



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



In the matter of:)
)
) ISCR Case No. 16-01730
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the security concerns involving drug involvement and substance misuse, criminal conduct, financial considerations, and personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On November 17, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse), J (criminal conduct), F (financial considerations), and E (personal conduct). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on January 31, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on November 28, 2017, scheduling the hearing for January 11, 2018. Without objection, I granted Applicant's request for a continuance, for additional time to prepare. DOHA issued a second NOH on January 4, 2018, scheduling the hearing for February 26, 2018. I convened the hearing as rescheduled.

I marked the Government's discovery letter and list of exhibits as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 19 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant's Exhibits (AE) A through E, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until March 12, 2018, for Applicant to submit additional documentation. Without objection, I granted Applicant's March 5, 2018, request for an extension of time and left the record open until April 13, 2018. Applicant did not provide any additional evidence. I marked collectively as HE III, Applicant's requests to cancel the initially scheduled hearing and for an extension of time to submit additional documentation. DOHA received the hearing transcript (Tr.) on September 12, 2017.

Findings of Fact

In response to the SOR, Applicant confirmed the allegations in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, and 4.a. I construed her confirmation of these allegations as admissions. She neither admitted nor denied the remaining SOR allegations. I construed her lack of a specific admission or denial to these allegations as denials.²

Applicant is 52 years old. She married in 1987 and divorced in 2002. After her divorce, she reconciled with her ex-husband three times: in 2004 for 10 months, at the end of 2005 until 2007, and from 2009 until his passing in February 2013. She has a 22-year-old child, who was living with and financially supported by her until September 2017.³

Applicant earned a bachelor's degree in 1996 and a master's degree in 2014. She recently completed a certified professional contract manager course, and she was studying for the exam as of the hearing date. Since around 1985, she has worked for various defense contractors. Between 1985 and 2009, she received yearly exceptional inspection ratings for security compliance from the DOD as the facility security officer (FSO) for two defense contractors. She has worked as a senior contracts manager for

² Response to the SOR; Tr. at 10-11.

³ Tr. at 7, 41-44, 73-75; GE 1, 2, 3.

her current defense contractor since August 2014. She was first granted a DOD security clearance in 1985.⁴

Applicant acknowledged that she struggled with an opioid addiction for approximately 17 years, from 1996 to 2013. She attributed her drug-related arrests and charges, and her delinquent finances, in part to her opioid addiction. She was first prescribed opiates by a pain specialist in 1996, when opioids were considered safe, for chronic pain from a car accident injury. The doctor maintained her prescription regimen of opioids daily, with increasing doses monthly, until he lost his license in around 2002. She believed this regimen led to her addiction.⁵

From 2002 to 2008, Applicant saw another doctor who continued to prescribe her opioids and other pain medications. During this period, she tried many times to stop using opioids but she would become ill and incapable of functioning, so her doctor resumed her opioid medication. From 2008 to February 2013, she saw her primary care physician for the purpose of pain medication management and weaning her off opioids. He prescribed her lower doses of opioids. In February 2013, after her ex-husband's death and another drug-related arrest and conviction, she stopped using opioids cold turkey.⁶

Applicant identified several factors that contributed to her drug-related arrests and charges, and delinquent finances, including: abuse by her ex-husband; her ex-husband's alcoholism; her ex-husband's illness; and her ex-husband's family. When he was diagnosed with end stage renal failure in 2010 after attempting to cease his alcohol consumption, he required dialysis and round-the clock care. Applicant quit her job to take care of him. She reconciled with him despite the abuse because his family had deserted him. She also did so for the sake of their daughter. She denied that her reconciliation with him had anything to do with having access to his prescription medications.⁷

Applicant's finances also suffered when she worked as a consultant from mid-2009 to mid-2012, and her income was unsteady due to the nature of consulting work. For 11 months during this period, she did not receive income and she was financially supported by her mother. When her ex-husband required dialysis in approximately late 2011, they received no income for a period as he had not yet been approved for disability pay. While she has been steadily employed since August 2012, she financially supported her child until September 2017. Her five-hour commute between work and home also contributed to her delinquent finances.⁸

⁴ Tr. at 6-7, 19, 44-47, 93-95; GE 1, 2, 3; AE B.

⁵ Tr. at 14-18, 21, 32-37, 41-52, 66-71, 99-100, 106-107; GE 2, 3; AE B.

⁶ Tr. at 14-18, 21, 32-37, 41-52, 66-71, 99-100, 106-107; GE 2, 3; AE B.

⁷ Tr. at 14-18, 21, 32-37, 41-52, 73-75, 95-96, 107-108; GE 3, 14; AE B.

⁸ Tr. at 14-18, 21, 32-37, 41-52, 73-75, 95-96; GE 1, 2, 3.

In May 2009, Applicant was charged with three counts of controlled dangerous substance (CDS): possession - not marijuana, and driving vehicle while impaired by drugs or alcohol, or alcohol and drugs (SOR ¶¶ 1.e, 2.a, 3.b). She was pulled over for speeding during a three and a half hour drive home, after she had stayed up all night talking with a long lost friend. When she attempted to obtain something from her purse, she dropped some pills onto the passenger seat. She was subsequently administered field sobriety tests, which she indicated she had difficulty performing due to her neck problems and bad balance.⁹

The CDS charges were dropped after she produced her prescriptions for the various medications she had on her at the time of her arrest. She pled guilty to the latter charge. She was sentenced to probation before judgment. She performed 40 hours of community service, paid a fine, obtained a drug and alcohol assessment, in which she stated she was not found to have a substance abuse problem, and went to Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). She found that the 12-step groups with NA and AA were similar to one another and helpful.¹⁰

On the morning of December 2010, Applicant was arrested and charged with driving while impaired by drugs or drugs and alcohol (SOR ¶¶ 1.f, 2.a, 3.b). She testified that prior to her arrest, she had taken her prescription medication as prescribed. She was pulled over on her drive into work. She was convicted, sentenced to 60 days of which 56 were suspended, and placed on one year of probation. She served two weekends in jail.¹¹

Later that evening, Applicant was again arrested (SOR ¶¶ 1.g, 2.a, 3.b). She was with her ex-husband's close friend, and they were pulled over on the side of the road meeting with another car, to collect money from an acquaintance who owed her ex-husband. The acquaintance was a known drug dealer in the neighborhood. A police officer stopped behind them after the acquaintance's girlfriend gave Applicant \$20 of crack cocaine instead of money. She was charged with CDS: possession - not marijuana (crack cocaine). She pled guilty and was placed on 18 months of probation.¹²

Applicant testified that she realized she had a problem after her two arrests in 2010, so she voluntarily returned to the treatment center that conducted her 2009 drug assessment. She disclosed to the center that she had used marijuana between 2003 and 2007 (SOR ¶¶ 1.b, 2.a, 3.b), cocaine between 2009 and 2011 (SOR ¶¶ 1.d, 2.a, 3.b), and misused her pain medication on various occasions in the years prior (SOR ¶¶ 1.c, 2.a, 3.b). The center diagnosed her with opiate and cocaine dependence, as well as anxiolytic dependence. The center recommended that she seek outpatient treatment.

⁹ Tr. at 32-33, 52-55, 96; GE 1, 2, 3, 6.

¹⁰ Tr. at 32-33, 52-55, 66, 69-71; GE 1, 2, 3, 6.

¹¹ Tr. at 33-34, 55-61, 98; GE 1, 3, 7.

¹² Tr. at 33-34, 55-61; GE 1, 3, 7, 8, 9.

Applicant elected to go through the 12-step program because it was more affordable for her.¹³

On February 14, 2013, Applicant found her ex-husband dead in their bedroom when she arrived at home after work that day. She believed he died of a prescription pill overdose, as there were pills all over their bedroom floor. One week later, she was arrested and charged with CDS: possession – not marijuana, and CDS: obtain by fraud (SOR ¶¶ 1.h, 2.a, 3.b). At the time of her arrest, both she and her ex-husband were treated by the same doctor, and had both been prescribed opioid medication. When she needed a refill of her medication, she could not get an appointment with the doctor. She testified that the doctor told her over the telephone to pick up her ex-husband's prescription from the pharmacy, then follow up with him later.¹⁴

Following her doctor's instructions, Applicant testified that she then called the pharmacy to have them fill her deceased ex-husband's prescription. When she went to the pharmacy to pick up the prescription, the pharmacist knew from a newspaper that her ex-husband had died a week earlier and felt Applicant was fraudulently trying to take a deceased person's prescription. Applicant was stopped in the parking lot, and various prescription drugs were found on her, to include one for which she had never been prescribed. Applicant testified that these were the drugs she found on her bedroom floor the week prior, when she found her ex-husband dead. She testified that she kept the drugs with the intention of finding out what they were then disposing of them. She stated that she had no intention to use them.¹⁵

Applicant pled guilty to the charge of CDS: obtain by fraud. She was placed on two years of probation and ordered to receive treatment. She successfully completed probation in November 2015. As she could not afford treatment at a state-run facility, she elected to participate in the 12-step program of NA, where she got a sponsor. She also participated in Al-Anon.¹⁶

Applicant acknowledged at hearing that she used marijuana in high school (SOR ¶¶ 1.b, 2.a, 3.b). She also acknowledged that she used Phencyclidine (PCP) in around 1985, and she was with her ex-husband who had drugs in his car when she was charged with possession with intent PCP and possession of PCP (SOR ¶¶ 1.a, 2.a, 3.b). She believed the charge was dropped and subsequently expunged. She testified that her October 2005 charge for second degree assault was falsely brought against her by her ex-husband (SOR ¶¶ 2.a, 3.a). He had been drinking, and they got into an argument after he left their then-nine-year-old child in the car unattended. He hit her, and she reacted in self-defense. The charge was subsequently dropped.¹⁷

¹³ Tr. at 33-34, 55-61, 69-71, 98, 108-109; GE 1, 3.

¹⁴ Tr. at 34-36, 62-66, 74-75, 98-99; GE 1, 3, 10, 11.

¹⁵ Tr. at 34-36, 62-66, 98-99; GE 1, 3, 10, 11.

¹⁶ Tr. at 34-36, 62-66, 69-71; GE 1, 3.

¹⁷ Response to the SOR; Tr. at 61-62, 91-93; GE 3, 4, 5, 12.

After her ex-husband's passing in February 2013 and her subsequent drug-related arrest and conviction, Applicant testified that she turned her life around. Since then, she testified that she has been opiate-free, medication-free, drug and substance use-free, and alcohol-free. She indicated that she has no desire to use such substances, and she intends to remain abstinent from them in the future. She testified that she no longer socialized with her past drug-associates, or her ex-husband's family. She was willing to sign a statement of intent to abstain from all drug involvement and substance misuse, but had not done so as of the close of the record.¹⁸

Applicant adopted non-medicinal ways of dealing with her chronic pain, to include regular exercise, yoga, online support groups, online participation weekly or in-person participation two to five days weekly in the NA and AA 12-step programs, as well as in Al-Anon. She continued to have a sponsor as of the date of the hearing. She was writing a book about opioid addiction, to spread awareness about the dangers of using opioids for the treatment of chronic pain, but also as a self-reminder to remain abstinent. She threw herself into her career. She regularly contributed to professional networking groups concerning ethics, contracts, and leadership. She was also involved with an online leadership program.¹⁹

The SOR alleges that Applicant filed chapter 7 bankruptcy and received a discharge in 2002 (¶¶ 2.a, 4.a). It alleges two state tax liens from 2014 for \$7,668 and \$401 (¶¶ 2.a, 4.b, 4.w), 13 delinquent consumer accounts totaling \$8,710 (¶¶ 2.a, 4.c - 4.i, 4.q, 4.x - 4.z, 4.bb - 4.cc), and 16 delinquent medical accounts totaling \$2,823 (¶¶ 2.a, 4.j - 4.p, 4.r - 4.v, 4.aa, 4.dd - 4.ff). Applicant provided a list of her outstanding debts, totaling \$58,203, which included some of the delinquent debts alleged in the SOR as well some that were not. In addition to her admissions, the financial SOR allegations are established by bankruptcy court records from 2002; credit reports from May 2010, April 2015, July 2015, and March 2016; and a judgment and lien court record from July 2016.²⁰

Applicant testified that her priority has been to resolve her outstanding federal and state taxes (SOR ¶¶ 4.b, 4.w). She indicated that she paid the IRS \$2,900 of her outstanding \$3,400 taxes. The outstanding federal tax stemmed from an error on her 2010 and 2011 federal income tax returns, in which she did not submit proper documentation regarding an early withdrawal she made from her retirement savings. She testified that she was working with the IRS on a monthly payment plan to resolve the remaining \$500 balance. She was unaware of any other outstanding federal taxes.²¹

Applicant also indicated that she decreased her outstanding state taxes from \$7,500 to \$5,900, which stemmed from the same error in her 2010 and 2011 state

¹⁸ Tr. at 14-18, 21, 32-37, 62, 66-71, 100, 108-109; GE 3; AE B.

¹⁹ Tr. at 14-18, 21, 32-37, 62, 66-71, 100, 108-109; GE 3; AE B.

²⁰ Tr. at 37-38; GE 13, 15-19, 75-91, 107-108; GE 3, 13, 14, 15, 16, 17, 18, 19; AE A, B.

²¹ Tr. at 18, 38-39, 76-77, 81-82, 96-98, 108; GE 3; AE B.

income tax returns. She indicated that she made payments of \$100 monthly since January 2017, and her 2017 state tax refund was also intercepted and applied to her outstanding taxes. She testified that she was in regular contact with both the IRS and state authority concerning her outstanding taxes. She did not provide documentation to corroborate her claims.²²

Applicant's next largest outstanding debt is SOR ¶ 4.c, which is a car loan charged off for \$4,007. Applicant co-signed on the loan with her now deceased ex-husband. It became delinquent when he got sick and she stopped working. She attempted to make some payments towards the loan, but the car was eventually repossessed. She was working with the credit-repair service, as further discussed below, to determine whether she should pay this debt or allow it to remain as a charge off.²³

SOR ¶ 4.h is a credit card placed for collection for \$785. Applicant testified that she received a settlement offer of \$385 from the creditor one week prior to the date of the hearing. She intended to pay this settlement in full once she received her tax refund.²⁴

SOR ¶¶ 4.j to 4.p, 4.r to 4.v, 4.aa, and 4.dd to 4.ff are for 16 delinquent medical debts totaling \$2,823, though Applicant believed some were duplicates. She testified that she contacted her insurance company and at her request, received documentation demonstrating that the outstanding debts were covered by her insurance and therefore paid. The credit-repair service was assisting her with locating the medical creditors so that she could provide them with such documentation. She indicated that she was willing to pay her medical creditors if they could prove that the debts were not covered by her insurance.²⁵

SOR ¶ 4.x is a store credit card charged off for \$1,022. Having learned to do so from the credit-repair service through which she was receiving financial counseling, as further discussed below, Applicant testified that she requested a settlement from the creditor despite the charge off. Similar to SOR ¶ 4.x, Applicant testified that she also requested settlements from her remaining creditors. She hoped to resolve SOR ¶ 4.x and her remaining outstanding debts through such settlement arrangements.²⁶

Applicant indicated that she paid SOR ¶ 4.q. She did not provide documentation to corroborate her claim. She also indicated that she was current on her student loans

²² Tr. at 18, 38-39, 76-77, 81-82, 96-98, 108; GE 3; AE B.

²³ Tr. at 39, 77-78; GE 3; AE A.

²⁴ Tr. at 40-41; GE 3; AE A.

²⁵ Tr. at 40, 78-81; GE 3; AE A.

²⁶ Tr. at 39-40; GE 3; AE A.

totaling \$53,000 that were previously deferred, through a payment plan she reached with the creditor.²⁷

Applicant testified that she enrolled in a credit-repair service, offered by the creditor that holds her car loan, in March 2016. The service provided her with financial counseling, to include assistance with timely paying her bills, and resources for budgeting and debt management. She learned how to make a budget. The service assisted her with setting up payment plans for her delinquent debts as she is able. The service notifies her of any changes to her credit score. The service assisted her with identifying ways in which she can decrease her expenses, to include locating a cheaper place to live. The service began assisting her in October 2017 with locating some of her debts. She had not disputed any debts through the service as of the date of the hearing.²⁸

Since August 2014, Applicant has earned \$93,000 annually. She eliminated her internet, cable, and television services, to free up additional money to apply towards her debts. After paying her monthly expenses, to include her outstanding taxes as discussed above, rent, car payments, utilities, groceries, gas, credit card, student loans, personal loan, and medical fees, her monthly net remainder was \$5. She hoped to receive a pay raise within the year. Once she moved, she expected to use any extra money to pay her outstanding debts. She was also working to lower her monthly student loan payment.²⁹

Applicant testified that she did not falsify her April 2010 security clearance application (SCA), by failing to disclose her use of marijuana from 2004 to 2007, her misuse of prescription medication from 2003 to 2010, and her use of cocaine from 2009 to 2010, in response to section 23a., which inquired about illegal drug use or drug activity in the seven years prior to the date of the SCA (SOR ¶ 2.b). She testified that she did not falsify information during a May 2010 background interview, when she stated that she had never used illegal drugs (SOR ¶ 2.c).³⁰

Applicant testified that she failed to list her drug use on her 2010 SCA, and disclose her drug use during her May 2010 background interview, because of a combination of factors. First, it was an oversight. Second, she misread and was confused by the questions on her SCA. Third, she did not recall her drug use, as she did not have her documentation, such as her journals, to refresh her memory. She testified that “2010 was a very bad time for me. I honestly don’t think I was thinking clearly.”³¹

²⁷ Tr. at 83-84; GE 3; AE A.

²⁸ Tr. at 18-19, 21, 37-38, 78-81, 84-91, 96-98, 108; GE 3; AE B, D.

²⁹ Tr. at 18-19, 21, 37-38, 46, 78-81, 83-91; GE 3; AE A, B, D.

³⁰ Tr. at 60, 71-73, 100-107; GE 2, 3.

³¹ Tr. at 60, 71-73, 100-107; GE 2, 3.

Applicant also testified that she did not falsify her March 2015 SCA, by failing to disclose her use of cocaine from 2009 to 2011, and her misuse of prescription medication from 2008 to 2011, in response to section 23, which inquired about illegal drug use or drug activity, to include the misuse of prescription drugs, in the seven years prior to the date of the SCA (SOR ¶¶ 2.d, 2.e). She also testified that she did not falsify information during a March 2016 background interview, when she stated that she had not used cocaine or misused prescription drugs within the seven years prior, and that she had not used marijuana since age 18 (SOR ¶¶ 2.h, 2.i).³²

Applicant also cited to a combination of factors for failing to disclose her drug use on her 2015 SCA. She indicated that she misunderstood the timeframe of the drug questions. She indicated, without corroboration, that she was ill-advised by her FSO that the relevant timeframe for the drug questions was only a few years prior to the SCA. She also stated that she still could not recall her drug use at the time. When she assembled her journals to begin working on her book at the end of 2015, she refreshed her memory about her past drug use. She did not contact her FSO or anyone in her security office to correct her responses to the March 2015 SCA, because she was unaware it was an option. She did not seek advice from anyone because she was under the impression that she could not do anything to change her prior submissions.³³

Applicant testified that she believed she disclosed her relevant drug use and misuse of prescription drugs during her 2016 background interview. She acknowledged that between her 2010 SCA and her 2016 background interview, she may have been living in denial about her past drug use. She owned up to it in her response to the SOR.³⁴

Applicant testified that she did not falsify her 2015 SCA, by failing to disclose her 2014 state tax liens from SOR ¶¶ 4.b and 4.w, or any of her delinquent debts from SOR ¶¶ 4.c through 4.v and 4.x through 4.ff, in response to section 26 concerning her financial delinquencies involving enforcement and routine accounts, in the seven years prior to the date of the SCA (SOR ¶¶ 2.f, 2.g). She indicated that she was unaware of her tax liens and delinquent debts at the time. She indicated that she first learned about them during her 2016 background interview.³⁵

Applicant's supervisor since August 2014 held a security clearance as of the hearing date. He had daily contact with Applicant. He testified that he was aware of the SOR allegations pertaining to Applicant's use of opioids and drugs as well as her financial issues. He was also aware Applicant's efforts to overcome them, to include

³² Tr. at 60, 71-73, 100-107; GE 1, 3.

³³ Response to the SOR; Tr. at 60, 71-73, 100-107; GE 1.

³⁴ Response to the SOR; Tr. at 60, 71-73, 100-107; GE 1, 2, 3.

³⁵ Tr. at 73; GE 1, 3.

writing a book on opioids and participation in various support groups. He testified that Applicant is a reliable and responsible individual, and she is a person of high integrity.³⁶

Applicant attributes her professional success to her supervisor's leadership and mentorship. One of the many lessons she has learned from him is how to maintain calm in the face of chaos, which has helped her in other areas of her life outside of work. Applicant's contracts manager since August 2013 attested to her high level of integrity, dedication to her job, strong work ethic, reliability, and accountability. Her prior customer reiterated the same sentiment, indicating that he observed her "extraordinary customer service and program support" from 1998 to 2002.³⁷

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.

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(a), 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 the national security."

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

³⁶ Tr. at 19-21, 37, 110-119; GE 3; AE B, C, E.

³⁷ Tr. at 19-21, 37, 110-119; GE 3; AE B, C, E.

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder.

Applicant misused her prescription medication and was addicted to opioids for 17 years, from 1996 to 2013. She used marijuana in 1978 and PCP in 1985. She again used marijuana between 2003 and 2007, and she used cocaine between 2009 and 2011. She was diagnosed with opiate and cocaine dependence, as well as anxiolytic dependence, in 2010. She has five drug-related charges from 1985 and 2009 through 2013, and four drug-related convictions between 2009 and 2013. AG ¶¶ 25(a), 25(c), and 25(d) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. The following are potentially applicable:

(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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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.

Applicant acknowledged her use of PCP, marijuana, and cocaine between 1978 to 1985, and 2004 to 2011. She has not used any illegal drugs since 2011. Of her four drug-related convictions, only one--in December 2010--involved illegal drug use. She has not had any such drug-related arrests or convictions since. AG ¶ 26(b) partially applies to SOR ¶¶ 1.a through 1.d.

Applicant also acknowledged her 17-year struggle with opioid addiction, which stemmed from an opioids prescription in 1996 for chronic pain from a car accident injury. She turned her life around after the February 2013 passing of her ex-husband and subsequent opioid-related conviction. She quit opioids cold turkey. She disassociated herself from drug-using associates and contacts, and she avoids places where she used to use drugs. AG ¶ 26(c) applies to SOR ¶¶ 1.e through 1.h.

While commendable, Applicant's five-year abstinence from opioids misuse is not sufficient at this time to overcome her 17-year period of opioid addiction and her three convictions related to her misuse of opioids between 2009 and 2013. In 2010, when she was diagnosed with opiate and cocaine dependence, as well as anxiolytic dependence,

she was recommended to seek outpatient treatment. She did not provide evidence that she satisfactorily completed a prescribed drug treatment program. Nor has she provided evidence of a favorable prognosis by a medical professional. She did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. I find that her behavior did not happen so long ago, was not infrequent, did not happen under such circumstances that it is unlikely to recur, and it continues to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a), 26(b) and 26(d) do not apply to SOR ¶¶ 1.e through 1.h.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's 2005 assault charge was isolated and dismissed. AG ¶ 31(b) is not established for SOR ¶ 3.a. However, Applicant's five drug-related charges from 1985, 2009, 2010, and 2013 stemmed from her illegal drug use and misuse of prescription drugs. The latter three of such charges resulted in four drug-related convictions. AG ¶ 31(b) is established for SOR ¶ 3.b.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

For the same reasons as set forth above in my Guideline H analysis, AG ¶¶ 32(a) and 32(d) do not apply to SOR ¶ 3.b.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable to pay her debts, to include her delinquent state taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond her control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. Applicant has not provided corroborating documentation of her efforts to resolve the SOR debts. There is insufficient evidence to conclude that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant testified that she paid SOR ¶ 1.q. She indicated she was paying the state tax liens in SOR ¶¶ 1.b and 1.w. She indicated that she disputed the medical debts in SOR ¶¶ 4.j to 4.p, 4.r to 4.v, 4.aa, and 4.dd to 4.ff. She also indicated that she was working with a credit-repair service to resolve her remaining delinquent debts. However, she did not provide any documentation to corroborate any of her claims. Her finances are not under control. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to address her delinquent debts, even after her 2002 Chapter 7 bankruptcy discharge, casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) through 20(e) and 20(g) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . ; and

(g) association with persons involved in criminal activity.

Applicant displayed untrustworthiness, questionable judgment, and unreliability. Her 2005 assault charge was isolated and dismissed. However, her use of illegal drugs and misuse of prescription drugs led to her drug-related charges and convictions. They also led to her financial delinquencies. AG ¶¶ 16(e) and 16(g) are established for SOR ¶ 2.a.

In light of her history of illegal drug use, to include misuse of prescription drugs, I find that Applicant intentionally falsified her 2010 and 2015 SCAs, as well as her May 2010 and March 2016 background interviews. I do not find credible her claim that she could not recall any of such drug use, until she refreshed her memory when she gathered her journals at the end of 2015. Moreover, she disclosed her illegal drug use and misuse of prescription drugs to a treatment center in around late 2010, just several months after she completed her 2010 SCA and well before she began gathering her journals in late 2015. In addition, she continued to falsify information about her drug use during her 2016 background interview, after she had gathered her journals in late 2015.

I also do not find credible Applicant's claims that she did not know about any of her delinquent debts when she completed her 2015 SCA, and that she first learned about them during her 2016 background interviews. She knew that her finances suffered during her marriage, after her divorce, and during the periods in which she was reconciled with her ex-husband. She knew that her finances took a hit when her income was unsteady as a consultant and when she quit her job to care for her ex-husband between mid-2009 and 2012. Though she obtained a job in 2012, she knew that she was continuing to experience financial problems. AG ¶¶ 16(a) and 16(b) are established for SOR ¶¶ 2.b through 2.i.

I have considered all of the mitigating conditions under AG ¶ 17 and considered the following relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

In her response to the SOR and at the hearing, Applicant owned up to her past illegal drug use, her 17-year struggle with opioid addiction, and her criminal offenses, to include the drug-related incidents. She also took responsibility for her delinquent finances. Her supervisor and at least one of the character references were aware of some of the issues that led to the SOR. However, for the same reasons set forth above in my Guideline H, J, and F analyses, AG ¶¶ 17(c), 17(d), 17(e), and 17(g) do not apply to SOR ¶ 2.a.

As to SOR ¶¶ 2.b through 2.i, AG ¶¶ 17(a) through 17(e) do not apply. Applicant did not make any prompt or good-faith efforts to correct the information on her 2010 and 2015 SCAs about her past illegal drug use, her misuse of prescription medication, and her delinquent finances. Nor did she do so concerning her May 2010 and 2016 background interviews. She failed to corroborate her claim that her FSO gave her incorrect advice concerning the timeframe applicable to the drug questions on her 2015 SCA. She maintained, at hearing, that she did not intentionally falsify her SCAs and her

background interviews. She cited to a number of factors that led to her false answers, and acknowledged that at the time, she was still living in denial. Her supervisor and at least one of the character references were aware of only some of the issues that led to the SOR. Her reliability, judgment, and trustworthiness remain questionable.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, J, F, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns involving drug involvement and substance misuse, criminal conduct, financial considerations, and personal conduct.

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 H:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant
Subparagraphs 1.e - 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.i:	Against Applicant

Paragraph 3, Guideline J:
Subparagraph 3.a:
Subparagraph 3.b:

AGAINST APPLICANT
For Applicant
Against Applicant

Paragraph 4, Guideline F:
Subparagraphs 4.a - 4. ff:

AGAINST APPLICANT
Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge