



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-02524
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/15/2013

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on September 26, 2011. On September 14, 2012, the Defense of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline H. DOD acted 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 (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on September 20, 2012; answered it in an undated document; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 29, 2012, and the case was assigned to me on December 4, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2012, scheduling it for January 15, 2013. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Department Counsel's exhibit list is attached to the record as Hearing Exhibit (HX I). Applicant testified and presented the testimony of one witness. I kept the record open until February 1, 2013, to enable her to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. Her transmittal letter is attached to the record as HX II. Department Counsel's comments regarding AX A through D are attached as HX III. DOHA received the transcript (Tr.) on January 23, 2013.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the allegations in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 26-year-old contracts administrator employed by a federal contractor since September 2007. She graduated from high school in June 2004, obtained a cosmetology license in September 2005, and worked in a hair salon until October 2006. She worked as an office assistant and a guest services coordinator before she was hired by her current employer as an administrative assistant. She became a contract administrator around January 2011. (Tr. 60.) She has held a security clearance since November 2007.

Applicant is unmarried and lived with her parents after graduating from high school. She is the youngest of three daughters. (Tr. 43.) When she was about 20 years old she moved out of her parents' house and lived with her sister. She moved back and forth between her sister's home and her parents' home and then moved into an apartment with friends. (Tr. 44.)

Applicant was treated for depression for about eight months in 2009. Her treatment included daily use of prescription drugs. She stopped seeing her doctor and began self-medicating, using Ritalin that had been prescribed and she had accumulated, as well as Percocet and Vicodyn that she obtained illegally. She was introduced to heroin by a boyfriend in November 2010. She testified that her opiate dependency escalated quickly from pills to heroin. Her heroin usage increased until she was using as many as eight \$10 bags per day. (GX 3 at 2; Tr. 56.) She used heroin before work, during her lunch break, and after work. (Tr. 58.) The cost of supporting her heroin habit caused her serious financial problems. (Tr. 70.)

In March 2011, one of Applicant's friends contacted Applicant's parents and told them that she believed Applicant was using heroin. (Tr. 38.) Applicant's parents confronted her and she immediately agreed with them that she needed treatment. She testified that when her parents confronted her she was afraid and nervous, but she also felt relieved. When they made a family decision that she would obtain treatment, she "jumped all over it." She testified that she "couldn't wait to go." (Tr. 48.)

On April 26, 2011, Applicant entered a detoxification program for five days of inpatient treatment and 21 days of intensive outpatient treatment. (GX 3 at 2.) When she was admitted, she tested positive for opiates. (AX D at 1.) Her diagnosis upon admission was opioid dependence, dysthymic disorder with anxious features, attention-deficit/hyperactivity disorder, and opioid-induced mood disorder. (AX D at 2) The diagnostic impressions note that she was “internally and externally motivated for treatment” but that she “seems to lack insight into the disease of addiction and the recovery process.” Her strengths for treatment included “willingness to receive treatment, family support, secure job,” and “lack of legal issues.” Her weaknesses were observed to be “lack of sober supports, mental health and financial issues.”

Applicant was discharged from the detoxification program on September 23, 2011. The discharge summary reflected that she attended 12 group sessions and 9 individual sessions, was working on her 12-step program and using a sponsor, and starting to socialize with other recovering peers. Medical professionals participating in her treatment included a psychiatrist, a nurse practitioner, and several counselors.

The discharge summary did not include a formal prognosis, but it included the following comments: “[Applicant] will need to enhance her sober social environment. She will need to develop additional coping skills to aid in mood stabilization and select a treating physician/psychiatrist to prescribe ongoing medication.” Aftercare recommendations included attending three or more weekly Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings, meeting weekly with a sponsor, participating in bi-weekly sober socializing with other recovering females, follow-up with a treating physician or psychiatrist for medical checks, and reengaging in outpatient treatment if future problems arose. (AX D at 9.)

Applicant is now under the care of the family medical doctor. (GX 3 at 1.) She notified her security officer about her drug use when she returned to work after the inpatient phase of detoxification. (Tr. 61-63.)

Applicant continued to live with her parents for about nine months after completing the detoxification program, and then she moved into an apartment that she shared with friends. Her friends became concerned because she was beginning to associate with her old drug-using friends, and they notified her parents. (Tr. 68.) Her parents were concerned that she was vulnerable to resuming her drug use, and they invited her to return home. As of the date of the hearing, she had been living with her parents for about a year. (Tr. 39-40, 53.)

Applicant is attending AA and NA meetings about three times a week. (Tr. 63.) She also sees a counselor and medical doctor regularly. She has not used drugs since April 2011, when she entered the detoxification program. At the hearing, she was enthusiastic about her work, her family, and her lifestyle. She testified that her life is now going “incredibly well.” (Tr. 49-50.) She has feelings of accomplishment at work and feels appreciated by her colleagues and supervisor. She testified, “I never imagined

that, you know, it could really be this good, just, you know, the thought of staying on the right path and knowing all the good people. It's really nice." (Tr. 52.)

Applicant has a new circle of friends and no longer associates with the boyfriend who introduced her to heroin. She has new boyfriend who has visited her parent's house and has their approval. She and her boyfriend enjoy playing pool and participate in a pool league. She has started working on her physical fitness. Applicant's father is a self-employed remodeling contractor, and she helps her parents manage the business. She spends considerable time with her four-year-old niece, to whom she is very attached. Her sister has told Applicant that she will cut off any further contact with her niece if she returns to using drugs. (Tr. 35, 72-74; AX A.)

Applicant's parents have been very supportive. Her father testified at her hearing and described how she had changed from a withdrawn person to an active participant in family life. (Tr. 41-42.) Her parents have attended classes and meetings to better educate themselves about the disease of drug addiction and to learn how to be supportive in their daughter's recovery process. (AX A.)

Applicant's supervisor submitted a statement supporting continuation of her clearance. (AX C.) She believes that Applicant was straightforward and honest about her drug addiction. She states:

Because [Applicant] had a good family behind her to guide her through those troubled times, and because [Applicant] herself has a strong foundation, she quickly addressed the problem and submitted to a drug rehabilitation program. The road to recovery was aided by her realization of how much she is valued and needed at work; she has worked through her problems and has been doing terrific [sic] for over a year now.

Applicant's NA sponsor, who has credentials as a nurse practitioner, nurse clinician, and adjunct professor at a prestigious medical school, also submitted a statement on her behalf.<sup>1</sup> (AX B.) She states:

[Applicant] has been living a life that is demonstrative of a caring, kind and honest person. During her recovery she has surrounded herself with people [whose] value systems reflect that of the highest integrity and moral choices.

She continues to consistently focus on improving her life as well as those around her through her regular attendance at work and recovery meetings. [Applicant] is fully invested in doing her best on a daily basis. She has demonstrated trustworthy behavior and introspective thought processes that govern and guide her everyday life. It has been truly

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<sup>1</sup> The declarant did not identify herself as Applicant's sponsor. However, Applicant identified her as her sponsor in the transmittal letter for her post-hearing submissions. (HX II.)

rewarding to witness the growth that [Applicant] has recently experienced. I am certain that she will remain steadfast in her quest to remain healthy in mind, heart and body and realize her full potential in the near future.

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The SOR alleges that Applicant purchased and used heroin on multiple occasions from November 2010 until “at least” April 2011, while holding a security clearance (SOR ¶¶ 1.a-1.c). It also alleges that she tested positive for heroin in April 2011 and received detoxification and substance abuse treatment (SOR ¶¶ 1.d-1.e).

The concern under this guideline is set out in AG ¶ 24: “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.” As explained in AG ¶ 24(a)(1), this guideline encompasses “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).” Applicant’s admissions in her answer to the SOR, corroborated by the evidence presented at the hearing, establish the following disqualifying conditions:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(b): testing positive for illegal drug use;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

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 following mitigating conditions are potentially relevant:

AG ¶ 26(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;

AG ¶ 26(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

AG ¶ 26(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..

The first prong of AG ¶ 26(a) (“happened so long ago”) focuses on whether the drug involvement was recent. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant’s last drug use preceded her admission into the detoxification program on April 26, 2011, almost two years ago. She participated in the detoxification and treatment program willingly and enthusiastically. Her parents, supervisor, and NA sponsor have noticed her positive lifestyle changes. I conclude that AG ¶ 26(a) is established.

AG ¶ 26(b)(1), (2), and (3) are established. She no longer associates with drug users. She lives at home and spends her spare time engaging in wholesome, family-related activities. She has abstained from illegal drugs for almost two years. She has not submitted the statement of intent described in AG ¶ 26(b)(4).

AG ¶ 26(d) is partially established because Applicant successfully completed her drug treatment program, including the aftercare requirements. She did not receive a formal prognosis upon completion of the program, but her NA sponsor, a qualified medical professional, expressed confidence that she will maintain her healthy and drug-free lifestyle.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant became addicted to opiates when she tried to self-medicate her anxiety and depression. Her use of illegal drugs while holding a security clearance was a serious breach of trust, imposing a heavy burden on her to mitigate the security concerns raised by her conduct. On the other hand, she used illegal prescription drugs and heroin for a relatively short time. She responded readily and enthusiastically to treatment. She has successfully completed her drug treatment program and is complying with the aftercare requirements. She has changed her lifestyle and living environment. She has strong support from her family, her supervisor, and her sponsor. She was candid, sincere, remorseful, and credible at the hearing. I am satisfied that her drug involvement will not recur.

After weighing the disqualifying and mitigating conditions under Guideline H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on drug involvement. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant



## **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge