



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



In the matter of:)
)
) ISCR Case No. 15-01274
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant accepted a friend’s leftover Vicodin and used it during a period of less than three weeks to treat his pain while deployed in November 2011. He disclosed his Vicodin use in his 2012 security clearance application (SCA). There is no evidence of any further Vicodin use after November 2011, or of any illegal drug use. Under the circumstances of this case, Applicant’s use of Vicodin does not raise questions about his current reliability, trustworthiness, judgment, ability to comply with the law, and to protect classified information. He mitigated the Guideline H security concerns. Clearance is granted.

Statement of the Case

Applicant submitted a SCA on July 9, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H

(drug involvement), on August 21, 2015.¹ Applicant answered the SOR on September 17, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), dated November 2, 2015, was mailed to him on November 6, 2015. Applicant received the FORM (on an unspecified date), and submitted an answer (on December 10, 2015) with material in rebuttal, extenuation, and mitigation. Department Counsel did not object to Applicant's submission. The case was assigned to me on January 21, 2016.

Findings of Fact

Applicant admitted the sole SOR factual allegation, with explanations. His admission is incorporated herein as a finding of fact. After a thorough review of the record evidence, including his 2012 SCA (FORM, Item 2) and his answer to the SOR (Item 1), I make the following findings of fact:

Applicant is a 46-year-old electrician. He graduated from high school in 1988 and attended college for about two years, but did not earn a degree. He enlisted in his state's Army National Guard, where he honorably served for a period of one year. Applicant has never been married. He has two adult children, both 22 years old. He has been residing with a cohabitant since August 2010.

In 2002, Applicant attended a vocational school and received an electrical apprentice certificate. Through the years, he has continued his technical training and has earned several certifications, the last one in 2010.

Applicant worked for contractors between 2002 and October 2010. He was laid off in October 2010 and was unemployed until November 2010. He was hired by a federal contractor in November 2010 and worked for several federal contractors until he was hired by his current employer, a federal contractor, in December 2011. Applicant was first granted a security clearance around 2008, while working for a federal contractor and detailed to work with another government agency.

Applicant disclosed in Section 23 (Illegal Use of Drugs or Drug Activity) of his 2012 SCA that he illegally used Vicodin intermittently, during a period of three weeks, in November 2011. At the time, he was working for a federal contractor, possessed a security clearance, and was deployed in support of U.S. interests in a South Asia nation.

¹ The action 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

In May 2011, Applicant signed an employment contract with a federal contractor to deploy in support of U.S. servicemen deployed overseas. Before his deployment, he did not have medical or dental insurance. He spent almost \$10,000 to have his teeth fixed. On May 17, 2011, Applicant underwent a dental procedure after which the dentist prescribed 20 Vicodin tablets and 15 tablets of Motrin 800 mg. (See documents attached to Answer to the SOR.)

Applicant explained that he had spent so much money on his dental procedures that he did not want to fill out the Vicodin prescription. Instead, a friend gave Applicant 30 Vicodin tablets that he had left over from his personal prescription.

In October 2011, while deployed, Applicant injured his knee and was prescribed ibuprofen and a muscle relaxant. In November 2011, after he ran out of the prescribed medications, Applicant continued to experience severe knee pain, and he could not sleep. Applicant took Vicodin at night to arrest his knee pain. He explained that he did not take Vicodin every night, just when he could not bear the pain and could not sleep. He took the Vicodin over a period of less than three weeks.

In his 2012 SCA, Applicant stated that he still had “at least 15 Vicodin tablets left.” He took the Vicodin only for pain management. Applicant averred that he is not addicted to Vicodin. He stopped taking the Vicodin after the pain subsided. He has not taken Vicodin again since November 2011. Applicant promised to never use someone else’s prescription drugs again.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does,

the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 articulates the security concern for drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

In about October 2011, Applicant received Vicodin from a friend. He used it infrequently for a period of less than three weeks during November 2011, for pain management. At the time, Applicant possessed a security clearance.

AG ¶ 25 describes two conditions related to drug involvement that could raise a security concern and are disqualifying in this case:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

AG ¶ 26 provides three potentially applicable drug involvement mitigating conditions:

- (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) a demonstrated intent not to abuse any 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.

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

All of the above Guideline H mitigating conditions are raised by the facts and circumstances in this case and mitigate the drug involvement security concerns. Applicant disclosed his use of Vicodin in his 2012 SCA. There is no evidence that the Government had any independent knowledge about his use of Vicodin prior to his disclosure. The SOR allegations were based on his candid disclosures in his 2012 SCA.

Applicant's evidence shows that he was legally prescribed Vicodin in May 2011. He did not fill his prescription. Instead, he accepted and used his friend's leftover Vicodin tablets (legally prescribed) to save money. Applicant stated in his 2012 SCA, that his friend gave him 30 Vicodin tablets, and that at the time he completed the 2012 SCA, he still had at least 15 Vicodin tablets left over. I find Applicant's past use of Vicodin to be infrequent and limited to a short period during which he had a knee injury and suffered from pain. There is no evidence of any further Vicodin use after November 2011. Applicant promised to never use prescription medications dispensed to someone else ever again. Applicant's evidence is sufficient to mitigate the drug involvement security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) I have incorporated my comments under Guideline H in my whole-person analysis.

Applicant is a 46-year-old employee of a federal contractor. He has worked for federal contractors since at least 2008, when he was granted a clearance. Although he had a Vicodin prescription, Applicant's accepted his friend's left over Vicodin and used it infrequently during a period of less than three weeks to treat his pain in November 2011. There is no evidence of any further Vicodin use after November 2011, or of any illegal drug use. Under the circumstances of this case, Applicant's use of Vicodin does not raise questions about his current reliability, trustworthiness, judgment, and ability to comply with the law, or to protect classified information. He mitigated the Guideline H security concerns.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge