



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04774
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
 For Applicant: *Pro se*
04/28/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct.) Although Applicant has made positive strides in recovering from her drug addictions, in light of her previous relapses, not enough time has passed to be confident of her sobriety. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 24, 2014. On November 25, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guidelines H and E. The DOD acted 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 (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on December 7, 2015; answered it; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on January 22, 2016. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to

Applicant on January 28, 2016, and she was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on February 1, 2016, and her Response was received by the Defense Office of Hearings and Appeals on February 3, 2016. Her Response consisted of three documents, which I have admitted as Applicant's Exhibits (AX) A through C. Department Counsel made no objections to Applicant's Response. On March 29, 2016, I reopened the record until April 15, 2016, to permit Applicant to submit additional information. I received a statement from Applicant via electronic mail dated April 15, 2016. Department Counsel had no objection to the statement, and I admitted it into the record as AX D. The case was assigned to me on March 17, 2016.

Findings of Fact

The SOR alleges under Guideline H that Applicant abused drugs, including heroin and other opiates from December 2007 until June 2013; that she abused prescription drugs, including Percocet, Oxycotin and Suboxone, between January 2007 and June 2013; that she illegally used drugs after having been granted a clearance in 2011; and, that she has been diagnosed as opiate dependent. Applicant admits that she abused drugs from December 2007 until June 2013. She emphatically denies that she abused drugs from January 2007 and states that she entered "1/2007" instead of "12/2007" on her e-QIP by mistake. She denies that she used drugs while holding a security clearance. She admits the diagnosis.

The SOR alleges under Guideline E that Applicant was charged with and found guilty of refusal to pay train fare in September 2012 and in August 2014, and cross-alleges that she used illegal drugs after receiving her clearance. Applicant admits the 2012 charge. She denies that she intentionally failed to pay train fare in 2014, but admits that she was charged and fined. She neither admits nor denies the cross-allegation, but denied the allegation under Guideline H. Therefore, I deem SOR ¶ 2.a to be denied.

Applicant is a 25-year-old data entry analyst for a defense contractor where she has worked since June 2014. She graduated from high school in 2009 and received a medical-assistant certificate in 2010. Applicant provided a document that shows that between August 2010 and December 2010, she was employed by another defense contractor. (AX B.) This contractor sponsored her for a clearance that was granted in February 2011. (GX 7.) Applicant was previously unclear on her dates of employment with this contractor, and provided inconsistent employment dates of August 2010 to February 2011 (GX 5); an unstated start-date until December 2010 (GX 4); and, April 2011 to August 2011 (GX 6). Despite her inconsistencies regarding her dates of employment, Applicant unequivocally states that during her period of employment with this contractor, she did not use illegal drugs. (GX 4; AX A.) She also emphatically states that she was no longer employed with this contractor and unaware that her clearance was granted after her employment ended. (GX 4; AX A.) She states that after her employment terminated, the clearance processing also terminated. (GX 5.)

In September 2012, Applicant was arrested for failure to pay train fare. She does not specifically recall the details of this incident because she was under the influence of opiates, but knows that she was on her way to purchase heroin, and does not doubt that she failed to pay the fare. (GX 7.) She was also charged with failure to pay train fare in August 2014. However, she erroneously thought policy permitted her to purchase a single trip ticket that included a return trip, as long as the return trip was made within two hours of the purchase. She purchased a single trip ticket and returned within two hours. This policy was no longer in effect, and she was fined.

Between December 2008 and December 2012, Applicant was treated in an outpatient detoxification hospital on three separate occasions, each time successfully completing the course of treatment. Following the December 2008 treatment, she stayed clean for approximately one month. She then returned to opiate use and began using opiates with increasing frequency. (GX 3.) She repeated this pattern following the second treatment program. During the third treatment program, she was prescribed Suboxone, which is a prescription medication used to help treat heroin addiction and dependence on other opiates¹. She took Suboxone daily for about one year, during which time she rarely used opiates. She began socializing with drug users in an environment where drugs were abundant. She began using opiates and soon started shooting heroin. She also abused Suboxone in conjunction with abusing Percocet, Oxycotin and heroin. She periodically attempted to stop using heroin, and would take only Suboxone instead. However, she was unable to stop using heroin completely and by January 2013, was using heroin multiple times a day. (GX 6.)

Applicant was arrested in January 2013 on an outstanding warrant for the September 2012 charge of failure to pay train fare. Following the arrest, she entered a 10-day detoxification treatment program. She successfully completed the program and stayed clean until June 2013. In February 2013, she also entered her current treatment program. For reasons she does not know, Applicant injected heroin in June 2013, overdosed and was hospitalized. She was very frightened by her overdose and unequivocally states that she has not used drugs since and has no intention of future drug use. (GX 6; AX D.)

One of her current program's requirements is random drug screening. Applicant has not had a drug screening that was positive for drugs since July 2013, following her June 2013 overdose. (AX C.) The program also includes counseling. (AX D.) She recognizes the devastation that her opiate addiction had on her life. She no longer associates with anyone who uses drugs and avoids the types of places where drugs are available. She has reconnected with her family, who support her clean and sober lifestyle. She associates with friends who are in her treatment program. (AX A; AX D.) She enjoys her life and her job and has a positive outlook. (AX A; AX D.) She has been renting her own apartment since May 2014, and she recently purchased a used car, on which she makes timely loan and insurance payments. She has been clean and sober since July 2013. (AX A.)

¹ Suboxone is a brand name for the combination of buprenorphine and naloxone. Information about Suboxone is available at: <http://addictions.about.com/od/dailylifewithaddiction/g/What-Is-Suboxone.htm>.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “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.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline H (Drug Involvement)

The concern under this guideline is set out in AG ¶ 24: “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.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).”

Applicant’s admissions, corroborated by her e-QIP, personal subject interview, Answer, Response, and the record evidence, establish the potentially disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(b): testing positive for illegal drug use;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

AG ¶ 25(d): diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

AG ¶ 25(e): evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

AG ¶ 25(f): failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

The following mitigating conditions are potentially relevant:

AG ¶ 26(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;

AG ¶ 26(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; and (4) a signed statement of intent with automatic revocation of clearance for any violation; and

AG ¶ 26(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.

AG ¶ 26(a) is partially established. It has been nearly three years since Applicant used illegal drugs. However, while this has been her longest period of sobriety, she has previously successfully completed multiple treatment programs and then relapsed. In 2013, she was clean for six months and actively participating in treatment, then for reasons she does not know, injected heroin which led to an overdose, and hospitalization.

AG 26(b) is partially established. Applicant no longer associates with individuals who use drugs and she avoids environments where drug use occurs. She has been clean and sober for almost three years. Although Applicant's efforts to live a clean and sober lifestyle are commendable, given her history of failed rehabilitation attempts and her use of heroin after entering rehabilitation with her current treatment program, this recent period of abstinence and other favorable record evidence is insufficient to mitigate the concern.

AG ¶ 26(d) is not established. Applicant's treatment is ongoing, therefore, she has necessarily not received any prognosis.

Guideline E (Personal Conduct)

The concern under this guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other

failure to cooperate with the security clearance process.

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(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;

AG ¶ 17(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(c) is established. The 2012 failure to pay train fare incident is minor and is mitigated by time. The 2014 train fare incident is minor and was a mistake, not intentional wrongdoing by Applicant. Her conduct does not cast doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 17(d) is established. Although Applicant was under the influence of opiates during the 2012 train-fare incident, she admits the conduct. She has been in ongoing counseling since February 2013, and has changed her behavior, attitude, and personal environments. The conduct is unlikely to recur.

AG ¶ 17(f) is established. Applicant has consistently and credibly stated that she did not use illegal drugs while previously employed by a defense contractor in 2010, and that she was unaware that she was granted a clearance in February 2011.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant recognizes that her addiction to opiates had devastating repercussions in her life. She is participating in an ongoing treatment program and has not tested positive for drugs in nearly three years. She is receiving professional counseling and personal support. She has maintained a job that she enjoys since June 2014. She lives independently and is financially responsible. Her dedication to living a clean and sober lifestyle is commendable.

After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all the evidence in the context of the whole person, I conclude

Applicant has not mitigated the security concerns raised by her illegal drug use. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 1.a; 1.b; and 1.d:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge