



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



In the matter of:

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ISCR Case No. 17-01510

Applicant for Security Clearance

**Appearances**

For Government: Carroll Connelly, Esq., Department Counsel

For Applicant: Jacob Ranish, Esq.

06/01/2018

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E. Applicant failed to introduce documentation to mitigate the doubt cast on her judgment by her falsifications. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 16, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on July 20, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 11, 2018, scheduling the hearing for May 8, 2018. The hearing was convened as

scheduled. The Government offered Exhibits (GE) 1 through 3 into the record. Applicant testified on her own behalf, and presented 12 documents, which I marked and admitted as Applicant's Exhibits (AE) A through L. DOHA received the transcript of the hearing (Tr.) on May 16, 2018.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.a through 1.c. She provided additional information with the denials. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31-year-old software engineer of a defense contractor. (Tr. 13) She obtained her undergraduate degree in May 2008. (AE D) Applicant obtained her graduate degree in December 2015. (AE E) She has been with her employer since July 2008. She is single and has no children. Applicant has never held a security clearance (SCA). (GE 1)

The SOR alleges that Applicant used the prescription medication Adderall without a prescription on various occasions in May 2011; that she falsified her March 2016 SCA by answering "No" to Section 23 – Illegal Use of Drugs or Drug Activity Misuse of Prescription Drugs in the last seven (7) years; and that she falsified material facts during a personal subject interview, on August 16, 2016, with an authorized investigator with the Department of Defense, when she denied that she used Adderall on various occasions in May 2011.

Applicant attended a party in May 2011. She had recently been involved in a relationship which ended, and she was stressed and anxious. (Tr. 16) She reported that she shared this information at the party and an acquaintance gave her a small number of pills. He told her that it would help her anxiety and her concentration. (Tr. 19) She believed the pills to be Adderall. She stated that he told her they were Adderall. (Tr. 39) According to her, the pills were not helpful. She still felt scattered and unfocused. The pills were given to her and there was no exchange of money. At the hearing, Applicant stated that the person said the pills were Adderall and she believed him. (Tr. 21)

In 2012, during a NSA interview, Applicant admitted that she used Adderall, which was given to her by "friends" in May 2011 about five times. She added that this was a self-diagnosis of ADHD because she had trouble focusing. She admitted to trying marijuana once in 2004 while in college, but did not like it and has not used it since. During the 2012 interview, she stated that she has not used either drug since and has no intention to use them in the future. The substances were given to her by friends. She has never purchased or sold any illegal substances. Applicant elaborated that she used an over-the-counter medication, Benadryl, for the treatment of vertigo. (GE 3)

At the hearing, Applicant stated that in later years, when she had allergies, she used Claritin which are small white pills. It is unclear why, but she googled Adderall and saw that the pills were bigger and pink and that was not what she recalls taking in 2011. She then decided that it was a placebo and not Adderall. (Tr. 22) She in fact stated that

it was many years later that she made a connection and thought that the pills were a placebo. (Tr. 24) She no longer has any contact with the person who gave her the pills in 2011. (Tr.44)

When Applicant completed her March 2016 SCA, she answered “no” to Section 23 and failed to disclose that she used Adderall as alleged in SOR 1.a. In her August 2016 OPM interview, she confirmed her negative responses under the illegal drug section of the SCA as alleged in SOR 1.b. When she was confronted with the one-time use of marijuana and use of Adderall in 2011 about five times due to a self-diagnosis that she had ADHD, she disputed ever using Adderall five times in May 2011, and does not have any knowledge and/or recollection in regards to the aforementioned. She was unable to provide any other pertinent information regarding an alleged use of Adderall. She admitted that she experimented with marijuana one time. (GE 2)

Applicant claimed when she completed her SCA in 2016, that her focus was on her foreign travel and foreign contacts. She stated that she was so worried about getting travel dates correct that “when the drug thing came up” she was flummoxed by it. She testified that she did not want to omit the information about the 2011 incident. At one point Applicant stated that she did not read the drug section on the interrogatories carefully. (Tr. 33) She further explained that in the interview, she was caught off guard and, instead of doing what she realizes what she should have done – take a deep breath and explain the situation – she became nervous that the investigator would not believe her answer and simply offered a general denial of past misuse of Adderall. (Answer to SOR) Her rational was that she reported the use of Adderall in 2012 to the NSA interviewer- so she was not attempting to hide anything.

When questioned by Counsel, why her friend would give her a “placebo”, Applicant stated that he did not look like the kind of person who went to the doctor for drugs for himself. (Tr. 45) When questioned about the OPM interview in 2016, and her flat denial of any use of Adderall, she stated that she was perplexed. (Tr. 47) She admits that she should have said “yes” to the question about Adderall. She was given a copy of the NSA 2012 interview, but she stated that nothing was triggered in her memory. (Tr. 48) However, the 2012 report clearly reflects that she admitted to using Adderall in 2011. (GE 3) She was shown a copy of the 2012 report. After viewing her demeanor, I do not find her testimony credible. She would not answer a question directly, but would rather elaborate on another point.

Applicant submitted a 2017 performance evaluation, which reflected that she consistently met expectations. (AE A) She received a merit increase for her work. (AE B) as well as a quarterly bonus. (AE C) Applicant submitted a Domestic Abuse Certificate for completing a course. (AE H) She is very active as a volunteer in the community. Applicant also assisted students in a technology institute in 2008. (AE G)

Applicant submitted letters of reference. Each attests to her character, patriotism, and trustworthiness. She is careful, conscientious and attentive with company information. She takes her work seriously. (AE I)

## Policies

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

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. Under Directive ¶ E3.1.15, 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 clearance 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 classified 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(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; and,

(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.

The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

- (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;
- (f) the information was unsubstantiated or from a source of questionable reliability; 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.

Applicant used the prescription medication Adderall without a prescription when they were offered to her in May 2011 by a friend at a party. She admitted in 2012 that she was anxious and upset and agreed to take the pills. No money was exchanged. In 2012, Applicant admitted using Adderall in a 2012 report. However, she claims years later that she decided that the pills were a placebo and not a prescription medication. For this reason, she did not list any misuse of a prescription medication in her SCA. Also, when speaking to an OPM investigator who confronted her about the Adderall, she disputed that she ever used Adderall in May 2011 and had no knowledge about that issue. Despite being shown the 2012 report, she denied any Adderall use. She lied to cover up a mistake that she made years ago. The story is not credible that years later she decided based on research that she had not used Adderall and had nothing to report on her SCA. She repeatedly stated at the hearing that her focus was on her

foreign travel and not anything else. She falsified information as alleged in the SOR. She has not mitigated the security concerns under the personal conduct guideline.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a good history of working in the defense industry and is respected by her peers. She is highly educated and performs well at her job. She is active in the community and is well regarded for her work in domestic abuse.

She was going through a difficult time in May 2011. She accepted pills from a friend at a party. The pills were Adderall according to the friend and Applicant. She has never used any since. Her lapse of judgment in 2011 by taking the pills was due to a combination of stress and anxiety. The incident occurred in 2011 and she has not used any illegal substances. Based on the passage of time and her maturity, SOR allegation 1.a is found in her favor.

However, she disclosed the use of Adderall in detail in 2012 to NSA. But in her SCA years later, she answered "No" to Section 23. It was within the time frame. In addition, in her OPM interview she lied and stated she had no knowledge of use of Adderall when shown the 2012 report. She was not candid and created a story about the fact that the pills were really a placebo and so she had nothing to report. In the alternative, she claimed that she was just not thinking about it, and did not report the truth about the Adderall use in 2011.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Personal Conduct security concerns.

### **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 E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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NOREEN A LYNCH  
Administrative Judge