



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



In the matter of:

ISCR Case No. 17-03225

Applicant for Security Clearance

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

09/14/2018

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I find that Applicant failed to mitigate drug involvement and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 4, 2016 to retain a security clearance required for her duties with a defense contractor. Applicant reported on this e-QIP that she has used cocaine since 1995, and stopped using cocaine in 2013. She previously submitted an e-QIP on September 11, 2008, and a Standard Form (SF) 86 Security Clearance Application on December 11, 2001, but did not report any cocaine use on either form. Applicant has been eligible for access to classified information for more than 20 years.

On September 28, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement and substance misuse (Guideline H) and personal conduct for falsifying material facts on the e-QIP and the SCA (Guideline E). These actions were taken under Executive Order

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the Department of Defense on June 8, 2017.

Applicant answered the SOR on November 17, 2017. She admitted all allegations of drug involvement and substance misuse, as well as material falsifications on her 2008 e-QIP and her 2001 SCA. Department Counsel was prepared to proceed on December 18, 2017. The case was assigned to another administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 26, 2018, scheduling a hearing for July 31, 2018. The case was transferred to me on July 10, 2018. I convened the hearing as scheduled. The Government offered five exhibits, which I marked as Government Exhibits (GX) 1 through 5. I only admitted GX 1-4 into the record.<sup>1</sup> Applicant testified, and offered sixteen exhibits which I marked and admitted into the record without objection as Applicant Exhibits (AX) A through P. DOHA received the transcript of the hearing (Tr.) on August 8, 2018.

### **Findings of Fact**

Applicant's admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact. Applicant is 57 years old. She graduated from high school in 1978. She has taken some college courses but has not received a degree. She has lived with her husband for over 20 years, but they have only been married since October 2013. She has no children. Applicant has worked for the same defense contractor as an application systems specialist since December 1991. Her parents are deceased and she has two sisters, one with special needs that she assists. (Tr. 12-14; Gov. Ex. 1, e-QIP, dated August 4, 2016; GX 2, e-QIP, dated September 11, 2008; GX 3, SCA, December 11, 2001; AX A, Biography; AX B, Resume; AX C, State Driver's License; AX D and AX K, Family Photograph; AX L, Updated Resume)

The SOR alleges, and Applicant admits, that she purchased and used crack cocaine from approximately 1995 through at least 2013. (SOR 1.a) She admitted that she purchased and used the drugs after receiving a security clearance in October 2008. (SOR 1.b) The SOR alleges and Applicant admits that she falsified her SF 86 in December 2001 (SOR 2.a) and her e-QIP in September 11, 2008 (SOR 2.b) by deliberately failing to disclose her purchase and use of crack cocaine. (GX 4, Joint Personnel Adjudication System (JPAS), Incident History, dated August 3, 2016)

Applicant testified that she was not certain when she started using cocaine but she admitted to purchasing and using crack cocaine starting in 1995 because she wanted to smoke cocaine. She understood there was a federal prohibition against using drugs particularly while having eligibility for access to classified information. Her employer has a policy against using illegal drugs, but she was not tested for drug use.

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<sup>1</sup> The Government initially offered five exhibits but withdrew government Exhibit 5, a copy of a Personal Subject Interview (PSI). (Tr. 5-6)

She started using drugs because her future husband and the people that were her friends and acquaintances were using drugs. She initially received the cocaine from her friends. She does not remember when she actually started purchasing cocaine for her own use. She smoked cocaine about four or five times a week. (Tr. 26-30)

Applicant and her future husband stopped purchasing and using cocaine in approximately 2010. They started to disassociate themselves from the people that they used drugs with them. They used cocaine a few more times after that, with about six to nine months between uses. Between 2010 and 2013, Applicant and her future husband had a couple of relapses, and they occasionally used drugs. Applicant definitely stopped using cocaine when she and her husband married in 2013. She did not suddenly stop using drugs but it was a gradual process. She no longer associates with the people she formally used cocaine. (Tr. 30-31)

Applicant stated she can no longer tolerate or enjoy the cocaine. She does not consider herself addicted to cocaine despite using cocaine for almost 20 years. Even though Applicant never used marijuana, she acknowledged that her husband still uses marijuana, and that she has seen him use marijuana. Applicant also executed a document stating that if she used drugs in the future her security clearance could be automatically revoked. (Tr.33-35; AX E, statement)

Applicant recently volunteered to take drug tests and the tests were negative for drugs. (AX F, dated October 24, 2017; AX O, dated July 9, 2018) Applicant has met with a counselor for treatment for anxiety once a week for at least 17 weeks since January 2018. The counselor does not prescribe drugs for her anxiety, but she is a good support system for Applicant. Applicant admits she is in therapy for anxiety but not for drug use. (Tr. 16-23).

Applicant's drug use has not affected her finances. Her house is completely paid and she has sizeable funds in savings accounts, checking accounts, money market accounts, and retirement accounts. (Tr. 20-21)

Applicant admits that she deliberately did not report her use of cocaine on her 2001 and 2008 security clearance applications. She was in denial concerning her illegal drug use and did not want to deal with the fact of her drug use. She knew that drug use reflects poorly on her, so she wanted to avoid the subject of her drug use. She was not comfortable talking to others about her drug use. She did not think anyone would find out about her drug use. She reported her drug use during the security clearance process in 2016 because she wanted to move forward. She is a different person and wants to get on with her life. She did not believe she had a drug problem that she needed to report. She talked to some of her co-workers about reporting her drug use, and was told that she did not have to report her substance abuse, if there were no records of her using illegal drugs. She admits that the advice was wrong and she should not have followed it. (Tr. 36-39)

Applicant acknowledges that it was wrong for her to abuse drugs and to fail to be honest on her security clearance applications. She acknowledges her drug involvement and substance abuse, and she claims to have taken actions to overcome her drug use problem. She no longer enjoys drugs. She stays to herself and no longer sees people that previously used drugs with her. Applicant pointed out that she agrees to be drug tested and that she signed a letter of intent not to use drugs in the future. She cooperated with investigative authorities concerning her drug use and information on her security clearance. (Tr.24-25)

Applicant presented seven letters of recommendation from fellow workers and her supervisors that attest to her dedication, work ethic, knowledge and excellent work performance. (AX G and P) She also presented information to establish the good work she performed for her employer (AX H and M), and awards she received. (AX I)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by department counsel. . ." The applicant has the burden of persuasion to obtaining 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 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 information.

## **Analysis**

### **Drug Involvement and Substance Misuse**

The use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drug material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. Cocaine is included in the Schedule 1 list. (AG ¶ 24)

Applicant purchased and used crack cocaine four or five times a week for over 18 years with her now husband starting in 1995. She stopped using crack cocaine when she and her husband married in 2013. She was granted eligibility for access to classified information in the late 1990s, and has maintained that eligibility since then. Applicant's admissions and the available evidence is sufficient to raise the following Drug Involvement and Substance Abuse Disqualifying Conditions under AG ¶ 25:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

I considered the following Drug Involvement Mitigating Conditions under AG ¶ 26:

- (a) the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse drugs in the future, such as; (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. Based on an evaluation of the evidence presented at the hearing and in the case file, I conclude that none of the mitigating conditions fully apply.

Applicant purchased and used crack cocaine for over 18 years starting in 1995, and only stopped using cocaine in 2013. Applicant used cocaine for an extended period of time and only stopped using the illegal drug five years ago. Applicant did not present evidence of enrollment in or attendance at a drug treatment program. The evidence she presented is treatment by a therapist for anxiety and not directly for substance abuse. Applicant lives with her husband who used cocaine for many years with her. He is still using the illegal drug abuse, marijuana. Even though she claims she no longer associates with her former drug abusing acquaintances, living with her drug abusing husband negates a finding that her use happens under unusual circumstances and is unlikely to happen again. Her relationship to and living with her husband undercuts her stated intent not to use cocaine or other illegal drugs in the future. Her last use of cocaine was only five years ago under circumstances that can likely recur. Under these circumstances, there has not been an appropriate period of abstinence. Applicant has not established circumstances that could indicate a change in lifestyle and circumstance. Applicant failed to mitigate security concerns for drug involvement.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the

Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning his drug use in responses to drug use questions on two security clearance applications, an SF 86 on December 11, 2001, and an e-QIP on September 11, 2008. The reason she did not list her cocaine use on the security clearance applications was because she did not want to deal with her substance abuse. There is sufficient evidence to establish that Applicant deliberately did not provide full, complete, and accurate information concerning her drug use on the applications. Applicant's failure to list her cocaine use on the SF 86 and the e-QIP raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(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 eligibility or trustworthiness, or award fiduciary responsibilities).

I considered the following Personal Conduct Mitigating Conditions under AG ¶17:

- (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; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressor, circumstances, or factors that contributed to untrustworthy, unreliable, or other appropriate behavior, and such behavior is unlikely to recur.

The mitigating conditions do not apply. Since the security clearance process relies on an applicant providing correct information, Applicant's failure to list her cocaine purchase and use on her security clearance applications is not a minor offense. The personal conduct security concern is that Applicant "deliberately" did not provide correct, true, and accurate information. Applicant admits that she intentionally did not provide full, complete, and accurate information on the SF 86 and the e-QIP because

she was in denial concerning her illegal drug use and she did not want to deal with the facts of her drug use. She knew that drug use reflects poorly on her, so she wanted to avoid the subject. She was not comfortable talking to others about her drug use and she did not think anyone would find out about her drug use. She reported her drug use during the security clearance process in 2016.

Applicant's failures to list her cocaine use were deliberate and not the result of a misunderstanding of why the government was concerned about use of illegal substances. Based on the available evidence and Applicant's admission, I find that Applicant deliberately failed to provide correct and accurate information on drug use on her SF 86 in 2001 and her e-QIP in 2008. I conclude that Applicant did not mitigate the personal conduct security concern.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 considered Applicant's family circumstances, her letters of recommendation, and her intention not to use illegal drugs in the future. The allegations under Guidelines E and H, as established by the government's evidence, reflect a lack of judgment by Applicant. The evidence shows an extensive use of cocaine while having eligibility for access to classified information. Applicant's explanation for failing to disclose her cocaine use and while holding a security clearance is that she just did not want to face the fact of her illegal drug use. Applicant's actions of using cocaine shows a lack of good judgment. She also showed a lack of good judgment when she did not list her use of cocaine on the SF 86 and the e-QIP, and could not provide an adequate explanation or reason for her earlier failure. Applicant's statement of intent not to use marijuana in the future has little impact because of her extended voluntary use and her continued residing with a known drug



abuser. Applicant has not established that she did not deliberately provide false information concerning her drug use on an SF 86 and an e-QIP. These facts leave me with questions and doubts about Applicant's judgment and her suitability for access to classified information. For all these reasons, I conclude that Applicant has not mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is denied.

### **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
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Subparagraphs 1.a - 1.b:	Against Applicant
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Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraphs 2.a - b:	Against Applicant
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### **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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THOMAS M. CREAN  
Administrative Judge