



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



In the matter of: )  
)  
) ISCR Case No. 10-09055  
)  
Applicant for Security Clearance )

**Appearances**

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

January 24, 2012

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 10, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 16, 2011, detailing security concerns under Guideline H, drug involvement, and Guideline J, criminal conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on May 24, 2011. She answered the SOR on June 6, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 27, 2011. I received the case assignment on August 3, 2011. DOHA issued a Notice of Hearing on October 7, 2011, and I convened the hearing as scheduled on October 25, 2011. The Government offered exhibits marked as GE 1 through GE 13, which were received and admitted into evidence without objection. Applicant and four witnesses testified. She submitted exhibits marked as AE A through AE V, which were received and admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on November 1, 2011. I held the record open until November 9, 2011, for Applicant to submit additional matters, including previously submitted letters of recommendation with signatures.<sup>2</sup> Applicant timely submitted AE W - AE FF, which were received and admitted without objection. The record closed on November 9, 2011.

## **Procedural Ruling**

### **Notice**

Applicant received the hearing notice on October 18, 2011, less than 15 days before the hearing. (File) I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived her right to the 15-day notice. (Tr. 10)

## **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.f, 2.a-2.c, and 2.e-2.h of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶ 2.d and partially denied the factual allegations in ¶ 2.i of the SOR.<sup>3</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

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<sup>1</sup>A number of these exhibits were unsigned letters of recommendation. Signatures were requested, and Applicant submitted the letters with signatures post-hearing.

<sup>2</sup>The following exhibits now include a signed document: AE B, AE D, AE I, AE J, and AE Q. AE O remains unsigned.

<sup>3</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Applicant, who is 38 years old, works as an engineering technician and data collector for a Department of Defense contractor. She began her current employment in March 2009. Her supervisors give her good performance reviews and describe her as a highly motivated worker, upon whom they can rely.<sup>4</sup>

Applicant married twice and divorced twice. She has a 19-year-old son from her first marriage and an 18-year-old daughter from another relationship. She also has a one-year-old granddaughter, who is under her care. The State, in which she lives, determined that she provided a safe home environment for her granddaughter and granted her full custodial rights in July 2011. Her daughter is the mother of her granddaughter. Her daughter is immature and involved with drugs, and thus, unable to properly care for the granddaughter.<sup>5</sup>

Applicant experimented with marijuana on a dare at age 9. When she was a sophomore in high school, she dropped out of high school. At age 16, she began using marijuana. She met her first husband at age 17. He used methamphetamines recreationally and introduced her to this drug. She began using the drug whenever she could obtain it. Her marriage to her first husband lasted two years. He has full custody of their son, and to her knowledge, her first husband has not used any illegal drugs in the last 15 years or more.<sup>6</sup>

In 1992, Applicant met R.R., the father of her daughter. She described R.R. as a full-time criminal, whose criminal enterprises included buying and selling drugs. During her on-and-off nine-year relationship with him, she used drugs daily. This relationship led to her first arrest in 1992 for use of a dangerous drug, possession of marijuana, possession of stolen property, and possession of paraphernalia. The court found her guilty of use of a dangerous drug, sentenced her to 24 months probation, and fined her. At the same time, the police charged R.R. with multiple felonies, including possession and sale of drugs, and trafficking in stolen property. The court convicted R.R. and sentenced him to 17 years in jail. He appealed and was released after serving 2 ½ years of his sentence.<sup>7</sup>

Between 1994 and 2001, the police arrested Applicant six times for drug-related offenses.<sup>8</sup> The court dismissed the charges filed against her on May 13, 1999 and May

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<sup>4</sup>GE 1; AE BB - AA EE.

<sup>5</sup>GE 1; AE V; Tr. 110.

<sup>6</sup>GE 1; GE 2; Tr. 111-113.

<sup>7</sup>GE 2; GE 3; GE 4; Tr. 114-115.

<sup>8</sup>SOR ¶ 1.d alleges that Applicant was charged with possession of a weapon. The Federal Bureau of Investigation criminal records report does not reflect such a charge, and the court records in the case record do not show that Applicant was charged with possession of a weapon. In two cases, her co-defendants were charged with possession of a weapon and found guilty. GE 3; GE 4; GE 5.

30, 1999, with prejudice (the prosecution could not file the case again) and on August 5, 2000, without prejudice (the prosecution could file these charges again, but did not). As to the remaining three arrests for drug-related criminal charges, the court gave her probation and fined her. Applicant acknowledged these arrests on her E-QIP and admitted that she used methamphetamines during this time.<sup>9</sup>

During this same period of time, the court also directed Applicant to participate in drug counseling on two different occasions. In 1994, she received in-patient treatment for her methamphetamine use, after which the court placed her on intensive probation. She completed the program, but returned to her drug use. In 2001, she again enrolled in an in-patient drug rehabilitation program and attended Narcotics Anonymous, as required by the court. During this time, she worked and performed community service. After her release from probation, with the help of another person, she opened the first half-way house in her area for women in drug recovery. She received a community service award in 2003 for her work with the half-way house.<sup>10</sup>

While attending Narcotics Anonymous, Applicant met her second husband, a recovering addict. They married in 2003. He started using pain medication, then returned to drinking and using methamphetamines. She returned to using methamphetamines with him after a two-year absence. In February 2004, the police stopped them and found methamphetamines in her pocket and marijuana in his pocket. The police arrested them.<sup>11</sup>

Six months later, while out on bail, Applicant's then boyfriend used her car and drove to a local department store, where he stole some items. The store security called the police, who attempted to arrest her boyfriend. Her boyfriend used her car in a high speed chase, which ended in his arrest at another friend's house where Applicant was visiting. Because there was an active warrant on her, the police searched her purse and found drugs. The police arrested her and again charged her with drug-related crimes. The police charged her boyfriend with endangerment, reckless driving, and other crimes.<sup>12</sup>

In November 2004, Applicant pled guilty to three drug-related charges connected with both cases. The court sentenced her to five years in prison. She began her prison sentence in November 2004, and the prison paroled her in September 2008. She completed her parole in 2009. While in prison, Applicant divorced her second husband. She does not have any contact with him.<sup>13</sup>

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<sup>9</sup>GE 1; GE 2; GE 3; GE 5-GE 12.

<sup>10</sup>GE 2; AE Y; AE Z; AE AA; Tr. 120, 159.

<sup>11</sup>GE 2; GE 12; Tr. 119-122.

<sup>12</sup>GE 2; Tr. 123-125, 140.

<sup>13</sup>GE 1; GE 2; GE 12; AE S; Tr. 122.

Shortly after her arrival in prison, Applicant realized that she needed to take care of herself and that no one else would take care of her. During her incarceration, Applicant learned about a concept used to mimic outside society inside her prison. Through this concept, she learned how rewards and incentives were earned in prison. She investigated the prison programs offered, which would help her earn money to purchase items in the prison store and which would help her with self improvement. She was not eligible for incentives, such as a good paying job, lower security, and more recreational time, unless she made better decisions. Good behavior, not discipline, determined what rewards or incentives she would receive. She decided that she wanted to work in the best paying job in her prison, which was as a telemarketer. To do this, she completed her GED education and passed her GED test. She received her high school diploma and successfully worked as a telemarketer. She served on a prison committee, which did fund-raising. The profits from the committee's fund-raising went to women's shelters or to victims of disasters. Applicant used her time in prison to improve herself through education and work. Just prior to her release from prison, a journalist interviewed Applicant about her prison experience and her plans for her future. The journalist published her story, which references Applicant and her drug history.<sup>14</sup>

Upon her release from prison in 2008, Applicant lived with her parents until she could support herself. In compliance with the requirements of her parole, she enrolled in a counseling and treatment program, which she successfully completed in 2009, and she attended Narcotics Anonymous until October 2010. She no longer attends Narcotics Anonymous on a regular basis because she wants to move forward with her life and not be surrounded by recovering drug addicts. If she needs to attend a meeting, she will go. Her sister is a positive force in her life. Her extended family, close friends at work, long-time high school friend, and friends from recovery all provide a support system for her.<sup>15</sup>

During her time in prison, Applicant received one disciplinary action for not following an order. Applicant has not been arrested since her release from prison three years ago, nor has she used drugs. When asked by Department Counsel if she had any concerns about a relapse to her past drug use, Applicant responded: "I can honestly say that I'm done." Applicant expressed an intent not to use drugs in the future at the hearing and signed a letter agreeing to immediately resign her job should she be involved in criminal activity or illegal drug use. She agreed to continue disassociating with individuals in her past who choose to engage in criminal activities and illegal drug use. Her company has a no tolerance drug policy. She has not been subject to drug testing at work, but volunteered to be drug tested at anytime.<sup>16</sup>

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<sup>14</sup>AE FF; Tr. 126-130.

<sup>15</sup>GE 2; AE T; AE U; AE W; Tr. 148-151.

<sup>16</sup>AE S; AE X; Tr. 156-159.

Since her release from prison in September 2008, Applicant has chosen to stay away from her previous friends who use drugs, a fact verified by long-term friends. She has no contact with her second husband. She refuses to be in the same room with her brother, a fact verified by her sister, because he continues to be involved in his drug lifestyle. She discovered that her daughter brought marijuana into her apartment in May 2011. Since her daughter was 18 years old, Applicant banned her daughter from her apartment. Applicant also gained custody of her granddaughter because of her daughter's drug use. Applicant will support her daughter's non-use of drugs, but will not support her daughter in using drugs.<sup>17</sup>

Applicant renewed and rebuilt her relationship with her son since leaving prison. They have visited with each other, despite living many miles apart. She has also developed a friendship with his father, her former husband. Concerning R.R., Applicant still talks with him periodically about their daughter and their granddaughter. R.R. is serving his third prison term (42 years) in a state many miles from her. She has no desire for any personal relationship with him.<sup>18</sup>

Applicant's immediate supervisor and her group manager wrote letters of recommendation and testified on her behalf. Both know she served time in prison for drug-related charges, but do not know all the specifics of her past criminal conduct and drug use, as they do not believe they need to know this information. Both also confirm that their employer has a random drug testing policy. Her supervisor describes her as an employee upon whom she can rely. Applicant does all work requested of her to the best of her abilities. Her supervisor trusts her and her peers respect her.<sup>19</sup> Her supervisor enjoys working with her. When questioned about Applicant's extensive past drug history, her supervisor stated that she did not feel that Applicant's past made a difference, as Applicant has always been a professional and has not demonstrated questionable behavior. Her group manager considers Applicant trustworthy and a model employee. Based on his knowledge of the responsibilities for holding a security clearance, he recommends Applicant for a security clearance.<sup>20</sup>

Applicant submitted seven letters of recommendation from co-workers at her current job. Each described her as a hard worker and a person upon which they can rely. She performs her job exceedingly well and continues to improve her job skills. She is seen as an asset to the organization. None of these individuals is aware of her past criminal and drug conduct.<sup>21</sup>

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<sup>17</sup>AE B; AE H; AE K; AE L; Tr. 73-74, 78-82, 89-92,97-99,132-137.

<sup>18</sup>AE A; Tr. 145-147.

<sup>19</sup>On two occasions, Applicant reported concerns about co-worker behavior to her supervisor. Tr. 42-44.

<sup>20</sup>AE F; AE N; Tr. 42-69.

<sup>21</sup>AE C - AE E; AE G; AE O - AE Q.

Applicant's younger sister wrote a letter of recommendation and testified on Applicant's behalf. They talk with each other several times a week and are best friends. Over the last seven years, Applicant's sister observed tremendous changes in Applicant and stated that the changes are the result of her time in prison. Since Applicant has returned home from prison, she has not questioned her behavior. Applicant has strong beliefs in her current life and will not jeopardize it. Applicant does not associate or communicate with anyone of questionable behavior. As mentioned earlier, Applicant's sister indicated that Applicant has no relationship with their brother because he has extremely questionable behavior related to his drug use. Applicant's sister discussed the intense process required for Applicant to obtain custody of her granddaughter because she worked through the same process when she adopted their brother's children. In the last seven years, she has not questioned Applicant's behavior and firmly believes that Applicant will not return to her past life. Applicant has not expressed any concern to her that she might return to her drug use. Applicant successfully completed her drug treatment program after leaving prison and is not tolerant of her daughter's use of marijuana or their brother's drug use.<sup>22</sup>

A long-time family friend and the stepmother of R.R. wrote a letter of recommendation and testified on behalf of Applicant. She has known Applicant since Applicant was a teenager and is fully aware of Applicant's past drug use and criminal conduct. She considers Applicant a daughter. Applicant is not the same person she knew as a teenager. She has "turned her life around." While in prison, Applicant learned to make good choices for herself. Applicant has matured into a strong, capable and reliable person. She has no concerns that Applicant will return to using drugs, after discussions with Applicant on this subject. Applicant has separated herself from drug users and her past.<sup>23</sup>

Applicant's long-time high school friend wrote a letter of recommendation, confirming that Applicant has severed her ties with the people from her past and that Applicant does not tolerate illegal activity of any type in her current life. A couple, who have known Applicant for 20 years, also attest to the changes she made in her life in recent years, as do her mother and father. Finally, a law enforcement officer, who has known her and her family for 25 years, praises her for how she has changed her life after making bad decisions in the past. He describes her as a hard worker, who is committed to her family and her job.<sup>24</sup>

Applicant admitted that she entered drug rehabilitation programs in 1993 and 2002. She did not use methamphetamines while in rehabilitation. In 1993, she returned to her drug use as soon as she completed the program. After the second time, she remained drug free for over two years. Applicant completed her most recent drug

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<sup>22</sup>AE H; Tr. 86-106.

<sup>23</sup>AE M; Tr. 71-82.

<sup>24</sup>AE B; AE I - AE L.

rehabilitation program in 2009. She stated that she was formally diagnosed with a drug problem and that the last program indicated the she had a good prognosis for recovery. The record does not contain any medical records showing this information. When asked why she did not believe that she would relapse this time, Applicant stated that her earlier rehabilitation efforts were done to please others, such as the court, and that her current decision to remain drug free is for herself. She is not trying to please others; rather, she wants her new life and does not intend to return to using drugs. Applicant is not proud of her earlier life, but she is proud of where she is now.<sup>25</sup>

## **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 list potentially disqualifying conditions and mitigating conditions, which are used 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 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 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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

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<sup>25</sup>AE U; AE W; Tr. 147-150, 158.



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.

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 H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to 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.

(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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

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

From 1990 until 2002 and from 2003 until July 2004, Applicant used methamphetamines, an illegal drug, on a regular basis, often daily. To use methamphetamines, she had to possess the drug. Under the facts of this case, AG ¶¶ 25(a) and 25(c) apply. Applicant testified that she had been diagnosed as a drug addict, but the record does not contain a medical report or record showing this diagnosis by a qualified medical professional or licensed social worker or the qualifications of the medical professional or licensed social worker. AG ¶¶ 25(d) and 25(e) are not raised.

AG ¶ 26 provides conditions that could mitigate security concerns. I have considered all the mitigating conditions, and especially the following:

(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; 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 twice entered drug rehabilitation programs and twice relapsed. After her incarceration in 2004, Applicant began making better decisions for herself on many levels, including a decision not to use methamphetamines. Upon her release from prison, she successfully completed a third drug rehabilitation program. For seven years, she has not used methamphetamines or any other illegal and destructive drug. She continues to adhere to her decision to avoid drug use. She no longer associates with drug-users and stays away from drug environments. She refuses to associate with her brother because of his continuing drug-related behavior. She removed her daughter from her apartment when she found marijuana in her daughter's possession and sought custodial care of her granddaughter because of her daughter's issues, including drug use. Her sister and long-time friends verified the substantial changes in Applicant's attitude and behavior towards drugs. They also substantiate her refusal to associate with her brother and her decision to remove her daughter from her apartment.

Applicant signed a letter of intent and agreed to the immediate loss of her job should she use illegal drugs or be involved in criminal activity. With her long history of drug use, this act alone would not be sufficient to mitigate the Government's security concerns. However, in this case, her signed intent coupled with her seven-year abstinence, disassociation with drug-users, significant change in behavior and attitude, and the decision of the State to award her custodial care of her granddaughter supports mitigation of the Government's security concerns. Applicant has committed herself to her new, drug-free life. AG ¶ 26(b)(1)-(4) applies. Although Applicant has successfully completed her most recent drug program, a complete medical record and report, including professional qualifications, are not part of this record. Thus, AG ¶ 26(d) is not applicable.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining 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."

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.<sup>26</sup>

Applicant was arrested nine times between 1992 and 2004 and charged with drug-related offenses. Following her two arrests in 2004, she spent four years in prison. She successfully completed the requirements of her parole in 2009. AG ¶¶ 31(a) and 31(c) apply under the facts of this case.

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<sup>26</sup>In ISCR Case No. 07-13890 (App. Bd. Jan. 27, 2009), the Appeal Board discussed AG ¶ 32 (f) "conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year." The requirements set forth in Guideline J AG [para.] 32(f) reflect legislation, the Smith Amendment (10 U.S.C. 986), which is no longer in effect. It was repealed on January 28, 2008 by the Bond Amendment (Sec. 3002 to 50 U.S.C. 435b). The Bond Amendment continues the requirement for disqualification for persons who were sentenced to and served imprisonment for more than a year unless the individual receives a waiver for merit. However, this disqualification now only applies to prohibit favorable clearance adjudications that would provide access to Special Access Programs (SAP), Restricted Data (RD), or other information commonly referred to as Sensitive Compartmented Information (SCI) for covered individuals. The statutory modification ended the former Smith Amendment's applicability as to adjudications of "collateral" security clearances. The SOR in Applicant's case was issued on June 23, 2008, subsequent to the enactment [\*8] of the Bond Amendment. It was also issued after the Under Secretary of Defense's Interim Guidance for the implementation of the Bond Amendment. Accordingly, the Smith Amendment-related provision set forth at Guideline J AG [para.] 32(f) does not apply in Applicant's case.

AG ¶ 32 provides conditions that could mitigate security concerns. I have considered all the mitigating conditions, and especially the following:

(a) 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;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has an extensive criminal past, all related to her use of methamphetamines. Her last arrest occurred in July 2004, more than seven years ago. During her four years in prison, Applicant stayed out of criminal trouble and has remained free of criminal behavior since her release from prison in September 2008. Since her arrest and incarceration, Applicant has completed her high school education and some college courses. She learned skills which provided her with employment. Her current employer and co-workers describe her as a trusted employee and hard worker upon whom they can rely. Shortly after arriving in prison, Applicant quickly decided to learn to make good decisions and not bad decisions. After leaving prison, she continues to make good decisions about all aspects of her life. She has decided that her drug and criminal activities are her past and not her future. Applicant has changed her behavior and her attitude about drugs, and its related criminal conduct. She is not proud of her past drug use and criminal conduct, but she is proud of her new life. She has mitigated the Government's security concerns under AG ¶ 32(d).

Even if the SOR allegations are not mitigated under Guidelines H and J, they are mitigated under the Whole-Person Concept, *infra*.

### **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 an 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant dropped out of high school. Within a year, she began experimenting with methamphetamines. In a short time, her use of methamphetamines changed from experimental to regular to daily usage. From 1992 until 2001, Applicant associated with drug users. Her boyfriend not only used drugs, but regularly conducted various criminal enterprises, which resulted in jail time for him. Although she entered a drug counseling program in 1992, she did not seriously commit to no future drug use. In fact, as soon as she could, she returned to her drug use. In 2001, she enrolled in a second drug counseling and rehabilitation program. For the next two years, she remained drug free and appeared committed to remaining drug free. During her sobriety, she also worked to establish a women's shelter for which she received an award. She met her second husband in drug rehabilitation and married him in 2003. He returned to drug use and so did she because in her words, her sobriety was to please others and not for herself improvement. In 2004, the police twice arrested her for drug possession and use, as well as drug paraphernalia. Her last two arrests resulted in her incarceration in prison for nearly four years.

Shortly after arriving in prison, Applicant finally understood that she alone was responsible for her conduct and her well-being. She learned about the positive and negative aspects of life in prison. She realized that rewards and incentives were given for good decisions, not poor decisions. The first decision she made in prison was to obtain her GED, as she wanted to work the best available job in prison. She completed her GED and obtained this job. During her four years in prison, she had one minor disciplinary action for failing to follow an order. She made daily choices to stay away from negative behavior, from drugs, and to avail herself of the programs and activities which would help her improve herself. These decisions showed her a new way to consider life decisions after she left prison. Since her discharge from prison more than three years ago, she has continued to make good decisions about her lifestyle. She stays away from her former drug associates and drug life style. She enjoys her job and

her ability to live a drug-free life. She has no desire to return to her old lifestyle, a life of which she is not proud. Her current decision to remain drug-free is for her betterment and not to please others.

Her direct supervisor and second level manager testified and wrote letters of recommendation on her behalf. Both are aware of her past drug use and criminal conduct, including her prison time. Neither consider her past as a detriment to her holding a security clearance because they have observed her in the work environment. They praise her work performance and abilities to work with co-workers. Her sister and daughter's grandmother provided credible and convincing testimony about Applicant's tremendous change following her time in prison. Both agreed that drugs and criminal activity are no longer a part of her life and will not be a part of her life in the future. A high school friend agreed with them in a letter of recommendation. Several co-workers wrote letters of recommendation based on their observances of her at the worksite. Her co-workers do not indicate any knowledge of her past drug history and past arrests. Thus, the letters of recommendation from her co-workers are given limited weight.

Applicant has been awarded custodial care of her granddaughter by the State in which she lives because her daughter is not currently capable of caring for her daughter. Applicant will not allow her daughter in her home because her daughter is involved with marijuana. She no longer associates with her second husband or other drug users. She will not go near or be in the same room as her brother because of his drug life-style. She focuses on her work and caring for her granddaughter. In weighing all the evidence of record which shows an extensive past history of drug use and related criminal conduct and a complete turnaround in Applicant's behavior, attitude, and lifestyle, I find that Applicant has rehabilitated her life, and that she has mitigated the Government's security concerns for the reasons mentioned above.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her drug involvement and criminal conduct under Guidelines H and J.

### **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.f:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.i:	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.

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MARY E. HENRY  
Administrative Judge