



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



In the matter of: )  
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----- ) ISCR Case No. 11-07808  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

01/16/2014

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his security clearance to work in the defense industry. He presented sufficient evidence of reform and rehabilitation to mitigate his drug abuse. As discussed below, this case is decided for Applicant.

**Statement of the Case**

On July 3, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the

national interest to grant him access to classified information.<sup>1</sup> The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline H for drug involvement.

Applicant timely answered the SOR, but he did not request a hearing. Department Counsel made a timely request for a hearing on September 11, 2013.<sup>2</sup> The case was assigned to me September 18, 2013. The hearing was scheduled for October 8, 2013, but was cancelled due to the shutdown of the federal government. The case was rescheduled and heard on November 19, 2013. The transcript (Tr.) was received November 27, 2013.

### **Findings of Fact**

The SOR, in general, alleged a history of drug abuse consisting of misuse of prescription drugs and use of an illegal drug, both of which occurred while Applicant held a security clearance. He admitted the SOR allegations in his answer. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 34-year-old employee of a federal contractor. He is married, and his wife is a stay-at-home mom to three minor children. His educational background includes completing high school and technical school, where he received a diploma for automotive technology. He has been continuously employed for many years. He began working in the defense industry in 2004, and he was granted a security clearance in 2005. He is currently employed as a heavy equipment operator and mechanic at a U.S. military base. He enjoys his work and he desires to continue his current employment. The available documentary information shows he has a good employment record.<sup>3</sup>

Applicant is seeking to retain the security clearance previously granted to him. To that end, he submitted a security clearance application in February 2011.<sup>4</sup> In the application he disclosed a history of drug abuse consisting of misuse of prescription drugs and use of an illegal drug, both of which occurred while holding a security clearance.<sup>5</sup> He further discussed his drug abuse during an April 2011 interview

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Directive, Enclosure 3, ¶ E3.1.7.

<sup>3</sup> Exhibits F, G, H, I, and J.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 1 at 25–26.

conducted for his background investigation as well as in response to written interrogatories in April 2012.<sup>6</sup> He also provided about 150 pages of medical and other records in April 2013.<sup>7</sup>

Applicant's history of drug abuse consists of the following:

1. He became addicted to hydrocodone (also known by the brand name Lortab), a narcotic pain reliever he was prescribed and used over a period of several years due to injuring his neck in an all-terrain vehicle (ATV) accident in 2002.
2. He misused and abused hydrocodone by using more than was prescribed, which led him to obtain the drug from others, including buying it off the street.
3. His abuse peaked in 2010, when, at times, he was taking between 30 and 50 ten-milligram tablets daily as opposed to the prescribed rate of four tablets daily.
4. Recognizing he had a problem, he sought help from his company's employee-assistance program (EAP) in August 2010.
5. As a result, he was hospitalized for dependence on prescription opiates.
6. He was also diagnosed with depression, and his mood disorder improved with his overall clinical improvement.
7. He successfully detoxed off the opiates, and he was prescribed another medication for his chronic pain.
8. He was discharged from the hospital, and he then completed a 30-day inpatient rehabilitation program during August–September 2010.<sup>8</sup>
9. A few months later in November 2010, he used crystal methamphetamine by smoking it with a pipe; he did so when he was presented with the illegal drug by a former acquaintance he met during the rehabilitation program.
10. He used crystal methamphetamine again in December 2010; on this occasion he was alone and smoked the remains from the previous usage.
11. He denies any other use of illegal drugs, including marijuana.

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<sup>6</sup> Exhibit 3.

<sup>7</sup> Exhibit 4.

<sup>8</sup> Exhibit B.

12. In January 2011, the police arrested him for the misdemeanor offenses of driving under the influence of a drug (DUID), passing in a no-passing lane, resisting arrest, and speeding 11 mph over the limit.
13. The incident occurred during the evening when he was running an unexpected family errand after taking the prescribed drug Ambien.
14. The incident was disposed of in municipal court;<sup>9</sup> he received a deferred sentence on the DUID offense and he pleaded guilty to the other offenses.
15. As a result, he was required to complete six weeks of outpatient substance abuse treatment<sup>10</sup> and attend Narcotics Anonymous once a week for six weeks.
16. He completed those tasks and the DUID offense was dismissed in September 2011.
17. Applicant took a pre-employment drug test in May 2011, when he began working for his current employer.<sup>11</sup>
18. The result of the test is not documented, but presumably a positive drug test would have resulted in an adverse information report to security officials.

At the hearing, I found Applicant to be sincere, contrite, and remorseful. I also found that Applicant understands the seriousness of his drug abuse and he accepts responsibility for, in his words, “messing up.”<sup>12</sup> And I found his testimony credible. He explained that his illegal drug use in late 2010 took place after he completed inpatient treatment, and after he had learned that his spouse had been unfaithful to him over a period of years. He described it as a low point in his life, and he attributed his illegal drug use to his marital problems, in part. He and his wife have since reconciled and remain married. He also attributed his illegal drug use to a lapse of judgment, a lapse that has caused him shame and embarrassment. He stated that he has no intention of engaging in future drug abuse, and he submitted a signed statement of intent with automatic revocation of clearance for any violation to demonstrate his intent.<sup>13</sup>

Applicant has been under the care of a board-certified psychiatrist (who practices in the fields of chemical dependency, and child, adolescent, and adult psychiatry) since

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<sup>9</sup> Exhibits 4 and D.

<sup>10</sup> Exhibit C.

<sup>11</sup> Exhibit L.

<sup>12</sup> Tr. 68.

<sup>13</sup> Exhibit E.

his hospital admission in August 2010.<sup>14</sup> The psychiatrist is also a retired colonel from the U.S. military. In his August 2013 letter, the psychiatrist summarized the history of Applicant's case. The psychiatrist noted that since Applicant's discharge, he has functioned at a high level and been compliant. The psychiatrist sees Applicant every three months as an outpatient, and Applicant has been prescribed another medication to manage his chronic pain without exposure to the risk of returning to the use of hydrocodone or other potent opiates. The psychiatrist made the following diagnosis of Applicant:

Axis I:	Opiate Dependence in full remission
Axis II:	Major Depression in full remission
Axis III:	Cervical trauma secondary to ATV accident and chronic pain
Axis IV:	Psycho-social Stressors: Minimal
Axis V:	Global Assessment of Functioning: Current – 70.

The psychiatrist also stated that it was his opinion that Applicant's risk for a relapse is "extremely low."<sup>15</sup>

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>16</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>17</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>18</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>19</sup>

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<sup>14</sup> Exhibit A.

<sup>15</sup> Exhibit A at 2.

<sup>16</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>17</sup> 484 U.S. at 531.

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>20</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>21</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>22</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>24</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>25</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>26</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

## Discussion

Under Guideline H,<sup>27</sup> the security concern is that the use of an illegal drug, or misuse of a prescription drug, raises questions about a person's judgment, reliability, and trustworthiness. In this context, the term drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction."<sup>28</sup> The guideline also expresses a concern that drug involvement may call into question a person's ability or willingness to follow laws, rules, and regulations.

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<sup>20</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>26</sup> Executive Order 10865, § 7.

<sup>27</sup> AG ¶¶ 24–26 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>28</sup> AG ¶ 24(b).

Here, the evidence is sufficient to establish a security concern based on Applicant's history of drug abuse.<sup>29</sup> In light of the evidence, I have considered the following disqualifying conditions as most pertinent:

AG ¶ 25(a) any drug abuse;<sup>30</sup>

AG ¶ 25(c) illegal drug possession;

AG ¶ 25(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and

AG ¶ 25(g) any illegal drug use after being granted a security clearance.

The evidence shows he engaged in drug abuse consisting of misuse of prescription drugs and use of an illegal drug, both of which occurred while holding a security clearance. His drug abuse during the 2010–2011 period was both unlawful and troubling. His drug abuse while holding a security clearance is a cause of serious concern. And his drug abuse reflects poorly on his judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations. With that said, two observations are in order. First, his misuse of hydrocodone happened during medical treatment for his chronic pain. And second, the two incidents of crystal methamphetamine usage were aberrational or situational or both in nature.

There are four mitigating conditions to consider under Guideline H.<sup>31</sup> In light of the evidence in this case, AG ¶ 26(b) is most pertinent because Applicant has demonstrated that he does not intend to abuse drugs in the future. I reach this conclusion for several reasons: (1) he no longer associates with the acquaintance with whom he used crystal methamphetamine; (2) his last use of an illegal drug was in December 2010, and his last incidence of drug abuse (Ambien) was in January 2011, which is an appropriate period of abstinence; (3) his submission of the signed statement of intent, which is certainly probative evidence; and (4) his ongoing medical care from a psychiatrist who is monitoring the treatment of Applicant's chronic pain. The same psychiatrist opined that Applicant's opiate dependence is in full remission and assessed the risk of a relapse as extremely low.

In addition, Applicant receives credit for his willingness to self-refer to his company's EAP and seek treatment. He also receives credit for disclosing his drug abuse in his security clearance application and during the security clearance process.

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<sup>29</sup> AG ¶ 25(a).

<sup>30</sup> Under AG ¶ 24(b), drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

<sup>31</sup> AG ¶ 26(a)–(d).

By doing those things, Applicant did what is expected of a person who is currently eligible for access to classified information.<sup>32</sup> Taken together, along with the other facts and circumstances of this case, I am persuaded that his drug abuse has ended, it is safely in the past, and it will not recur.

Applicant's history of drug abuse does not justify current doubt about his judgment, reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I considered the whole-person concept.<sup>33</sup> I also weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline H: For Applicant

Subparagraphs 1.a–1.e: For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard  
Administrative Judge

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<sup>32</sup> Directive, Enclosure 2, ¶ 2(e).

<sup>33</sup> AG ¶ 2(a)(1)–(9).