



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



In the matter of: )  
)  
) ISCR Case No. 15-06443  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/01/2017

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate concerns related to her history of illegal drug use and purchase. She also failed to mitigate the concerns related to her intentional falsification of a 2006 security clearance. Although Applicant did not knowingly use illegal drugs after being granted a security clearance, she did use illegal drugs while employed in public safety and law enforcement positions. Clearance is denied.

**Statement of the Case**

On February 12, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to deny her security clearance.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 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), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on April 6, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on April 15, 2016, and did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6, without objection.

### **Procedural Matters**

While the case was pending decision, the Director of National Intelligence (DNI) issued the Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Findings of Fact**

Applicant, 30, has worked for her employer, a federal contractor, since April 2015. She completed a security clearance application that month, disclosing the use and purchase of cocaine between August 2006 and December 2014. Applicant was initially granted a security clearance in October 2007, after a 2006 background investigation. She did not disclose any illegal drug use. The SOR alleges, under the drug involvement guideline, Applicant's history of illegal drug use and purchase (SOR ¶¶ 1.a and 1.b) between August 2006 and December 2014, and her continued use of illegal drugs after being granted and while having an active security clearance (SOR ¶ 1.c). Applicant's drug history is also cross-alleged under the personal conduct guideline (SOR ¶ 2.a), in addition to an allegation that she intentionally falsified her August 2006 security clearance application by failing to disclose her illegal drug use (SOR ¶ 2.b).<sup>3</sup>

In May 2015, a background investigator interviewed Applicant about her illegal drug use. Applicant stated that she only used illegal drugs, which she purchased from former high school classmates, at home by herself. Contrary to the disclosure on her April 2015 security clearance application, Applicant did not participate in substance abuse counseling. She clarified that she stopped using illegal drugs after receiving encouragement from friends to live a cleaner life.<sup>4</sup>

Applicant offered a different explanation of her drug use in her answer to the SOR. After reviewing unspecified personal records, Applicant changed her dates of illegal drug use. She explained that the dates she provided on her 2015 security clearance application were mistaken. Applicant now reports that she used drugs only

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<sup>2</sup> GE 1.

<sup>3</sup> GE 3 - 4.

<sup>4</sup> GE 3, 6.

between 2008 and 2012, when she was involved in a romantic relationship with another drug user. When the relationship ended, so did Applicant's use of illegal drugs.<sup>5</sup>

The record also contains information about Applicant's security clearance history. Applicant completed her first security clearance application in 2006 in connection with the Air Force Delayed Entry program in 2006. Applicant indicated that she reported to boot camp in January 2007 and received a medical discharge two weeks later. The record does not contain any information to verify Applicant's dates of service and she did not disclose any military service on her 2015 security clearance application. Records from the Joint Personnel Adjudication System show that Applicant was granted a security clearance in October 2007, months after her purported discharge from the military.

Applicant held eight jobs between February 2007 and April 2014. There is no record evidence that any required national security eligibility. During that time, however, Applicant worked as a school bus driver (February 2007 to August 2009), a correctional officer at a state prison (August 2009 to February 2011), and as a ramp agent at an airport (November 2012 to January 2013). Applicant disclosed that she was investigated by the Department of Homeland Security for a security clearance. She did not provide any other details about that adjudication.<sup>6</sup>

Applicant acknowledges that her use of illegal drugs shows a serious lapse in judgment. However, she claims to have taken steps to reduce the likelihood of future use. She no longer associates with drug users, ending those relationships by changing her phone number and moving to another city. Applicant states that she is more discerning about her friendships. She has gone to college, obtaining an associate's degree in August 2013, and is now working on her bachelor's degree.<sup>7</sup>

Applicant believes that she is trustworthy and reliable. Applicant claims that she does not intend to use illegal drugs in the future and has indicated a willingness to sign a statement of intent with automatic revocation for any future use. However, she did not provide a signed statement in response to the SOR or the FORM.<sup>8</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>5</sup> GE 2.

<sup>6</sup> GE 3-4, 6.

<sup>7</sup> GE 2-3.

<sup>8</sup> GE 2.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The record establishes a *prima facie* case under the drug involvement and personal conduct guidelines. Applicant admits substance misuse as well as possession and purchase of an illegal drug.<sup>9</sup> The record does not support the allegation in SOR ¶ 1.c that Applicant used illegal drugs after being granted and while possessing an active security clearance. While the allegation may be factually correct, the record does not establish that the Applicant knew of the favorable adjudication or that she was working in a position that required national security eligibility. Even though SOR ¶ 1.c is resolved

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<sup>9</sup> AG ¶¶ 25(a) and (c).

in Applicant's favor, the underlying concerns about her history of illegal drug use remain and are not mitigated by the passage of time or her claims that future use is unlikely to recur.<sup>10</sup> Applicant's drug use is sufficient for disqualification under the drug involvement guideline alone. However, the circumstances of Applicant's illegal drug use raises personal conduct concerns, supporting a negative whole-person assessment, indicating questionable judgment, a disregard for the law, and an unwillingness to follow rules and regulation. For years, Applicant used of illegal drugs while employed in public safety and law enforcement positions. She did not provide any evidence to mitigate this conduct.

In addition to her history of illegal drug use, the record also shows that Applicant has a history of lying to the Government about it. She intentionally falsified her 2006 security clearance application by failing to disclose her contemporaneous drug use.<sup>11</sup> The potential adverse consequences of reporting such adverse information in the months preceding boot camp is sufficient circumstantial evidence of her intent to mislead the Government. Applicant's conflicting statements during the current adjudication are evidence of her ongoing efforts to mislead the government and show a pattern of dishonesty that cannot be ignored or mitigated.

Based on the record, I have doubts about Applicant's judgment and trustworthiness. I have also considered the whole-person factors at AG ¶ 2(d), which supports a negative whole person assessment. Applicant has demonstrated an inability and unwillingness to abide by laws, rules, and regulations. She has also demonstrated that she is unreliable, untrustworthy, and unlikely to truthfully self-report derogatory information. Ultimately, these characteristics suggests that Applicant may not properly handle or safeguard classified information.

### **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, Drug Involvement and Substance Misuse:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

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<sup>10</sup> AG ¶ 24.

<sup>11</sup> AG ¶ 16(a).

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge