



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



In the matter of:)
)
) ISCR Case No. 12-00322
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Richard Morris, Esq

01/17/2014

Decision

MASON, Paul J., Administrative Judge:

Because of his convincing evidence in rehabilitation, the drug involvement guideline is resolved in Applicant’s favor. Conversely, the absence of current evidence from a duly qualified mental health professional to support Applicant’s testimony results in a finding against him under the psychological conditions guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on August 10, 2011. He was interviewed by an investigator from the Office of Personnel Management (OPM) on September 21, 2011, and November 14, 2011. He agreed that the investigator’s summaries could be used at a hearing to determine his security suitability. (GE 2 at 11)

On June 10, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the guidelines for drug involvement (Guideline H) and psychological conditions (Guideline I). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006. Applicant's notarized undated answer to the SOR was received by Defense Office of Hearings and Appeals (DOHA) on July 11, 2013.

DOHA issued a notice of hearing on August 19, 2013, for a hearing on September 5, 2013. The hearing was held as scheduled. At the hearing, two Government exhibits (GE 1-GE 2) were admitted in evidence without objection. Applicant and three witnesses testified. Applicant's 15 exhibits (AE A-AE O), and his post-hearing exhibit (AE P) were admitted into the record without objection. DOHA received the transcript (Tr.) on September 12, 2013. The record closed on September 19, 2013.

Rulings on Procedure

A request by the Government was made for me to take official notice of a 26-page publication entitled "Bipolar Disorder," issued by the United States Department of Health and Human Services, National Institutes of Health. The publication was revised in 2008 and reprinted in 2009. Administratively noticed matters are limited to those that are obvious to the average person, easily verifiable, and relevant to this case. I will take administrative notice of this publication, which has been marked and admitted into evidence as Hearing Exhibit (HE) 1. (Tr. 13-14)

Findings of Fact

In his answer to the first paragraph of the SOR (drug involvement), Applicant denied ¶ 1.a and admitted ¶¶ 1.b and 1.c. He admitted ¶ 2.a of the second paragraph (psychological conditions). Attached to his answer is a two-page explanation in the form of a closing statement. Applicant's answers to the SOR will be incorporated into the following factual findings.

Applicant is 26 years old and single. He received his high school diploma in June 2005. While attending college between September 2005 and May 2007, he decided to seek a career in the trades. He began doing trade work in 2007 as a welder's assistant. He has been employed by a defense contractor on the night shift as a maintenance mechanic helper since June 2008. He seeks his first security clearance. (Tr. 106-107)

Drug Abuse - Background

The divorce of his parents created emotional problems for Applicant. Peer pressure, which added to those problems, triggered Applicant's alcohol consumption at age nine. He started using marijuana at age 12 (1999), and sold the drug to high school friends. He used benzodiazepine (benzos), oxycontin, heroin, and other opiates from age 12 to February 2011. His use of primarily marijuana and heroin at addictive levels necessitated treatment on several occasions between 2009 and 2011. He also experimented with phencyclidine (PCP), mushrooms, and ecstasy. In October 2009, Applicant stopped drinking alcohol because he did not like the taste. (SOR ¶1.a) (GE 2 at 1, 17, 31-32, 64-65, 163; Tr. 106-112)

On August 13, 2006, Applicant was 19 years old and drinking at a party with friends. He got into a car with a driver who was under the influence. The driver had a serious accident leaving Applicant with multiple broken bones requiring four surgeries. During nine months of rehabilitation, he became addicted to prescribed painkillers, e.g., oxycontin, until some time in 2007. When the prescriptions ended, Applicant began using opiates and continued his marijuana abuse. (Tr. 145-148)

As a result of Applicant's opiate problem, his father drove him to a treatment program in September 2009. On September 23, 2009, Applicant was admitted to treatment (2009 treatment) because of alcohol and opiate abuse. He also tested positive for benzo use. He testified there was a reference to his bipolar condition during group therapy. The records reflect a bipolar disorder, not otherwise specified (NOS). (SOR 2.a) After completing group therapy, individual therapy, and working the Narcotics Anonymous (NA) steps, Applicant remained in the treatment facility an additional three weeks because he liked the warm weather. He was discharged from the treatment program on November 23, 2009, with treatment officials deciding that critical objectives of the program were achieved at a satisfactory level. Recommendations at discharge included continued NA step work, finding a sponsor, and additional supportive therapy. On reflection, Applicant did not really commit himself to the program and participated minimally. He spent most of his time playing ping pong and socializing. Though he claimed that he never used drugs while in the program, he tested positive for methadone and benzos on October 5, 2009, and November 14, 2009. (GE 2 at 163-164, 169, 202, 205-207, 314, 316; Tr. 112-113, 148-151)

After his discharge from treatment during the Thanksgiving holiday in 2009, Applicant attended enough NA meetings to deceive his parents into believing that he was committed to recovery. Though his discharge recommendation was for extensive supportive therapy, he recalled consulting a therapist on one occasion. While he stated in the records that 60 days passed before he resumed drug use, he testified that he was using marijuana and heroin within a month after his discharge from the 2009 treatment

facility. His frequency of use escalated from occasional to three to five times a week. He switched to heroin because the opioids were too expensive. (GE 2 at 65; Tr. 153-157)

Applicant's regular heroin use was making him feel miserable. He was losing control. Based on a family member's recommendation, he entered an outpatient methadone treatment facility (2010 treatment) on January 26, 2010. His admitting diagnosis was opioid dependence, cannabis abuse, and depression. (SOR 1.b) Applicant received methadone daily from January 30, 2010, to October 28, 2010. He was required to consult a drug counselor once a week and had to undergo a urinalysis at a regular frequency. He was supposed to attend NA meetings, but did not attend many. He was still not committed to treatment. He left the methadone center on October 28, 2010, and experienced withdrawals for about a month. He could not afford methadone so he resumed heroin and marijuana use. (GE 2 at 38, 40-50; Tr. 114, 158-162)

In early January 2011, Applicant was using heroin at addictive levels. After trying to commit suicide on January 15, 2011, he was arrested for narcotics possession and transferred to a hospital for treatment. The charge was ultimately dismissed under the state's deferred adjudication statute. Applicant was diagnosed with a bipolar condition, NOS, with opiate and cannabis dependence. Applicant indicated he was spending about \$840 a week on drugs and supporting his addiction through earnings and stealing. He was confined in the hospital for six days of detoxification, and only allowed to leave his room for group therapy and meals. He was prescribed medication for sleep withdrawals and his bipolar condition. He was discharged on January 21, 2011. Applicant's psychiatric discharge summary reflects that he was not considered a risk to himself or others. The discharge diagnoses were bipolar disorder, and opiate and cannabis dependence. (SOR 2.a) The discharge recommendations included continued therapy, NA and Alcohol Anonymous (AA) meetings, 90 meetings in 90 days, and obtain a sponsor. (GE 2 at 5, 12-14, 28-33; Tr. 62-63, 114-115, 137, 165, 166-168, 171)

After having a brief relapse on February 3, 2011, Applicant was admitted to a second inpatient treatment facility for 24 days. Upon admission, he was diagnosed as opioid dependent. Clinical notes reflect that he attended all groups and activities. Though he had difficulty realizing the severity of his addiction, he developed an understanding of his disease and the 12 steps of NA. He committed full attention to treatment. He was attentive at all the group and individual therapy meetings. He demonstrated a willingness to help others and respond to suggestions. His daily routine started with taking medications in the morning followed by group therapy with NA or AA involvement. After physical exercise, Applicant and the other inpatients had lunch. Then, he reported to afternoon group therapy to discuss the topic of the day, including discourse about NA or AA issues. Following dinner, Applicant attended group therapy. (GE 2 at 14, 28-30; Tr. 117-120)

On February 26, 2011, Applicant was discharged to another inpatient facility [3rd inpatient treatment] for additional treatment because he did not have strong coping skills. Applicant stated:

When I was in treatment in [the 2009 treatment facility] they told me that if I wanted to stay clean, I had to change people, places, and things. And I don't know why but that stuck out (in) my mind at the [second inpatient treatment facility]. So I wanted to get more time away from it and deal with the coping mechanisms and gain some more tools to stay clean if I did have to go back to those people, places, and things. That's what led me to it. (Tr. 174-177)

Applicant's diagnosis at admission was bipolar disorder and heroin dependence. (SOR 2.a) The emphasis at the new facility was two daily meetings of one-on-one therapy. There were three daily group meetings. AA and NA met twice a day. When Applicant was discharged on March 26, 2011, his diagnosis was "heroin dependence; bipolar (?)." The discharge counselor noted Applicant's full participation in individual and group therapy. The counselor pointed out that Applicant needed to take charge of his own recovery. (GE 2 at 21-23, 34; Tr. 120-123, 174-177)

The day before Applicant was discharged on March 26, 2011, the counselor listed six recommendations to ensure continued abstinence from drugs: (1) remain abstinent; (2) strengthen stable recovery in a recovery house; (3) attend 90 meetings in 90 days, and obtain a home group and sponsor to work the NA steps; (4) comply with all continuing care recommendations for medical and dental care; (5) obtain an updated mental health evaluation; and, (6) follow through with mental and dental treatment. Applicant indicated he accomplished all recommendations. In addition, he has spoken many times at the February 2011 inpatient treatment facility to provide the inpatients a good example that dedication to treatment leads to successful results. (GE 2 at 23, 176-179)

On March 26, 2011, Applicant was discharged to a halfway house where he lived until the middle of January 2012. He attended an NA meeting immediately upon his discharge and found a sponsor in April 2011. At the halfway house, he had to take five urine tests a week. The tests were negative. He and other tenants new to recovery were required to do house chores, be responsible, and have a job. He returned to his employer in April 2011. After the halfway house, Applicant moved into an apartment. From April 2012 until May 2013, he lived with his former girlfriend. He left that living arrangement because he did not want to be around alcohol consumption. Since June 2013, he has been living with three other recovering substance addicts, including his high school friend who is currently a residential coordinator at a drug treatment facility. The reason for the move was to fortify his recovery with other addicts in a sober environment. (Tr. 123-126, 193-194)

Applicant testified the doctor who diagnosed him as bipolar during his six-day detoxification in January 2011, continued to treat him every other week for status reports until approximately November 2011, when the doctor decided to stop the medication. Applicant has consulted no mental health professional since November 2011. He attempted to contact the treating doctor, but decided not to contact him after reading the Directive indicating the mental health professional had to be a government psychiatrist. No documentation was provided from the treating doctor. (Tr. 168-169, 186-191)

Applicant has been drug free for about two years and seven months. He does not have any present concerns about his recovery because he understands he has to take the necessary steps on a daily basis to remain free from drugs. He sponsors the residential coordinator and five other individuals. He speaks to each sponsee about 20 or 30 minutes a day and sees them two or times a week. He attends three NA meetings a week and is currently on the sixth step of NA. He has identified 100 defects and is writing the description of action taken to address and remove the defect to improve his recovery. He does not intend to use drugs again. Applicant's two primary goals are to have a family and return to school. He swears he will never use illegal drugs in the future. If he does use drugs, he will voluntarily withdraw his security clearance. (AE P: Tr. 126-132, 182)

Character Evidence

Applicant's father testified that he divorced Applicant's mother when he was nine years old. There was a long custody dispute followed by Applicant not living with his father between 2005 and 2009. After becoming aware of Applicant's drug use in 2009, his father drove him to a rehabilitation facility in September 2009. Following the completion of the 2009 treatment, the father recalled Applicant acting strangely within two weeks after he returned home. The father considered Applicant a changed person after the 2011 treatment. Applicant's father grew much closer to Applicant during his 2011 treatment. In his father's view, based on Applicant's participation in NA meetings and attention to his sponsees, Applicant is committed to sobriety. His father opined that Applicant is not on drugs because of the positive changes in his physical appearance, his normal sleep patterns, the regular work hours he maintains, and his maturity. (Tr. 29-44)

Applicant's coworker during the night shift from April 2012 until the coworker switched to the day shift in approximately July 2013, believes Applicant is diligent, reliable, and responsible. In the three occasions that the two have socialized, Applicant has consumed no alcohol because he said just one drink could lead to drug use again. Applicant told the fellow employee that he attends NA meetings at least weekly. The employee has never been to Applicant's home. (Tr. 51-58)

A high school friend, currently a residential coordinator (RC) at a drug treatment facility, interacted daily in high school with Applicant from 2001 to 2005 or 2006, and drank

and used drugs with him once a week at parties. They stopped seeing each other in 2006 when the friend migrated to a different peer group and moved three times. In the intervening years, RC used a variety of drugs with heroin imposing the most negative effect on RC. When RC reestablished contact with Applicant in April 2012 at an NA meeting, he immediately noticed a dramatic change in Applicant. Rather than seeing a person whose only concern was trying to obtain drugs, RC saw a person who had established structure in his life by regularly attending NA meetings, going to work, and helping his parents and other people. (Tr. 59-82)

Applicant became RC's sponsor and guided him through the steps and principles of the NA program so that he could apply them in his daily life. Because Applicant is assigned to the night shift, they attend NA meetings on the weekend. Applicant imparted coping tools to help RC successfully deal with the thoughts of using drugs again. Applicant is the primary reason for RC's successful recovery that has reached 511 days. Living with Applicant and two other recovering addicts since June 2013, has provided a wholesome environment that enhances recovery. Neither Applicant nor RC associate with any drug users. (Tr. 59-82)

Applicant's sponsor for more than two years, who has been drug free and a member of NA for 12 years, attends three NA meetings a week with Applicant. The sponsor explained that when a recovering addict is new to the NA program, they have to attend 90 NA meetings in 90 days, and Applicant accomplished this task, even occasionally attending more than one meeting a day during the 90-day period. Early on in his recovery, Applicant kept to himself. He became more outgoing as he and the sponsor started working the steps of the program. Applicant obtained a position in the home group where he helps out at meetings while ensuring that new people feel welcome in the NA fellowship. The sponsor indicated that as long as the sponsee goes to the meetings every day, talks to his sponsor regularly, and has a commitment to the home group, the chances of a relapse are slim to none. Applicant is the sponsor's best sponsee because he does what his sponsor advises, he works the steps, he goes to meetings, and he follows through with his service commitment to his home group. The sponsor referred to Applicant's commitment to the NA program as "being in the middle." The sponsor has seen no indication of a relapse by Applicant. The sponsor has never seen Applicant associate with drug users. The sponsor indicated:

He's living in a house with other recovering addicts. He only talk(s) to recovering addicts. He only hang(s) out with other recovering addicts. And he's doing his step work. He's doing everything he should be doing. (Tr. 97)

The sponsor considers Applicant to be honest, trustworthy. He also believes Applicant demonstrates good judgment. (Tr. 83-104)

Applicant submitted four character affidavits in support of his security clearance application. Applicant's immediate supervisor since July 2011, commented that there are no disciplinary infractions in his record. The supervisor and second-line supervisor indicated that Applicant is conscientious, honest, and trustworthy. (AE I) The second line supervisor believes Applicant is a professional with a good attitude. The senior project engineer, who participated in the interview process of Applicant, praises Applicant's honesty. (AE M) A 20-year-old friend, who met Applicant in NA, stated that Applicant helped the friend reach one-and-one-half years of drug freedom. The friend has asked Applicant to be his sponsor. (AE N) Applicant's mother is certain Applicant has been drug free for two-and-one-half years. (AE I, M, N, O)

Policies

Each guideline under the AG lists potentially disqualifying conditions and mitigating conditions, which are required to be considered to the extent they apply in evaluating an applicant's eligibility for access to classified information. These guideline-conditions must be evaluated in the context of the whole-person concept, nine factors that bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Such decisions entail a certain degree of legally permissible extrapolation about the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

Analysis

Drug Involvement

Paragraph 24 of the AG sets forth the security concern associated with 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.

The pertinent disqualifying conditions under AG ¶ 25 that could raise security concerns are: (a) (*any drug abuse*); (b) (*testing positive for drug use*); (c) (*illegal drug*)

possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia); and (d) (diagnosis by a duly qualified medical professional of drug abuse or drug dependence). Between age 12 (1999) and 23 (February 2011), Applicant used a variety of drugs, including marijuana, methadone, oxycontin, and heroin. He also abused prescription drugs during his rehabilitation following the 2006 car accident. He received at least three diagnoses by a duly qualified medical profession of heroin and cannabis dependence. He financed his drug use through earnings or stealing. AG ¶¶ 25(a), 25(b), 25(c), and 25(d) apply.

The three pertinent mitigating conditions under AG ¶ 26 of the drug involvement guideline are: (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 are used, (3) an appropriate period of abstinence, and (4) a signed statement of intent with automatic revocation of clearance for any violation); and (d) (the satisfactory completion of a prescribed 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).*

When evaluated by itself, Applicant's freedom from drug use since February 6, 2011, represents a meaningful period of abstinence. Even though the period of abstinence is less meaningful when contrasted with Applicant's extensive period of addiction to several drugs concurrently or separately, and his relapses after treatment in 2009, 2010, and early 2011, Applicant receives some mitigation under AG ¶ 20(a) based on the network of support he has developed since February 2011.

Applicant has stated and testified that he does not intend to use drugs in the future. He began severing his connections to drug users when he stopped using drugs on February 3, 2011 and entered treatment. The medical records demonstrate that he has been fully committed to treatment and NA. On the day he was discharged from treatment on March 26, 2013, he attended a NA meeting. He moved a couple of times to ensure his living environment was drug and alcohol free. Since June 2013, he has been living with three other recovering addicts. Applicant's period of abstinence of two years and seven months, combined with his signed statement of intent, entitles him to full mitigation under AG ¶ 26(b).

Though Applicant completed a drug treatment program in 2009, he resumed drug use to addictive levels by the end of the year. While he attended the outpatient methadone program in 2010, the only evidence in the record is that he left the program in October 2010, and resumed serious drug use. However, the combined effect of inpatient treatment

at the two facilities in February and March 2011, turned Applicant's life around. He has been abstinent since February 3, 2011. He has continually strengthened his recovery with a network of support that includes his parents, particularly his father. He has attended 90 NA meetings in 90 days, and obtained a home group and sponsor to work the NA steps. He is currently working the sixth step and is sponsoring six individuals. The strong support network that Applicant has developed since February 2011 entitles him to mitigation under AG ¶ 26(d) even without a favorable diagnosis from a medical professional.

Psychological Conditions

AG ¶ 27 sets forth the security concern related to psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

The medical records show that Applicant received a diagnosis of a bipolar condition during his treatment in 2009 and twice during treatment in 2011. The pertinent disqualifying condition that applies is AG ¶ 28 (b) (*an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability and trustworthiness*).

The three pertinent conditions that may mitigate AG ¶ 28(b) are: AG ¶ 29 (a) (*the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan*); AG ¶ 29(b) (*the individual has voluntarily entered a treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional*) and AG ¶ 29(g) (*there is no indication of a current problem*).

I have carefully evaluated the diagnoses of bipolar condition in the medical records. Applicant indicated he consulted with his doctor throughout his 2011 treatment until November 2011, when the doctor told him that he no longer needed medication or consultation. However, other than his testimony, the record lacks corroboration for Applicant's testimony. He is not currently in counseling and there is no favorable prognosis

of a mental health professional. With no evidence from a mental health professional, I am unable to conclude that Applicant has mitigated the security concerns raised by the psychological conditions guideline.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the drug involvement and psychological conditions. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors set forth in 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 the participation was 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 decision of whether the granting or continuing eligibility for a security clearance is clearly consistent with the interests of national security must be a judgment based on common sense after a careful review of the guidelines, which are to be evaluated in the context of the whole-person concept.

Applicant engaged in extensive drug abuse and dependence in his teenage and early adulthood. However, beginning with inpatient treatment in February 2011, he has steadily developed a strong support system, complimented by a good work record, which will improve the chances for long-term recovery. He is committed to the NA program and to helping those in need of advice and guidance whenever possible. Having weighed the record in the context of the whole-person factors, Applicant has sufficiently removed the security concerns of his extensive drug involvement. On the other hand, given the 2009 and 2011 diagnoses of a bipolar condition and the absence of current mental health evidence to corroborate Applicant's testimony, I am unable to find for him under the guideline for psychological conditions.

Formal Findings

Formal findings for against Applicant on the SOR allegations are:

Paragraph 1 (Guideline H):	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2 (Guideline I):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge