



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ADP Case No. 10-05290  
 )  
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Applicant for Public Trust Position )

**Appearances**

For Government: Carolyn Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2011

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted her Questionnaires for Public Trust Position (SF 85P) on August 8, 2009. On January 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines G (Alcohol Consumption) and H (Drug Involvement), which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a Sensitive Systems Position (ADP-I/II/III). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation), and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense after September 1, 2006.

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant

Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in the Regulation .

Applicant acknowledged receipt of the SOR on January 27, 2011. She answered the SOR in writing on February 16, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on February 22, 2011. Department Counsel was prepared to proceed on April 7, 2011, and I received the case assignment on May 2, 2011, after it was reassigned from another administrative judge who was assigned it originally on April 20, 2011. DOHA issued a Notice of Hearing on May 5, 2011, and I convened the hearing as scheduled on May 27, 2011. The government offered Exhibits (Ex.) 1 through 3, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on June 8, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all factual allegations of the SOR, with explanations. Those admissions are incorporated into these Findings. She also provided additional information to support her request for eligibility for a public trust position.

Applicant is 54 years old, married, and has two daughters and one grandchild. She is a registered nurse and has been since 1985. She works for a defense contractor in the medical services industry, in which job she evaluates medical records of military members and does not treat patients. (Tr. 26, 58, 61; Exhibit 1)

Applicant has a history of drug and alcohol use from 1973 to 2009. (Tr. 26-68; Exhibits 1-3, A, E)

Applicant's drug use started in high school before she graduated in 1975. She used heroin intravenously twice in 1974 and marijuana from 1973 to 1979. Applicant eventually decided she did not like marijuana and ceased its use. She used LSD once in 1974 and mushrooms the same year. Applicant ingested cocaine from 1977 to 1985 when she became pregnant with her first child. Her next experience with drugs was the abuse of prescription medications in 1998 and 1999. Applicant stole prescription medications from patients in the hospital where she worked in 1999. The medications were Percocet, vicodin, and hydrocodone. She abused these medications while at work. She took about 100 pills over the course of a year. In July 2008 Applicant had a back operation and was prescribed pain medications. She did not disclose to her surgeon her prior addiction to medications or illicit drugs. She used these medications until she was ordered to take a urinalysis in January 2009 and subsequently discharged from work for violation of the drug free work contract. (Tr. 23, 26-32, 41, 46, 61-68, 71; Exhibits 1-3; A, E)

Applicant's alcohol use started when she was 14 years old. She drank with high school friends at their homes once every few months. In college, Applicant drank beer every weekend. She drank to intoxication every four months. It took eight to ten drinks for Applicant to become intoxicated. Applicant drank at home and in social settings until 1999. She suffered blackouts. She entered outpatient treatment then, and after discharge from her program she remained sober until 2007, when she resumed drinking with wine. By 2009 she was again identified as an abuser of alcohol, drinking two liters of hard liquor every two days. She hid alcohol in her house so her family would not know that she consumed that much alcohol. Applicant drank to relieve stress and after her family went to sleep each night. (Tr. 20, 24-26, 30, 33, 38, 39; Exhibits 1-3, A, E)

Applicant has participated in two treatment programs. The first program, from 1999 to 2004, resulted from her positive urinalysis for alcohol and drugs. Applicant admitted at that time she was a functioning alcoholic. She was suspended from work for three months and eventually her nursing license was placed on probationary status for five years. Applicant's license was reinstated without conditions, according to her explanation. The first program was an out-patient program with a counselor with whom Applicant met weekly, then semi-monthly, and then monthly during the three-month program. Applicant stated the program was intensive with group meetings every other day. She also had random urinalysis during a five-year process. Applicant was diagnosed as alcohol and drug dependent by her counselor, whose professional credentials are unknown. During the next two years after the initial three-month period, Applicant attended weekly group meetings. She did not have a sponsor while in that program. She ceased attending meetings after two years because Applicant thought she had conquered her problem. In 2007 Applicant resumed drinking wine and later using prescription medications. (Tr. 29, 33-39, 41, 60; Exhibits 1-3, A, E)

Applicant's second treatment program was an inpatient program in February and March 2009 after someone at her hospital reported that she was not functioning properly as a nurse, evidenced in part by sloppy charting. She was ordered to take a urinalysis screening in January 2009, did so, and before the results came back to her supervisors she disclosed the results would be positive. Applicant regards that admission as self-reporting. She was suspended from work in January 2009 when the urinalysis results came back positive. Since 2009 Applicant attends Alcoholics Anonymous (AA) meetings three or four times weekly, meets her sponsor weekly and speaks to her sponsor several times during the week. She has home group meetings every Thursday. Applicant is a sponsor for other alcoholics. Applicant admits she is an alcoholic and there is no cure for her disease. She is candid at work about her problem. Applicant tries to keep her life simple and avoid stress. She does not have alcohol in her home. Applicant has been abstinent from alcohol and drugs for two years and four months as of the date of the hearing. Her sponsor's letter supports this assertion. (Tr. 20, 22, 42-59; Exhibits 1-3, A, E)

Applicant's treatment notes from the inpatient treatment program date from February 2, 2009, to March 19, 2009, when she was discharged. The diagnosis on February 2<sup>nd</sup> was polysubstance dependence. The discharge diagnosis on March 11<sup>th</sup> is again polysubstance dependence. The recommended treatment program after

discharge included three to five AA meetings weekly. The evaluator in the inpatient program attended by Applicant is a licensed clinical social worker with the professional designations of MSSW, MPA, and CSAC. The other entries in the notes track Applicant's progress in discussing her addictions with family members and in the group sessions. (Exhibits 3, E)

Applicant admitted she drove intoxicated when she was drinking. She also admitted she went to work "hung over" but never drunk. (Tr. 44, 45)

Applicant submitted three character letters. Her AA sponsor, her pastor, and a counselor at her recovery program state that Applicant has the willingness and desire to sustain her recovery and abstinence. Her counselor at the recovery program has been in that work for 35 years and stated Applicant is deeply committed to her recovery process and maintains contact with the treatment staff on a regular basis. Applicant's pastor states she participates in church leadership on the church council and as a Sunday school teacher. (Exhibits A, B, D) None of them have observed behavior that would indicate that she is abusing drugs or alcohol. They state her friends and family are committed to helping Applicant in her recovery program.

Applicant submitted her 2009 and 2010 employee evaluations. Her supervisors rate her as meeting or exceeding expectations in each evaluation year. (Exhibit C)

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 [sensitive] 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 ¶ 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 trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 21 expresses the security concern pertaining to Alcohol Consumption:

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant admitted she drove while intoxicated during the years she drank alcohol and went to work “hung over.” Applicant admitted she had “blackouts” in 1999 and earlier because of her alcohol consumption. She also admitted she hid alcohol in her house so her family would not know her usage amounts. Before the inpatient treatment in 2009, Applicant admitted she did not acknowledge she had an alcohol abuse problem and that is why she resumed abusing alcohol in 2007. Applicant was diagnosed as alcohol dependent during her out-patient treatment program in 1999 by her counselor in that program. After her relapse in 2007, and being identified again in 2009 by a urinalysis by her employer, Applicant was diagnosed with polysubstance dependency by a licensed clinical social worker in a recognized alcohol treatment program. AG ¶ 22 (a), (b), (c), (e), and (f) apply to the facts admitted and demonstrated at the hearing.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 23 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

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

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant admits she is an alcoholic. She participates weekly in AA meetings, has a sponsor, and is a sponsor. Applicant has no alcohol in her home. Her sponsor's letter, and two other letters from persons who know her participation in the rehabilitation program, support Applicant's contention that she is abstinent and has the will to remain so. Applicant successfully completed her inpatient program, demonstrated a pattern of abstinence and received a favorable prognosis from a licensed clinical social worker in a recognized alcohol treatment program in 2009. AG ¶ 23 (b) and (d) apply.

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

AG ¶ 24 expresses the security concern pertaining to illegal drugs:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use; and
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program.

Applicant has a history of alcohol and drug abuse, dating back to high school and through her early 20's. The later illegal drug use included prescription medications she stole in 1998 and 1999 from patients at the hospital where she worked, and in 2008 and 2009 medications prescribed for her pain resulting from her back operation in 2008. In 1999 and 2009 she tested positive for illegal substance use. AG ¶ 25 (a) and (b) apply.

Applicant received a diagnosis in March 2009 of polysubstance dependence from a licensed clinical social worker who is a staff member of a recognized drug treatment program. AG ¶ 25 (e) applies.

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 security concerns 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;
  - (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 demonstrates her intention not to abuse drugs in the future. She changed her work environment and reduced her stress from working in a hospital with medications in daily proximity near her to a file evaluation position with a defense contractor. She established a two year and four month current period of abstinence. AG ¶ 26 (b) applies.

Applicant's 2008 and 2009 abuse of prescription drugs occurred after a back operation and the resulting pain. She was prescribed medications that she had abused in 1998 and 1999 because her physician was not told of her prior abuse by Applicant.. The abuse ended in January 2009 when she was identified as abusing drugs through a urinalysis screening, and entered an in-patient treatment program. AG ¶ 26 (c) applies.

Applicant satisfactorily completed a prescribed drug treatment program, including the aftercare requirements without a recurrence of abuse. Her favorable prognosis is from 2009 was not rendered by a medical professional but rather a licensed clinical social worker. AG ¶ 26 (d) has partial application because all the elements are not present in this mitigating condition to give it full effect.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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's past drug and alcohol abuse was very serious. It compelled her to steal prescription medications from patients in the hospital at which she worked in 1999 and led to the probationary status of her nursing license from 1999 to 2004. She indulged herself in drug and alcohol use from

her high school years to 2009, a period of over 30 years, though there were periods in the time when she was abstinent voluntarily, such as when her children were young.

Applicant was a mature, educated, and professionally licensed adult when she engaged in substance abuse during the past 15 years. She relapsed after the out-patient program in 1999 because she did not admit she was an alcoholic and drug dependent. Applicant's motivation for her conduct was pleasure, addiction, and self-indulgence. All of these actions cast doubt on her good judgment and trustworthiness.

Her candid admissions as to her drug and alcohol abuse and weekly participations in AA sessions decrease substantially the potential for pressure, coercion, exploitation, or duress because of her alcohol and drug dependency. She has made permanent behavioral changes following her in-patient rehabilitation. There is a decreased likelihood of recurrence because of the admissions Applicant made to her family and employers, her church members, and other persons in her community who know her.

Applicant's frank, candid, and credible testimony about her dependencies, and her contrite expressions of the effect of her dependencies on herself and family, persuade me sufficiently in her favor.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her alcohol consumption and drug involvement. I conclude the "whole-person" concept for Applicant.

### **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 G:           FOR APPLICANT

Paragraph 2, Guideline H:       FOR APPLICANT

## **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge