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intended to continue using marijuana in the future. Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose the foregoing drug use history on his May 2022 security clearance application (SCA). In response to the SOR, Applicant denied that he intended to use marijuana in the future or that he purchased cocaine, describing his “involvement in the purchase of cocaine” as “contributory as opposed to direct.” SOR Response at 3. He admitted the remaining Guideline H concerns and also admitted the falsification allegation, explaining that the omission was not an attempt to mislead, but rather “was an oversight” and based on his interpretation of the question and whether “[he] indulged vs. [he] regularly indulge[s].” *Id.* The Judge found against Applicant on all allegations.

## **Discussion**

On appeal, Applicant contends that the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all the evidence and not properly applying the mitigating conditions and Whole-Person Concept. For the following reasons, we affirm.

### **Challenge to Factual Finding**

The Judge found that Applicant submitted lab test results conducted in September 2024, which included negative results for a number of drugs, but “did not include testing for marijuana.” Decision at 3 (citing Applicant Exhibit C). On appeal, Applicant challenges this finding and asserts that he did provide a negative test result for cannabis from September 2024, a copy of which was attached to his appeal for reference.

The record reflects that, prior to the hearing, Applicant submitted a series of results from drug tests administered on September 9, 2024, which were cumulatively marked Applicant’s Exhibit C. The documents were identified on the record at hearing and described as consisting of six pages of results for “amphetamines, barbiturates, benzodiazepines, opiates, phencyclidine and cocaine all dated September 9th, 2024, all indicating negative drug tests.” Tr. at 9. Applicant acknowledged having submitted the documents prior to the hearing and, following their identification for the record, did not contend that the exhibit was missing a test result for marijuana or otherwise incomplete. The Judge’s finding that Applicant did not submit a September 2024 test result for marijuana is supported by the record.

We note that the negative cannabis test result submitted with Applicant’s appeal appears to have been from the same series of tests included at Applicant’s Exhibit C; however, this document constitutes new evidence, which the Board may not consider. Directive ¶ E3.1.29. Even if the Board could consider the new evidence, it would not impact our review of this case.

### **Guideline E**

Under Guideline E, the Judge found that AG ¶ 16(a) was established, noting Applicant’s explanations that he read the SCA’s drug involvement questions hastily and misinterpreted them, believing “use” of a drug meant “addicted,” which he claimed to not be. The Judge concluded that Applicant “is not a neophyte in the security-clearance process” and “found his explanations for

not disclosing his drug involvement in his most recent SCA unconvincing.” Decision at 6. The Judge went on to find AG ¶¶ 17(a) and 17(c)<sup>1</sup> not fully mitigating because “Applicant did not try to correct his omissions until he was confronted with the evidence by a security investigator,” and the falsification was recent and significant. *Id.* at 7 (citing ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011) (Falsification of an SCA “strikes at the heart of the security clearance process.”)).

On appeal, Applicant does not directly challenge the Judge’s conclusion that he intentionally falsified his SCA.<sup>2</sup> Rather, he challenges the Judge’s failure to apply mitigating condition AG ¶ 17(a) by reiterating his explanation that the omission was due to his hastily completing the SCA and misunderstanding the relevant Drug Use question. Applicant’s argument for application of AG ¶ 17(a) implies a challenge to the Judge’s disqualification analysis and his underlying finding of intentional falsification. This challenge, however, is unpersuasive.

The record reflects the following information about Applicant’s drug use history disclosures. In 2015 and 2016 applications completed prior to his current eligibility process, Applicant answered negatively in response to questions seeking information about illegal drug use in the prior year. Government Exhibit (GE) 2 at 21; GE 3 at 11. In his May 2022 SCA, as part of his current eligibility investigation, he again disclosed no illegal drug activity, this time within the prior seven years. GE 1 at 40.<sup>3</sup> As addressed below, Applicant subsequently participated in a series of interviews with an authorized DoD investigator, and he adopted the resulting reports as accurately reflecting the information he provided during each.

Applicant disclosed his marijuana and cocaine use for the first time during his interview in August 2022. He explained that he used marijuana from 2014 to June 2022, smoking the drug with a bong to alleviate complications from colon cancer, and that he “would obtain marijuana randomly on the street until 2020 when marijuana was legalized” in his residential area. GE 4 at 25. Applicant asserted that he stopped smoking marijuana because it negatively interfered with his Chronic Obstructive Pulmonary Disease (COPD), but that he was working with his doctor to identify a way to ingest it instead.

Upon further questioning, Applicant also disclosed that he used cocaine about six times per year from 2015 to December 2021, and that he would “randomly purchase [the drug] off the streets . . . from a random person.” *Id.* He explained that he started using cocaine when he was 18 and identified being addicted to it as a young man but averred that he “got clean” and remained so until 2015. Applicant acknowledged hiding the cocaine use from his former spouse. Applicant

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<sup>1</sup> AG ¶¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and 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.

<sup>2</sup> 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

<sup>3</sup> Applicant responded “No” to “In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.” *Id.*

initially explained that he omitted the drug use from his 2022 SCA because he misinterpreted the question but, when pressed about what specifically he misinterpreted, Applicant asserted that he answered “No” to the questions in haste.

Applicant participated in another interview in September 2022 and explained that, while he used both marijuana and cocaine recreationally when he was younger, his latest period of use was for self-medicating, and he averred that he was not addicted to cocaine. He reiterated that he purchased both drugs “illegally on the streets and from friends,” and also explained his 2022 SCA omission by stating that he “glossed over the questions on his [SCA] and associated them only with being arrested.” GE 4 at 37.

During a triggered follow-up interview in January 2023, Applicant was confronted with information that his last use of cocaine occurred in June 2022, not December 2021 as reported during an earlier interview. Applicant responded that he did not recall using the drug in June 2022, but that the June 2022 date “could be true as [he] does not count relapses as being the last time he used,” and it was “fair to say [he] had a relapse in June 2022 as it is a life struggle for [him] as an addict to possibly have a relapse.” *Id.* at 31. Applicant also updated his last marijuana use to have occurred in September 2022, not July 2022 as previously asserted, but noted that he is “not good with dates.” *Id.* at 32. Several days later, Applicant expressed confidence that he last used marijuana in either July or August 2022 and equivocated about whether he last used cocaine in December 2021 or June 2022. *Id.* at 40.

At hearing, Applicant provided information that varied wildly from that provided during his various interviews. He estimated that he last used marijuana in 2016 and averred that it was cigarettes that he stopped smoking after being diagnosed with COPD in 2022. Tr. at 28-30. Upon further questioning, Applicant acknowledged being told when he was diagnosed with COPD that, if he continued to smoke marijuana, he “would have to carry around an oxygen tank.” *Id.* at 35. When the questions turned to Applicant’s cocaine use, he initially denied using the drug from 2015 to 2022, as alleged in the SOR and admitted in his SOR response, and averred that he stopped using cocaine in 2006. *Id.* at 37-38. When confronted with his SOR response, however, Applicant acknowledged using cocaine “from time to time” when visited by an associate. He repeatedly denied purchasing the drug during his latest period of use, explaining instead that his associate would bring it by his house. *Id.* at 43-44. His denials persisted despite being confronted with his interview summaries – which Applicant adopted as accurate – reflecting his volunteered information that he purchased cocaine off the streets.

Turning to the Judge’s disqualification analysis, intent to deceive or mislead the Government can be inferred from circumstantial evidence. *See* DISCR OSD Case No. 90-0770, 1992 WL 388309 at \*2 (App. Bd. Jul. 16, 1992). Applicant’s explanations for omitting information from his SCA were relevant – but not conclusive – evidence for the Judge to consider in light of the entire record, including the Judge’s assessment of Applicant’s credibility. *Id.*

In addition to the inconsistencies between Applicant’s various drug use disclosures, which themselves reflect negatively on his credibility, he also provided inconsistent explanations for omitting the information from his 2022 SCA, shifting between that he hurriedly completed the application to that he misunderstood the question – which is clear on its face – as only seeking

information about drug addiction or, alternatively, drug arrests. Despite his denial, the record's circumstantial evidence reflecting Applicant's truthfulness throughout this process was sufficient to support the Judge's finding that Applicant intentionally falsified his 2022 SCA<sup>4</sup>

We are also unpersuaded by Applicant's arguments that AG ¶¶ 17(a) and 17(c) applied because three years have passed since his SCA omission, and he has since been "completely transparent and open regarding his past drug use." Appeal Brief at 13. Applicant's suggestion of openness and transparency is contradicted by the shifting details he provided regarding his drug use, which continued throughout his investigation and into his hearing, and the Judge's determination that Applicant failed to correct his omission was reasonable.

The Directive is clear that an applicant's failure to respond truthfully and candidly during a national security investigation is of special concern, specifically stating that the "refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives" in connection with an investigation and adjudication will normally result in an unfavorable eligibility determination. AG ¶ 15. In cases involving the deliberate omission, concealment, or falsification of material information, an applicant has a "heavy burden in demonstrating evidence of reform, rehabilitation, or changed circumstances sufficient to justify a conclusion that it is clearly consistent with the national interest to grant him access to classified information." ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). To date, Applicant has declined to acknowledge any intentionality or wrongdoing in completing his SCA, which detracts from a finding of reform and rehabilitation.<sup>5</sup> The Judge's conclusion that AG ¶ 17(c) does not apply is amply supported by the record.

### Guideline H

The Judge concluded that none of the Guideline H mitigating conditions applied, citing that Applicant's drug involvement has been recent and frequent, that he has not disassociated from drug users or changed his environment, and that he did not provide a statement of intent against future drug use. Applicant challenges the Judge's mitigation analysis and his failure to apply AG ¶ 26(a), which affords mitigation upon consideration of the recency, frequency, or unusual circumstances of the behavior,<sup>6</sup> or AG ¶ 26(b), which affords mitigation when the individual acknowledges his drug involvement, provides evidence of actions taken to overcome this problem, and establishes a pattern of abstinence.

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<sup>4</sup> In his 2022 SCA, Applicant also responded "No" to "In the last seven (7) years, have you been involved in the illegal purchase . . . of any drug or controlled substance?" GE 1 at 40. Applicant provided no explanation for how he misunderstood this question considering his acknowledgment that he purchased both cocaine and marijuana "off the streets." Although the SOR did not specifically allege falsification of this question, it is further circumstantial evidence reflective of Applicant's truthfulness in completing his SCA.

<sup>5</sup> See ISCR Case No. 96-0360 at 3 (App. Bd. Sep. 25, 1997) ("Where an applicant is unwilling or unable to accept responsibility for his or her own actions, such a failure is evidence that detracts from a finding of reform and rehabilitation.").

<sup>6</sup> 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.

Applicant's arguments in this regard, and his remaining arguments on appeal, amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See* ISCR Case No. 96-0376 at 2-3 (App. Bd. Mar. 6, 1997) (citing *Am. Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 523 (1981)). For example, Applicant contends that the Judge "failed to give proper weight to the amount of time that has elapsed since [Applicant's] consumption of illegal substances," which, as of the hearing, included about two and a half years for marijuana and about three years for cocaine. Appeal Brief at 6.

The Board has never established a bright line rule for what constitutes "recent" drug use, and the extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole. *See* ISCR Case No. 02-22173 at 2 (App. Bd. May 26, 2004). Considering Applicant's entire history of drug use including self-described addiction, his own characterization of his more recent drug use as "relapse," and his consistent failure to provide truthful and complete responses during this process, the Judge's conclusion that Applicant's drug use was recent and did not occur under unusual circumstances is supported by the record, as is his conclusion that Applicant failed to acknowledge his drug involvement or demonstrate a sufficient pattern of abstinence to support mitigation.<sup>7</sup>

### **Conclusion**

Applicant has not established that the Judge's adverse decision was arbitrary, capricious, or contrary to law. Our review of the record confirms that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Dept. of Navy v. Egan*, 484 U.S. 518, 528 (1988). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

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<sup>7</sup> Moreover, regardless of which of Applicant's reported dates of last using marijuana is accurate – June, July, August, or September 2022 – the record reflects that he used the drug after submitting his SCA in May 2022 and potentially also continued using after participating in at least one of his interviews. Having acknowledged understanding the security significance of marijuana use while granted national security eligibility (*see* GE 4 at 36), Applicant's post-SCA conduct carries further implications about his judgment and reliability. *See* ISCR Case No. 20-01772 at 3 (App. Bd. Sep. 14, 2021) (The Appeal Board has "long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.").

## **Order**

The decision in ISCR Case No. 23-01986 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein  
Administrative Judge  
Member, Appeal Board