



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



In the matter of:)
)
) ISCR Case No. 18-02181
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s marijuana use was infrequent and occurred several years ago. Drug involvement security concerns are mitigated. He did not provide sufficient information to mitigate personal conduct security concerns, which relate to falsifications about his illegal drug use and involvement during the security clearance process. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On October 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016), effective on June 8, 2017.

Applicant answered the SOR on October 22, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on November 16, 2018. On November 21, 2018, DOHA scheduled the hearing for December 11, 2018.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 10. Applicant and one other witness testified. Applicant submitted Applicant's Exhibits (AE) A through E. All exhibits were admitted without objection. The record closed on the date of the hearing. DOHA received the transcript on January 2, 2019.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, 2.a-2.c, and 2.e-2.h, all with explanations. He denied SOR ¶ 2.d, also with an explanation. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is 47 years old. He and his wife have been married for five years. He has three children, ages 27, 21, and 16, from prior relationships, and a 16-year-old stepson. Applicant joined the Navy after high school, and served for 20 years, from 1989 to 2009. He retired as a petty officer second class (E-5). He held a clearance during his entire Navy career. (Tr. 43-47, 52-54, 74, 76, 147-148; GE 1; GE 3; Attachments (Att.) B & H to GE 9)

After retiring from the Navy, Applicant was a full-time student at a community college for about a year (2009-2010). During that time, he was unemployed. He worked at a computer help desk for two defense contractors in 2010 and 2011. He spent much of the next two years (2011-2013) working in Afghanistan supporting U.S. military forces. (GE 1; Att. B to GE 9)

Applicant returned from Afghanistan in December 2013, when his employer's contract ended. He was then unemployed from about January to March 2014. He was briefly employed from March to June 2014, and was then unemployed again until October 2014. Since then, he has worked for his current employer, in the field of information technology. (GE 1) He does not currently hold a clearance. (Tr. 159-160) He earns \$45,000 annually, and gets \$1,200 a month in retirement pay. (Tr. 46-49, 51-52, 144-145; GE 1; Attachment (Att.) B to GE 9)

After he left the Navy, Applicant used marijuana on social occasions with friends about seven times between November 2009 and November 2014. (Tr. 93-94, 114-115; GE 1; Answer). He used marijuana twice in late 2009, while in school after leaving the Navy; several times between January and May 2014, and once at a wedding in November 2014. He also purchased marijuana on one occasion, in mid-2014. (GE 10-11, 16) (SOR ¶ 1.a) His marijuana use occurred after he had been granted a security clearance. (SOR ¶ 1.b)

In connection with his employment, Applicant submitted an SCA for a high-level clearance with another government agency (AGA) in August 2014. (GE 5) He did not disclose his marijuana use or the one-time marijuana purchase, all of which occurred within the previous seven years, the timeframe of the questions at issue. (GE 5 at Q. 23; Tr. 100-106) (SOR ¶¶ 2.a, 2.c)

At the same time, Applicant signed an acknowledgement concerning his understanding of AGA policy that drug use was illegal. (GE 6) He last used marijuana in November 2014, at a wedding. (GE 3 at 10-11) (SOR ¶ 1.a)

Applicant submitted another SCA, in October 2014 for a job with another defense contractor. (GE 2). He again failed to disclose his usage and purchase of marijuana, in answering questions that called for disclosure of that information. (GE 2 at 33; Tr. 100-106). (SOR ¶¶ 2.e, 2.f)

SOR ¶ 1.b, which Applicant admitted, alleges that Applicant used marijuana after he had been granted a security clearance. He had a clearance in the Navy, and all of his marijuana use came afterwards. SOR ¶¶ 2.c and 2.g, which Applicant also admitted, concern his alleged failure to disclose, on both of his SCAs in 2014, that he used marijuana while possessing a security clearance. (GE 2 at 33; GE 5 at Q. 23b)

Department Counsel represented on the record that the DOD's Joint Personnel Adjudication System (JPAS) indicated that Applicant's clearance was "denied" on June 29, 2015. (Tr. 74, 146) (See discussion below). However, there is no official documentation in the record, either from JPAS or otherwise, about whether Applicant in fact held a clearance, or was working in a cleared position, when he used marijuana at any time.

On December 2, 2014, Applicant had a background interview for the clearance with the AGA. He initially denied any involvement with illegal drugs. After further questioning, he admitted using marijuana at social gatherings twice in 2009 (after leaving the Navy) three or four times between January 2014 and May 2014, and once in November 2014. He also disclosed his one-time purchase of marijuana, in March 2014. (GE 4 at 2; GE 7 at 6; Tr. 100, 121-122)

Four days later, on December 6, 2014, Applicant had another interview with an AGA representative. In that interview, he disclosed only two uses of marijuana: once each in 2009 and 2014. He denied any further involvement with illegal drugs. (GE 4 at 2; GE 8 at 2; Tr. 121-122) His failure to disclose the full extent of his illegal drug use in the December 6 interview is alleged as SOR ¶ 2.h.

As a result of Applicant's illegal use of marijuana and related false statements on his August 2014 SCA and during subsequent background interviews, the AGA denied Applicant eligibility for access in a June 2015 clearance decision statement (CDS). Under the drug involvement guideline, the AGA applied the drug involvement disqualifying condition for "any drug abuse." The AGA's decision did not address whether Applicant's drug use, either in 2009 or 2014, had occurred while he held a

clearance. (GE 4) Applicant appealed the denial and had a hearing. (Tr. 73-74; GE 9) The AGA upheld the denial on appeal in September 2015. (GE 10)

Applicant submitted his most recent SCA in July 2016. He disclosed that he used marijuana about seven times on social occasions between 2009 and November 2014. He also disclosed his one-time purchase of marijuana, in 2014. He disclosed that his clearance had been revoked in June 2015 for failing to disclose his drug use. He also disavowed any future drug use because he said he did not want to put his clearance in jeopardy or put his livelihood at risk. He acknowledged that his prior drug use had been a mistake (GE 1) He discussed his drug use in background interviews in September 2016 and January 2017. (GE 3 at 10-11, 16) He testified that his intentions in disclosing his drug use was to be “one hundred percent honest” going forward, and to “come clean about everything.” (Tr. 112, 136)

Concerning the single drug purchase, Applicant purchased a \$10 bag of marijuana on one occasion in either March 2014 (GE 1 at 37; GE 3 at 17) or a few months later. (Tr. 97; GE 3 at 11) He kept the bag of marijuana in his garage. He initially testified that he had the bag “maybe a month.” (Tr. 98). He also testified “once my clearance got revoked, and I found out what I got revoked for, I got rid of it.” (Tr. 96-98) Once it was pointed out to Applicant at hearing that his clearance was revoked in late June 2015, he admitted keeping the marijuana in his garage for about 15 months, instead of only one. (Tr. 122-129)

Applicant said in his September 2016 background interview that he did not disclose his marijuana use on his earlier applications out of fear that doing so would impact his eligibility for a clearance. He decided later to admit to his use since lying about it was too much of a burden and that he wanted to do the right thing. (GE 3 at 10)

In 2013, while working in Afghanistan, Applicant sent an unsolicited personal e-mail to a female Marine he worked with. The e-mail was not well received, and she complained to his supervisor. (Tr. 49-51, 89-93; GE 7 at 3) In SOR ¶ 2.d, the Government alleged that Applicant deliberately failed to disclose on his October 2014 SCA that he had been reprimanded or disciplined as a result of this incident. (GE 2 at 12-13; GE 3 at 9, 15; Tr. 117-120) Appellant denied SOR ¶ 2.d, on the grounds that he had not been given a written reprimand or otherwise disciplined as a result of the e-mail. He acknowledged being told by his supervisor not to contact the woman again, and he complied. (Tr. 113) He denied being given a reprimand, written or otherwise. There is no written reprimand in the record.

Applicant disclosed this incident on his most recent SCA, in 2016. (GE 1 at 16) He said he did so to clear his conscience, and out of the abundance of caution. (Tr. 120)

In 2007, Applicant was a petty officer first class (E-6) and a leading petty officer (LPO) in charge of about 17 other sailors on his ship. In applying for chief petty officer (E-7), Applicant submitted documentation falsely representing that he had obtained certain qualifications necessary for promotion. On the documentation, he forged or falsified his senior chief petty officer’s signature. He submitted the documentation to the

very senior chief whose signature he had forged, and she noticed the discrepancy right away. Applicant was charged under the Uniform Code of Military Justice (UCMJ) with making a false statement. He received non-judicial punishment (NJP) and was reduced in rank to E-5. He was allowed to remain in the Navy so he could retire after 20 years. (Tr. 78-88, 141-144; GE 8 at 3) This incident is not alleged in the SOR.

Applicant disclosed his NJP on his July 2016 SCA. He did so despite the fact that it occurred in 2007, and, thus, need not have been disclosed, since it was beyond the seven-year time frame of the employment questions on the form. (GE 1 at 20-21)

In late August 2018, following a recommendation from his doctor, Applicant began attending counseling with a licensed clinical social worker (LSCW). (AE A) He attends counseling and has his medication evaluated every three months. (Tr. 132-135) Applicant testified that he accepts full responsibility for his actions and is very remorseful. His counselor noted this as well. (AE A) He sought counseling so as to put things behind him and “get my life back together.” (Tr. 71-72, 158; Answer) He accepted full responsibility for his actions and said he has learned his lesson. (Tr. 158; AE A)

In 2015, when he appealed the denial of his clearance application with the AGA, Applicant submitted a statement of intent not to use illegal drugs in the future, and he consented to automatic revocation of his clearance should he do so. (Att. E to GE 9) Applicant reaffirmed that statement during his testimony. (Tr. 135)

A former co-worker of Applicant’s testified as a character witness. They worked together from October 2017 at October 2018 and had daily professional contact. She attested to Applicant’s honesty and integrity. She trusts Applicant implicitly, which she rarely does with others. If she owned her own business, she would hire him. (Tr. 51-69)

Two senior executives at Applicant’s employer praised his work ethic and professional expertise. They regard Applicant as motivated, responsible, and a devoted employee. They stated that he has a high degree of integrity. They are aware of Applicant’s misconduct, and noted that he is remorseful and regretful. They believe Applicant made a mistake and has faced up to it. They recommend Applicant for a clearance. (AE B; AE C) Applicant’s security manager provided a similar strong endorsement, as did a longtime friend and fellow sailor. (AE D; AE E)¹

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”²

¹ I also considered the recommendation letters provided in 2015, when Appellant appealed the denial of his eligibility for a clearance with the AGA. (Att. A to GE 9)

² *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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. Likewise, I have not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use can raise questions about an individual's reliability and

trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition);
- (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.

Marijuana is a Schedule 1 drug under the Controlled Substances Act. Use and possession of marijuana are illegal under federal law. Applicant used marijuana on several occasions between November 2009 and November 2014. AG ¶ 25(a) applies. He purchased a \$10 bag of marijuana at some point in mid-2014. AG ¶ 25(c) applies.

SOR ¶ 1.b alleges, and Applicant admits, that he used marijuana after having been granted a DOD security clearance. However, for AG ¶ 25(f) to apply, Applicant must be shown to have used illegal drugs while granted access to classified information or holding a sensitive position.

All of Applicant's marijuana use occurred after he left the Navy. He used it twice in late 2009, shortly after he retired. While his Navy clearance may have been "current" at the time, Applicant was also unemployed and taking classes. He joined the defense industry in 2010. He used marijuana several times after returning from Afghanistan (in December 2013), between about January 2014 and May 2014. During part of this period, he was unemployed, and during part of this period, he was employed in the defense industry. Thus, it is not entirely clear from the record that any of these incidents of marijuana use occurred during periods when he was employed in a cleared capacity.

Applicant's most recent marijuana use was in November 2014, at a wedding. This was after he signed an acknowledgment of his understanding that drug use was illegal, in August 2014, after submitting SCAs, in August and October 2014, and after beginning work for his current employer. While he had recently applied for a clearance, it is not clear from the record that he had one at the time, notwithstanding his admissions.

Most importantly, notwithstanding Applicant's admissions, there is no documentary record evidence to confirm that Applicant had a clearance during any of the times when he used marijuana, either in 2009 or 2014. In particular, the CDS from

the AGA does not address whether Applicant used marijuana with a clearance – something which one assumes the AGA would address in the CDS if they had supporting record evidence. I find that there is insufficient record evidence to apply AG ¶ 25(f).

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

(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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement is grounds for revocation of national security eligibility.

Applicant used marijuana with friends, both at home, and in other social situations. There is little evidence that he has disassociated himself from his drug-using associates, or changed the environment where drugs are used. Applicant provided a statement of intent in 2015, and reaffirmed it at his hearing. AG ¶ 26(b) therefore partially applies.

Applicant used marijuana twice in 2009 and several times in 2014, about seven times in total. He purchased marijuana on one occasion in mid-2014, and kept it in his garage until after his clearance was denied, in June 2015. After that, he disposed of it. Thus, Applicant's involvement with marijuana continued until about three and a half years before the hearing. Applicant's marijuana use was, nonetheless, infrequent. He has not used marijuana since November 2014. He has expressed remorse and regret since then, in counseling, to his supervisors, and at hearing. Additionally, he has already had a security clearance denied, in part because of his drug use. Thus, he is well aware of the consequences of future involvement with illegal drugs. For that reason, I conclude that Applicant is unlikely to use illegal drugs in the future. I find that AG ¶ 26(a) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information or omitting information, concerning relevant facts to an employer, investigator, [or] security official, . . . in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant submitted two SCAs, and had a related background interview, for a clearance with the AGA in 2014. He deliberately failed to disclose his marijuana use and his one-time purchase of marijuana. AG ¶ 16(a) applies to SOR ¶¶ 2.a, 2.c, 2.e, and 2.f.

Despite being more candid about his drug use in a background interview only days earlier, Applicant deliberately underreported his drug use (acknowledging only two incidents) in his December 6, 2014 interview with the AGA representative. AG ¶ 16(b) applies to SOR ¶ 2.h.

As discussed in Guideline H, above, there is insufficient evidence to conclude that any of Applicant's marijuana use occurred "while possessing a clearance." Since that is not established, it is also not established that Applicant deliberately falsified the questions on his August and October 2014 SCAs, calling for disclosure of illegal drug use "while possessing a clearance. Thus, notwithstanding Applicant's admission, there is insufficient evidence to conclude that AG ¶ 16(a) applies to either SOR ¶ 2.b or ¶ 2.g. Those allegations are found for Applicant.

SOR ¶ 2.d is not established. Applicant sent an unsolicited e-mail to a female Marine in 2013. The e-mail was unwelcome, and she complained to his supervisor. Applicant was told to break off contact with the woman, and he did so. He denied receiving a written warning, or official reprimand, suspension or discipline at work as a result. There is no written reprimand in the record. Applicant had no duty to disclose the incident on his October 2014 SCA (or on his 2016 SCA, even though he did so). AG ¶ 16(a) does not apply to SOR ¶ 2.d.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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 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.

Applicant had multiple opportunities in 2014 to be fully candid about his drug use. He prepared two SCAs, in August and October 2014. He had used marijuana several times earlier that year, and knew that his recent use might affect his clearance eligibility. He then used marijuana in November 2014, after acknowledging the AGA's policy about illegal drug use and agreeing to abide by it.

Applicant had a background interview on December 2, 2014 with an AGA representative. He initially denied any involvement with illegal drugs. After further questioning, he admitted his use and purchase of marijuana, as alleged in SOR ¶ 1.a.

Four days later, he underreported his drug use, acknowledging only single uses of marijuana in 2009 and 2014. He denied any further involvement with illegal drugs. Applicant has a duty to be truthful and candid with the Government at all times. Prior disclosures do not mitigate subsequent omissions. The fact that he had disclosed his marijuana use only days before, does not mitigate this minimization.

Applicant was most fully candid about his illegal drug involvement on his 2016 SCA, and subsequently. However, this subsequent candor does not constitute "prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(c) does not apply.

Applicant has admitted his prior misconduct, and has expressed remorse and regret for his actions. He recently entered counseling, and is participating actively and to his benefit. Applicant is therefore given some credit in mitigation under AG ¶ 17(d).

Applicant's falsifications, as alleged in the SOR, are not minor. They are also not isolated. Though they are now several years old, they are also part of a pattern of poor judgment and lack of candor. This is evidenced not only by the multiple falsifications alleged in the SOR, but by the false official statement Applicant made in the Navy.

While not alleged, that prior instance of falsification is appropriate for consideration in weighing mitigation and under the whole-person concept. In 2007, while serving in the Navy as an LPO and with a clearance, Applicant falsified qualification documents necessary for his promotion to chief petty officer. He did so in a particularly foolish way – by falsifying the signature of his supervisor, to whom he then handed the document. Not surprisingly, he was caught. This led to a charge under the UCMJ of falsifying an official document. Applicant was reduced in rank to E-5, the rank at which he retired a few years later.

As I told Applicant at hearing,³ this incident cannot be considered as disqualifying conduct since it was not alleged in the SOR. However, it is appropriate to consider this incident in weighing mitigation or changed circumstances, whether Applicant has demonstrated sufficient rehabilitation, under the whole-person concept, and in weighing Applicant's credibility.⁴

Applicant's falsification in the Navy is now many years old, but, coupled with his falsifications on his 2014 SCAs and during his 2014 interview, it weighs heavily against mitigation. Applicant's falsifications, as alleged, are part of a pattern, and are not isolated. They are not attributable to a lack of maturity or a failure to understand the seriousness of the process. In light of the multiple falsifications in this case, including the unalleged prior, similar conduct, I cannot conclude that AG ¶¶ 17(c) and 17(d) fully apply in this case to mitigate the security concerns arising from Applicant's pattern of security-significant personal conduct.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis.

Applicant used marijuana several times, but infrequently, several years ago. Security concerns over his drug involvement is mitigated. However, Applicant did not provide sufficient evidence that he has mitigated personal conduct security concerns over his multiple falsifications.

³ Tr. 140-141.

⁴ ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

This is not a case about punishing Applicant for his prior transgressions. This is a case about whether or not Applicant is a security risk, and whether he has carried his burden of establishing that he is again a suitable candidate for access to U.S. Government classified information. Applicant has a long record of falsifications, going back to his Navy service. Multiple falsifications were alleged in the SOR and established in the record. The fact that Applicant has belatedly chosen to be more fully candid on his most recent SCA, has expressed remorse and regret for his prior falsifications, and has pursued counseling, is simply not enough to mitigate security concerns over his suitability for a clearance. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility for access to classified information.

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
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge