</sup> AG ¶ 15.

<sup>30</sup> *Id.*



I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Multiple facts speak in Applicant's favor. He is highly credible and well-educated. He is earnestly seeking to move forward and put his troubled youth behind him. Since successfully quitting drugs over five years ago, he has completed a college degree, found his niche in the professional world, impressed his employer as a valued worker, bought a home, maintained a stable romantic relationship, undertaken new hobbies and interests, and started anew in a town with no nexus to his past.

The Government rightly notes that Applicant had maintained drug-free periods in the past, and that he had previously undergone drug counseling and treatment. It thus argues that Applicant's current period of staying drug-free may be equally transient. However, it is notable that Applicant's current success is the result of a mature, volitional, adult decision. As a teen demonstrating typical teenage rebellion, Applicant was ill-prepared and ill-equipped to appreciate the true dangers of his drug abuse. At 19, after serving time for a felony, he thought he should change his life, but he was still too immature to appreciate the adverse impact drugs and his generally immature behavior were having on his life – beyond the fact his recklessness might have legal repercussions. It was not until when, after working diligently to pay for and excel in college, he realized his personal effort and goals were being compromised by his drug abuse. Nearly 25 at the time, he finally comprehended the impact drugs were having on his life and his hopes for the future. He then contemplated his situation, acknowledged that mere counseling was insufficient for helping him overcome his addiction to narcotics, and sought out medical attention. Through such medical therapy, he overcame his addiction to narcotic painkillers in mid-2007. In short, unlike previous periods of non-drug-use, Applicant's most recent decision to remain drug-free was based on and fortified by a mature and proactive commitment. In addition, he has removed himself from his former milieu, directed his energies in healthier areas, demonstrated considerable maturation, become a responsible homeowner and employee, and is now contemplating marriage.

In light of these considerations, I find that five-and-a-half years of abstinence from drugs sufficiently demonstrates Applicant's commitment and physical ability to remain drug free. I make this finding also noting his lifestyle alterations, his continued consultancy with his treating physician, his demonstrated maturity, his credible testimony and his choice to execute a statement of intent. I have no reasonable doubts that Applicant will again abuse drugs and conclude that both drug involvement and personal conduct security concerns are mitigated. Clearance is granted.

### **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-i: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a-2.c: For Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge