



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-13331
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

06/24/2014

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused drugs as a youth, including marijuana, Percocet, and Vicodin. In 1980, at age 20, he “sniffed” cocaine on a couple of occasions, and he abused Oxycontin. He developed an addiction to Vicodin after being prescribed the drug for pain in 2006 and 2007. He also took Vicodin prescribed for family members and friends when he had none available. Applicant has not used any Vicodin since he began treatment with Suboxone in 2007, and he does not intend to abuse any illegal or non-prescribed drug in the future. Allegations of regular abuse of cocaine from 1977 to 2006 and falsification of his security clearance application and interrogatories are unsubstantiated. Clearance is granted.

**Statement of the Case**

On February 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline E, Personal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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.

Applicant answered the SOR allegations on March 31, 2014. He requested a decision based on the written record without a hearing. On April 29, 2014, the Government requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge pursuant to paragraph E3.1.7 of the Directive. The Government provided discovery to Applicant by letter dated May 11, 2014. On May 13, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 14, 2014, I scheduled a hearing for June 4, 2014.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) were admitted into evidence. Medical records were admitted as GE 3 over Applicant's objection to the accuracy of some of the information. Five Applicant exhibits (AEs A-E) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 16, 2014.

### **Summary of SOR Allegations**

The SOR alleges under Guideline E that Applicant regularly used cocaine from approximately 1977 to at least 2006 (SOR 1.a) and illegally acquired Vicodin that had been prescribed to others on various occasions between 2006 and 2007 (SOR 1.b). In addition, Applicant is alleged to have falsified his July 2011 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing any cocaine abuse in response to whether he illegally used any controlled substances in the last seven years (SOR 1.c). Applicant is also alleged to have falsified his January 2013 response to interrogatories by not disclosing that he regularly used cocaine from approximately 1977 to at least 2006 (SOR 1.d).

When he answered the SOR allegations, Applicant admitted only the illegal acquisition of Vicodin (SOR 1.b). In a detailed response, Applicant "strongly" denied that he used cocaine on a regular basis over the years alleged. He cited a language barrier between him and his physicians, which could have caused erroneous statements in his medical records. Applicant denied the alleged falsifications.

### **Findings of Fact**

Applicant's admission to illegally obtaining Vicodin on occasion between 2006 and 2007 is accepted and incorporated as a finding of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 53-year-old machinist, who has worked for the same defense contractor since January 1994. A high school graduate, he obtained training as an

electronics technician from 1984 to 1986. Applicant was granted a DOD confidential security clearance around 1994. (GE 1.)

Applicant and his spouse have been separated since August 2009. His spouse has a grown daughter from a previous relationship. Applicant did not adopt his stepdaughter, who was seven years old at the time of his marriage to her mother, although he considers her to be his daughter. Applicant and his girlfriend have been cohabiting since September 2010. (GEs 1, 2.)

Applicant began drinking beer and smoking marijuana at age 12. At age 15, he used Percocet. Two years later, he used Vicodin, although apparently those narcotics were prescribed for him. (Tr. 37.) After a period of sobriety, he tried cocaine once or twice at age 20, around 1980. (Tr. 33, 38.) In 1982, he used hallucinogenic mushrooms once. (Tr. 40.) Applicant continued to use alcohol, at times to abusive levels (three driving under the influence arrests between 1981 and 1984 and a fourth in 2000), but he denies any abuse of a controlled drug after 1982 until 2006. (GEs 2, 3; Tr. 35.)

Around April 2006, Applicant was prescribed Vicodin, an opioid analgesic, for pain from a chronic skin condition. He began abusing his prescription, taking more than the prescribed dosage, and also obtaining the drug on occasion from family members and friends for whom the drug had been prescribed. By February 2007, his use of Vicodin had increased from several pills a week to three or four pills a day. He estimates that he took a total of 200 Vicodin pills before voluntarily seeking treatment for his drug addiction in February 2007. (GEs 1, 2.)

Applicant was referred by his primary care physician for Suboxone (buprenorphine) treatment for his opiate addiction. Around February 2007, Applicant stopped using Vicodin and began taking Suboxone under the care of a physician. (GEs 1-3.) In mid-May 2010, Applicant changed to his current Suboxone clinic. He asserts it was because this physician accepted insurance (GE 3; Tr. 32), although the evidence shows that clinic patients were required to pay upfront for visits and drug screens.<sup>1</sup> (GE 3.) On his intake to the clinic on May 18, 2010, Applicant reported that he had been in outpatient Suboxone treatment since 2008. Handwritten notes indicate about Applicant's substance abuse history: "Age 12 marijuana, Alc, acid; 15 Percocet; 16 Vicodin; 18 Alc—quit Alc 1992; 20 cocaine sniff, Oxycontin [illegible]." In his typed summary, Applicant's treating physician at the clinic characterized Applicant's substance abuse history, as follows:

49-year-old white male with a history of substance abuse since the age of 12 when he used marijuana and ETOH. When he was 15 he used Percocet, age of 17 Vicodin, age of 18 continues to drink in excess. He had some sobriety then went back to cocaine alcohol and some sniffing of Oxycontin together with Methadone. Patient is interested to be sober because of his current life. He has no legal issues. Patient is attending group meetings and is not in counseling.

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<sup>1</sup> The clinic's policy required payment in full at the time of the office visit, but the clinic would submit insurance claims on Applicant's behalf. (GE 3.)

Applicant's urine tested positive for Suboxone but negative for any other drugs, including cocaine, marijuana, and opiates. Applicant was prescribed Soboxone, which he is now taking in reduced dosage to wean him off the drug. (GE 3; Tr. 58.)

On July 25, 2011, Applicant completed and certified to the accuracy of an e-QIP on which he responded affirmatively to the illegal use of a controlled substance in the last seven years. He indicated that he used Vicodin from about January 2006 to December 2006, and that his prescription for Vicodin "led to an addiction as a follow on. [He] was forced to seek alternate methods of obtaining the prescription pills." Applicant added that he has received Suboxone treatment since 2007. Under the additional comments section, Applicant wrote: "The pride in my work and my dedication to my company far surpasses any issues in my past." (GE 1.)

On September 2, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), partially about his alcohol-related offenses and illegal use of controlled substances. Applicant indicated that he consumed no alcohol between 1992 and 2000, because he had been drinking too much. He did not explain why he resumed drinking, but he reported current use of six beers a week over the course of a Saturday, not to intoxication. When asked about his illegal use of controlled substances over the last seven years, Applicant stated that he had been prescribed Vicodin in early 2006 by his primary care physician. To cope with his pain, he started taking more than the recommended dose on a daily basis. At Applicant's request, his physician renewed his prescription. Applicant admitted that he also obtained Vicodin from his mother and friends when he did not have any of his Vicodin available. After about six months of abusive use of the drug, he realized that he had an abuse problem. Around February 2007, he stopped using Vicodin, and he began taking Suboxone medication to curb his cravings for Vicodin. His compliance with his treatment was monitored by monthly drug tests. Applicant expressed his intent to continue to take his Suboxone on a daily basis until it is no longer prescribed for him. Applicant denied any drug abuse other than Vicodin in the past seven years, and any illegal use of a controlled substance while possessing a security clearance. (GE 2.)

On January 18, 2013, Applicant completed drug interrogatories for the DOD CAF. He responded affirmatively to whether he had ever used any drug illegally, including whether he misused a prescription drug. He listed Vicodin (opiate) use between April 2006 and February 2007, "several a week to 3-4 a day;" one-time hallucinogen use in 1982; and cocaine use once or twice around 1980. About the illegal purchase of any drugs, Applicant added:

Approximately 2006 (spring) a friend asked if I could help him with his mortgage that month. I did help him. A couple weeks later, knowing my shoulder was bothering me, he offered me pills (Vicodin) 20 or thirty and thanked me for helping him and I accepted them.

Applicant expressed that he would never use drugs again in his lifetime. He indicated that he has been taking Suboxone under medical direction since February 2007, and that he was taking a reduced dosage at present to wean him from the drug. Applicant added that he has passed all drug tests administered at his monthly visits to the clinic. He expressed his commitment to remaining drug free and his willingness to submit to drug testing to prove his abstinence. (GE 2.)

As of June 2014, Applicant was still taking the Suboxone medication. He had not abused any controlled substance since February 2007, and he intends no future use of an illegal drug or of a potentially addictive prescription drug. (Tr. 42.)

Applicant takes pride in his work in the defense industry. Character references and work performance evaluations confirm his dedication and professionalism on the job. (AEs A-E.) Applicant earned the highest rating for job knowledge in 2007 (AE E) and again in 2008, despite some unplanned personal time in 2008, due to “personal problems.” (AE D.) In 2011, Applicant was considered for transfer to a new machine with the potential of becoming the lead machinist on second shift, but he had not been granted his security clearance. (AE C.) Applicant received mostly fully satisfactory ratings for his performance in 2013. He delivered quality work in all aspects, but he could not be as versatile in his work assignments because of his lack of a security clearance. Applicant’s supervisor was “not able to utilize him to his fullest.” (AE B; Tr. 26, 44.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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, 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 to obtain 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 the possible risk that 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).

## **Analysis**

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

The security concerns about personal conduct are articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant admits that he illegally obtained Vicodin from family members and friends on occasion between 2006 and February 2007 (SOR 1.b). However, he denies the alleged regular abuse of cocaine from about 1977 to at least 2006 (SOR 1.a). Applicant also denies that he falsified his e-QIP (SOR 1.c) and his response to interrogatories (SOR 1.d) by failing to disclose that cocaine abuse. Applicant admits that he used cocaine once or twice in 1980, which he disclosed in response to interrogatories, and which was well beyond the e-QIP’s seven-year reporting requirement.

Cocaine abuse on a regular basis for some 29 years would be very difficult to mitigate. However, the Government’s evidence falls considerably short of its burden of establishing that Applicant used cocaine beyond once or twice in 1980.<sup>2</sup> Available medical records of the Suboxone clinic (GE 3) include handwritten intake notes, as follows:

Age 12 Marijuana, Alc, acid

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<sup>2</sup> Under E3.1.14 of the Directive, Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.

15 Percocet  
16 Vicodin  
18 Alc  
Age – quit Alc 1992  
20 cocaine sniff  
-- Oxycontin  
[Illegible]

The physician's typed summary of this office visit reads in pertinent part:

49-year-old white male with a history of substance abuse since the age of 12 when he used marijuana and ETOH. When he was 15 he used Percocet, age of 17 Vicodin, age of 18 continues to drink to excess. He had some sobriety then went back to cocaine alcohol and some sniffing of Oxycontin together with Methadone.

The Government relies on the physician's summary statement, that Applicant "went back to cocaine," to support its allegation of regular cocaine abuse for many years. The medical summary is not a model of clarity. The time frame for Applicant's reported sobriety and abuse of cocaine is not mentioned. "Went back" could mean relapse into substance abuse that included cocaine rather than a recurrence of cocaine use, especially where the handwritten medical notes indicate that Applicant used cocaine only at age 20. If the Government had proof of more extensive abuse of cocaine, it was not presented. Nothing in the available medical records indicates that Applicant first used cocaine in 1977; that he abused it on a basis that could reasonably be characterized as regular; or that he used the drug until 2006. Without substantial evidence that Applicant used cocaine in other than 1980, I cannot conclude that he falsified either his e-QIP or his response to interrogatories. That being said, Applicant exercised poor judgment implicating Guideline E when he used cocaine, albeit in 1980, and when he more recently acquired Vicodin, at no cost to him, from friends and relatives. Disqualifying condition AG 16(c) applies in that Applicant's repeated violations of the laws pertaining to the use of controlled substances may be insufficient to deny him security clearance eligibility under the drug involvement guideline because of the passage of time, but they clearly reflect questionable judgment. AG ¶ 16(c) provides as follows:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

Mitigating condition AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," partially applies. Proven cocaine abuse was limited to

once or twice around 1980. While seven years have passed since Applicant stopped abusing and illegally obtaining Vicodin, his involvement with the drug was neither minor nor infrequent.

To Applicant's credit, he sought treatment when he realized he had become addicted to Vicodin. At the referral of his primary care physician, he began taking Suboxone around February 2007 under the guidance of a clinic physician. No evidence was presented of his treatment with that physician, and I cannot speculate about his initial progress. Medical records of his treatment with his current Suboxone prescriber are limited to his first two visits, which were in May 2010. While some update from the physician about Applicant's progress would have been helpful, there is no evidence that he has used any Vicodin or other opiate since 2007. Applicant has been candid about his Vicodin addiction, which lends credibility to his denials of any ongoing Vicodin abuse and of any intent to abuse any controlled substance in the future. AG ¶ 17(d) applies:

(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.

Mitigating condition AG ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability," is implicated in that the Government did not present substantial evidence to support its allegation of regular cocaine abuse by Applicant from 1977 to at least 2006, or of falsification, either of his e-QIP or his response to DOD CAF interrogatories. Applicant's favorable character references, including from a co-worker who has known Applicant for over 20 years, attest to Applicant's professionalism and skill. It is possible, although unlikely, that Applicant could achieve a consistent level of quality work if he had been a regular abuser of cocaine for over 20 years.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>3</sup>

Applicant is a longtime defense contractor employee, who tried marijuana and cocaine as a youth. He resumed drinking after four DUI offenses and a lengthy abstinence from 1992 to 2000, and he abused Vicodin between 2006 and February 2007. There is no

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<sup>3</sup> The factors under AG ¶ 2(a) are as follows:

(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.



evidence of any relapse since he began taking Suboxone, which apparently causes an adverse reaction if taken with opiates. He is still taking Suboxone, but at a reduced dosage, and his compliance is monitored by routine drug testing. After considering all the facts and circumstances, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

### **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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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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Elizabeth M. Matchinski  
Administrative Judge