



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



In the matter of:

ADP Case No. 16-04011

Applicant for Public Trust Position

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

05/14/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse, and alcohol consumption trustworthiness concerns. National security eligibility for a position of trust is granted.

**History of Case**

On February 24, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline G (Alcohol Consumption). Applicant answered the SOR on March 21, 2017, and requested a hearing (Answer).

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 11, 2018. DOHA issued a Notice of Hearing on January 12, 2018, setting the hearing for January 30, 2018. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant and one witness testified. He offered Applicant Exhibits (AE) A through D into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on February 7, 2018. The record

remained open until February 20, 2018, for the submission of additional exhibits. Applicant timely submitted an exhibit that I marked as AE E and admitted without objection.

### **Findings of Fact**

Applicant is 52 years old and has been married for 28 years. He and his wife have three sons. Applicant became licensed as a registered nurse (RN) in 1991, and subsequently began working for a hospital. (Tr. 16, 22) In 1994, he obtained a position in an intensive care unit for another hospital, and worked there until December 2014, when he resigned. (Tr. 22; GE 1) In March 2015, Applicant began his current position as a quality assurance nurse with a defense contractor. (Tr. 23; GE 1)

In early 2000, Applicant developed a herniated disc from weight lifting. He saw a physician who prescribed opioids for his cervical pain. Applicant continued to be treated by that physician for a period of time, but at a certain point, he decided he was too embarrassed to request additional pain medication from his treating physician. In 2002, he sought pain medication from an on-line physician. Applicant submitted his medical records to that doctor and began receiving prescriptions for Tramadol, a narcotic. He continued obtaining those scripts for six years. (Tr. 25-26)

In 2008, Applicant admitted that the use of Tramadol was having a negative effect on his life and that he had developed an addiction to the drug. He decided to seek treatment for substance abuse. He voluntarily reported his addiction to his employer and requested leave time for treatment. Applicant also reported his addiction to the state's nursing board. In September 2008, Applicant entered a 28-day inpatient treatment program with the help of his primary care physician.<sup>1</sup> He was diagnosed with opioid dependence. (Tr. 26-28; GE 1) After completing the program, he entered the maintenance phase of treatment. From about October 2008 to sometime in 2010, he participated in weekly individual or group therapy sessions. He attended Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings twice a week, and was subject to random urine screenings every week. He began working with a NA sponsor in 2008, when he entered treatment. (Tr. 28-29, 45)

Subsequent to Applicant's reporting his addiction to the state's nursing board in 2008, the board began monitoring his progress and compliance with the recovery program set out by his physician, as noted above, and adherence to the board's licensing protocols. According to those terms, Applicant was not permitted to consume drugs or alcohol. (Tr. 31, 39; GE 2) Sometime in 2010, Applicant's treatment plan changed. He began seeing his physician every six months and not weekly. He continues attending AA or NA meetings twice a week. He has random drug screens done twice a month, rather than four times. (Tr. 29-31)

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<sup>1</sup> Applicant's primary care physician is Board Certified in Addiction Medicine. (AE A)

From September 2008, when he entered treatment, to December 2014, Applicant did not consume alcohol or use drugs, and fully complied with his treatment plan. (Tr. 19) In December 2014, Applicant attended his wife's class reunion. Over the course of the party, he consumed four wine coolers. Two days later, he was required to participate in a random urine screening. The urine screening tested positive for alcohol, which was a violation of the terms of his agreement with the nursing board. Subsequently, the nursing board suspended his license for three months, from December 2014 to March 2015, during which time he was unable to work. (Tr. 18-19, 41; GE 2)

Applicant has been in treatment and recovery since he admitted himself to a rehabilitation program in September 2008. (Tr. 49) He intends to continue attending NA or AA regardless of any requirement to do so. (Tr. 44) He denied that he intends to consume alcohol in the future. He stated that "I will not drink alcohol because it's not worth going through what I'm going through right now." (Tr. 42; Answer) Other than the December 2014 incident, Applicant has not had any other relapse and continues to comply with all treatment requirements.

A former colleague, who is now Applicant's supervisor, testified. He has known Applicant since 2006 or 2007, when they worked together at a hospital. He is aware of Applicant's addiction. He is highly complimentary of Applicant's work performance and considers Applicant to be one of his top performers. In Applicant's most recent evaluation, he rated him as exceeding expectations in most areas. (Tr. 47-54; AE B, AE E)

In her January 22, 2018 letter, Applicant's physician addressed his recovery. She wrote:

I have been treating this person for addiction to Tramadol. He has completed formal programming successfully including inpatient treatment and outpatient treatment. He has continued to follow a recovery plan including: 1) AA twice a week, 2) Sponsor interaction once a month to once every other month, and 3) he continues on prescribed Suboxone which is an opioid replacement therapy. He has built a strong support system. . . He has never had any legal involvement due to his drug addiction. He accepts his disease of addiction and fully embraces the need for life long recovery skills. . . Clinically he has demonstrated excellent and consistent recovery. (AE A)

Applicant's nursing license has been in good standing with the state since he completed the suspension in early 2015. (Tr. 20, 39) His lawyer told him that the nursing board will terminate Applicant's monitoring soon because he has been compliant with the board's program for over three years. (Tr. 43) Applicant stated he never obtained medications illegally. He has never taken or used a patient's drugs. (Tr. 35-36) He expressed remorse over his conduct. His family and friends are aware of Applicant's addiction issues and supportive of his recovery efforts. (Tr. 38)

## Policies

The action by the DOD CAF, to issue the SOR to Applicant, was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), which became effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

## Analysis

### Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 describes the trustworthiness concerns involving drug involvement and substance misuse as follows:

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.

AG ¶ 25 sets out conditions that could raise a trustworthiness concern. Two may be disqualifying:

- (a) any substance misuse (see above definition); and
- (b) 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 admitted that subsequent to being prescribed Tramadol, a narcotic, in 2000 for pain management, he began misusing the drug and developed an addiction to it by 2008. During inpatient treatment, a physician diagnosed him with opioid dependence, a substance use disorder. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate drug involvement and substance misuse trustworthiness concerns are provided in AG ¶ 26. The following three are potentially applicable:

- (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; and
- (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.

After using a prescribed narcotic for about six years for pain management, Applicant acknowledged that he developed an addiction to it and voluntarily sought inpatient treatment, followed by outpatient aftercare. He began treatment in September 2008 and continues to follow his physician's treatment plan that currently consists of two monthly urine screens, weekly attendance at two NA meetings, and periodic meetings with his sponsor. Other than one incident in December 2014 involving the consumption of alcohol, he has consistently complied with his program and the nursing board's protocols. His physician opined that he has demonstrated an excellent recovery record. The evidence established mitigation under AG ¶¶ 26(b), (c), and (d).

### **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the trustworthiness concerns pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a trustworthiness concern and may be disqualifying. Four may be potentially applicable:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, valuation, treatment, or abstinence.

In December 2014, Applicant consumed alcohol in violation of a treatment agreement he had with his state's nursing board, which required him to abstain from alcohol consumption. That alcohol-related incident resulted in a three-month suspension of his nursing license and raised a trustworthiness concern under AG ¶ 22(a). The evidence does not raise trustworthiness concerns under AG ¶¶ 22(e), (f), or (g) because Applicant has not been diagnosed with an alcohol use disorder, or ordered by a court to abstain from consuming alcohol or undergo treatment. The only diagnosis in this record references opioid dependence.

AG ¶ 23 provides conditions that could mitigate the trustworthiness concerns raised under this guideline. One may potentially apply:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

Applicant has not consumed alcohol since December 2014, which is documented by his testimony and numerous urine screening since then. He acknowledged he made a mistake by consuming alcohol at his wife's reunion and has no intention to drink alcohol in the future. The reunion was an unusual circumstance, and a similar incident is unlikely to recur given his continued successful participation in treatment for drug addiction and his commitment to remain abstinent. The evidence is sufficient to apply the above mitigating condition.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant developed a serious and lengthy addiction to Tramadol between 2000 and 2008. He recognized his problem and voluntarily began recovery in September 2008 by admitting himself into an inpatient treatment program. He continues participating in recovery, almost ten years later. Other than a one-time use of alcohol that occurred in December 2014, he has complied with the terms placed on him by his state's nursing

board and his physician. After observing his demeanor and listening to his testimony, I found him to be candid and honest. He displayed remorse over his addiction and the ramifications it has had in his life. Given these facts, his physician's positive assessment about his treatment progress, and his recent performance evaluation from his employer, it is unlikely that he will engage in similar conduct in the future. He is committed to recovery. Overall, the evidence does not raise doubt as to Applicant's present eligibility and suitability for a position of public trust.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a position of public trust. National security eligibility is granted.

SHARI DAM  
Administrative Judge