



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02969  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esq., Department Counsel

For Applicant: Ryan C. Nerney, Esq.

January 27, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines F (financial considerations), H (drug involvement and substance abuse), and E (personal conduct). Applicant mitigated security concerns under Guidelines F and H. He failed, however, to mitigate the Guideline E security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 28, 2017, Applicant submitted a security clearance application (SCA) seeking a clearance. (Government Exhibit (GE) 1.) On November 22, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the above three adjudicative guidelines. The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4

(SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions within the Department of Defense on or after June 8, 2017.

On December 26, 2019, Applicant responded to the SOR (Answer). He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 28, 2020, the case was assigned to me. The hearing on the case was delayed due to the Covid-19 pandemic. DOHA issued a notice of hearing on October 2, 2020, scheduling the hearing on November 17, 2020.

I convened the hearing as scheduled. Department Counsel presented ten proposed exhibits, marked as GE 1 through 10. I marked his exhibit list as Hearing Exhibit I. Applicant's counsel had no objections to admissibility of GE 1, 2, and 4-10. He objected to admission of GE 3, a Polygraph Report summarizing admissions made by Applicant in a polygraph examination conducted in 2013 by an examiner of the U.S. Customs and Border Protection (CBP). Applicant's counsel offered 12 exhibits, marked as Applicant Exhibits (AE) A through L. Department Counsel did not object to any of these proposed exhibits. I admitted all exhibits, except GE 3. I reserved my decision on the admissibility of that exhibit until the issuance of this Decision. See my ruling below. (Tr. at 8, 10-16.)

### **Evidentiary Ruling on GE 3**

Applicant's counsel objected to the admission of GE 3 on the grounds that it contained inaccurate hearsay information and that no witness was present to confirm the authenticity and accuracy of the information set forth in the polygraph examination summary. Department Counsel argued that the report is not subject to the exception on admissibility set forth in Directive ¶ E3.1.20 and is therefore admissible hearsay. I agree with Department Counsel's argument. I find that GE 3 is not a DoD Report of Investigation. It contains only "adjudicatively significant information" and no "polygraph examination technical calls." (SEAD 4, Appendix A, Section 1(c)). It is an official record of CBP, Office of Internal Affairs, Credibility Assessment Division, on official letterhead and marked "For Official Use Only—Law Enforcement Sensitive." Official documents such as this are routinely admissible in DOHA proceedings under the "official record" hearsay exception of Federal Rule of Evidence 803(8). (Tr. at 13-15.)

I conclude that GE 3 is admissible under Directive ¶ E3.1.20 and the Appeal Board decision in ISCR Case No. 11-12641 (App. Bd. Mar. 14, 2013), which was upheld by the U.S. Court of Appeals for the District of Columbia. See *Palmieri v. United States*, No. 16-5347 at 11-14 (D.C. Cir. 2018) affirming the U.S. District Court's summary judgment against the appellant. *Palmieri v. United States*, 72 F. Supp. 3d 191 (D.D.C. 2014).

### **Findings of Fact**

I have incorporated Applicant's admissions in his Answer in my findings of fact and have noted therein his admissions and comments on his debts and his past drug use. I note that Applicant failed to admit or deny in his Answer the falsification allegation in SOR ¶ 3.a. I have treated that allegation as denied. Applicant's personal information is

extracted from GE 1, his 2017 SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant, 34, is married and has two young children. He received a high school diploma in 2004 and has taken some college courses, but he has not earned a degree. In December 2008, he received a Correctional Academy Certificate. (Tr. at 17.)

Starting in 2009 at age 19, Applicant sought a position in law enforcement, specifically with CBP. At that time, it was important to him work in that field. In 2009, he submitted an Electronic Questionnaire for Investigative Processing (e-QIP) seeking employment with CBP. After taking a polygraph examination in July 2013, he was advised that he was not going to be considered. He testified that he never inquired why he was disqualified. He testified that at the point, he had "already invested myself into the career I am currently at now." (Tr. at 17-20, 25, 58-61, 73.)

In November 2012, Applicant began his career working as a contractor for the U.S. Navy performing ship repairs. In about February 2018, he started working for his current employer in the same field. Initially, he took a pay cut of about \$10,000 because he believed that he would advance quickly and would ultimately earn a higher income. He has since been promoted to be a site manager and a level-one supervisor for this company, a Navy contractor, which is sponsoring Applicant to apply for a security clearance. According to Applicant, he presently has an interim clearance. (Tr. at 18-20, 25, 58-61, 68.)

### **Financial Considerations**

In September 2012, Applicant began to experience financial difficulties after his wife was laid off. She was pregnant at the time with their first child. She lost her annual income of \$40,000 to \$50,000. As a result, Applicant and his family had to live solely on his income, which was \$70,000 to \$75,000. In the following months, Applicant was unable to pay his bills. On the advice of an attorney, he filed for bankruptcy on May 13, 2013, under Chapter 7. (GE 2 at 3; GE 8 at 1-4; AE H; Tr. at 20-22.)

In addition to Applicant's 2013 bankruptcy, the SOR alleges three delinquent debts owed to a credit union, two credit-card accounts and one loan opened by Applicant to consolidate his debts. He opened these accounts after his bankruptcy discharge, hoping to reestablish his prior solid credit. The Government's evidence reflects that the three debts became delinquent in mid-2016. Applicant testified that at that time, he was not making enough money to pay his bills. He was earning about \$75,000 per year. (GE 5 at 3; GE 6 at 2; GE 7 at 4-5; GE 10 at 2; Tr. at 23, 31-33, 54.)

As described generally above and alleged in the SOR, Applicant has the following three delinquent debts owed to a credit union:

**SOR ¶ 1.a - Credit-Card Account in the amount of \$20,304.** Applicant opened this account in August 2013, the same month as his bankruptcy discharge. The credit limit on the account was \$19,300. He defaulted on this account in 2016. In late 2018, he received a promotion and a pay raise. In February 2019, he entered into a payment plan with the credit union to repay this debt at the monthly rate of \$100. At the time, he was earning a higher salary and could afford to begin paying his three debts owed to the credit union. The payment plan for this debt is scheduled to continue for 202 months, or about 17 years. Applicant provided documentation from the creditor evidencing his compliance with his payment plan. He intends to begin paying this debt off sooner with funds from a merit pay raise he expects to receive soon and with excess money he will have once his other debts to the credit union are paid off. **This debt is being resolved.** (GE 5 at 3; GE 6 at 2; GE 7 at 4-5; GE 10 at 2; AE E at 3; Tr. at 22-28.)

**SOR ¶ 1.b - Debt-Consolidation Loan Account in the amount of \$7,486.** Applicant opened this account in October 2015. He defaulted on this account in May 2016, about seven months later. Again in February 2019, he entered into a payment plan with the credit union to repay this debt at the monthly rate of \$100 for 77 months. He provided documentation from the creditor evidencing his compliance with his payment plan. He plans to increase his monthly payments with his next pay raise. **This debt is being resolved.** (GE 5 at 3; GE 6 at 2; GE 7 at 5; GE 10 at 2; AE E at 1; Tr. at 27-28.)

**SOR ¶ 1.c - Credit-Card Account in the amount of \$3,319.** Applicant opened this account in September 2015. He defaulted on the debt in May 2016. Since March 2019, he has been paying the creditor \$50 per month. He provided documentation reflecting his payments and current status under the payment plan. He intends to repay the entire amount more quickly than the 68 months provided for under the plan. **This debt is being resolved.** (GE 5 at 3; GE 6 at 2; GE 7 at 5; GE 10 at 2; AE E at 2; Tr. at 29.)

The fourth allegation under Guideline F in the SOR is the following:

**SOR ¶ 1.d - 2013 Chapter 7 Bankruptcy Petition.** Applicant filed his petition in May 2013. He listed about \$35,000 of unsecured debts and \$39,000 of secured debts, which were debts on two vehicles. He returned the two vehicles to the lenders, and his unsecured debts and the balances of the auto loans were discharged in August 2013. As explained above, he was unable to pay his debts in 2013 because his wife had lost her job and he was unable to pay the family expenses without her income. (GE 8 at 1-2; AE H; Tr. at 30-31, 46, 54-55, 80-81.)

Applicant considers himself financially stable, and he works hard to live within his means. He has taken a financial-counseling class online that taught financial planning, budgeting, and investments. As a result of his past financial problems, he has learned to budget his expenses and avoid overspending. He uses a computerized bill-pay system to plan and track his spending. Aside from the above three debts, he pays off his debts every month and has zero balances. Applicant testified that his wife is now reemployed, and she uses her income to pay some small bills. She has no separate debts and has good credit. His annual income has increased to approximately \$91,000, and his wife

earns another \$55,000 to \$60,000. He also has a retirement account with about \$43,000 in assets. He maintains a savings account with about \$3,500 to \$4,000 for emergencies. (AE D; AE F; Tr. at 23, 31-34, 49-54.)

## **Drug Involvement**

Applicant testified that the last time he used any illegal drugs was in 2004. He was a senior in high school at the time. His use of marijuana was experimental. He no longer associates with his high school friends who used marijuana with him. He always avoids environments where drug use might occur. In addition, he has signed a statement of intent in which he pledged never to use any illegal drugs in the future. He has also tested negative for drug use for seven or eight months preceding the hearing. In addition, he completed an online, drug-counseling course. He has no intent to use illegal drugs in the future because he does not approve of them, and with his two children, he wants to set the right example for them. (AE J; AE K; AE L; Tr. at 35-38.)

As noted, Applicant aspired to work in law enforcement. He aggressively pursued this career goal for three years. He applied for a position with the CBP in 2009. He testified that the hiring process took an unusually long time, in part, due to a hiring freeze at CBP. He also testified that he was randomly tested for illegal drug use and no longer used any illegal drugs while his application was pending. One of the last requirements of the application process was a polygraph exam, which he took in July 2013. (GE 1 at 13; GE 2 at 2; GE 3 at 1; GE 4 at 37; Tr. at 40-44, 66, 69, 73, 75-78, 86-88.)

By that point, Applicant had settled in a new career as a Navy contractor beginning in November 2012. He no longer dreamed of working in law enforcement after his son was born in September 2012 and his wife was unemployed. Nevertheless, he took the CBP polygraph in July 2013. As set forth in the examiner's Polygraph Report, Applicant admitted during the examination that he used marijuana approximately 20 times between 2000 and August 2012. Accordingly, his first use was while in high school and his last use was about one year before the polygraph. (GE 1 at 13; GE 2 at 2; GE 3 at 1; GE 4 at 37; Tr. at 40-44, 66, 69, 73, 75-78, 86-88.)

Applicant also admitted to the examiner that he purchased marijuana on about three occasions. At the hearing, he provided no testimony disputing the accuracy of GE 3 with respect to this statement regarding purchasing marijuana. (GE 3 at 1.)

Applicant, however, disputes the accuracy of GE 3 on one critical point. He testified that he told the examiner that he only used marijuana during the period 2004 to 2005. The examiner asked him to provide a range of the dates of use, and Applicant responded with this range just so that he would "make myself look better. I had never done a polygraph." He testified that he subsequently received a letter from CBP stating that he was "disqualified" for employment with that agency. While disappointed, he testified that he was "in a better place" at the time he received the CBP letter. He had already started working in his new career field. (GE 3 at 1; Tr. at 40-44, 60, 63-64, 66, 69, 75-79, 86-87.)

At one point in his testimony, described above, Applicant said that he never inquired about the CBP's reason for its disqualification decision. (Tr. at 60.) He subsequently testified that the disqualification letter advised him that he was not being considered for employment at CBP because he did not initially tell the truth about his marijuana use on his 2009 e-QIP. (Tr. at 76-77.) The letter explained further that he admitted in his polygraph that his marijuana use was more extensive than three times in 2004, which is what he disclosed in his e-QIP. In his testimony, he denied that the disqualification letter referred to drug use as recent as 2012. Moreover, he denied ever telling the examiner that his last use was in August 2012. He cannot explain why that date appears in GE 3. The first time he saw GE 3 was after the issuance of the SOR when he requested his investigative file. (GE 3 at 1; Tr. at 40-44, 60-64, 66, 68-69, 75-79, 86-87.)

### **Personal Conduct**

The SOR alleges that Applicant deliberately omitted information in his 2017 SCA relating to his use of marijuana. He answered, "No," to a question in Section 23 regarding drug use in the past seven years. The SOR alleges that he intentionally provided a false response to this question. As noted, GE 3 evidences that Applicant did indeed use marijuana in the prior seven-year period, which dates back to 2010. At the hearing, Applicant testified that, other than the admission relating to marijuana, the admissions summarized in GE 3 were accurate. Applicant denies, however, that GE 3 is accurate with respect to the period of time he admitted to using marijuana, *i.e.*, 2000 to August 2012. He claimed he only admitted using marijuana in 2004 to 2005, which was outside of the reportable, seven-year period in the SCA. (Tr. at 39-40, 44, 64-66.)

### **Character Evidence**

Applicant offered 15 character reference letters, his two most recent performance evaluations from his current employer, and nine certifications of his training and a history of his post-high school coursework. One letter is from a long-time friend and the others are from current and former supervisors, co-workers, and subordinates. Each person praises Applicant enthusiastically as a dedicated, highly trained, and skilled worker. They believe him to be honest and trustworthy and a person of integrity and character. Applicant testified that only one of his references is aware of the Government's security concerns raised in the SOR. That person is his current supervisor. The supervisor's letter is one of Applicant's strongest letters of recommendation. (AE B; Tr. at 70, 72.)

Applicant's two job performance evaluations praise his leadership skills, discuss his promotion, and compliment his mentorship and training efforts. Applicant's work team has an excellent safety record because of his leadership. He exceeded expectations and his performance was rated as "STRONG/OUTSTANDING."(AE G; AE I.)

The certificates Applicant presented evidence the significant amount of time Applicant has invested in his training and his expertise in his field. They support his employer's view expressed in its annual performance evaluations of Applicant that he is well trained in all aspects of his job, particularly in the critical area of safety. (AE I.)

## 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18 as follows:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The guideline at AG ¶ 19 contains seven potentially disqualifying conditions that could raise security concerns. Two of the conditions apply to the facts found in this case:

AG ¶ 19(a) (“inability to satisfy debts”), and

AG ¶ 19(c) (“a history of not meeting financial obligations”).

Applicant’s admissions in his SOR Answer and his testimony and the documentary evidence in the record establish the above potentially disqualifying conditions. Accordingly, further review is required.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of the conditions potentially apply to the facts of this case:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not



cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts.

Mitigating conditions 20(a) and (b) partially apply. Applicant's 2013 bankruptcy occurred a number of years ago and was caused by the unusual circumstance of his wife's loss of employment when she was pregnant with the couple's first child. This was also a condition largely beyond Applicant's control. Standing alone, these circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant, however, incurred \$30,000 of new debts in the three years after his bankruptcy discharge that he could not afford. These debts, which are ongoing, make it difficult to conclude that his financial problems are unlikely to recur. He has, however, successfully put new budgeting and spending control measures in place. His responsible behavior in 2019, prior to the issuance of the SOR, of entering into payment plans with the creditor of his three delinquent debts and of consistently making payments for almost two years under those plans demonstrate that he has acted responsibly under the circumstances.

Mitigating condition 20(c) fully applies. Applicant has received online credit counseling and has taken the lessons he learned to heart. He has created a serious budget and controls his spending so that his mistakes in the period 2013 to 2016 are not repeated. With his history of compliance with his payment plans to repay the three SOR debts and his serious efforts to live within his means, Applicant has provided clear indications that his financial problems are being resolved and are under control.

Mitigating condition 20(d) partially applies. Applicant did not repay the creditors to which he was indebted at the time of his bankruptcy filing. He has, however, initiated a good-faith effort to repay his three most recent delinquent debts and has faithfully adhered to his repayment plans for almost two years.

Overall, Applicant has maturely managed his finances since 2019. He has met his burden to establish mitigation of the allegations raised in the SOR concerning financial considerations. **Guideline F security concerns are resolved in favor of Applicant.**

## Guideline H, Drug Involvement and Substance Misuse

The security concern under this guideline is set out in AG ¶ 24 as follows:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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.

The guideline at AG ¶ 25 contains seven potentially disqualifying conditions that could raise security concerns. One condition applies to the facts found in this case:

AG ¶ 25 (a): any substance misuse (see above definition).

The record evidence establishes that Applicant used marijuana approximately 20 times between 2000 and August 2012. Under the pressure of his first polygraph examination, Applicant made more forthcoming admissions about his past marijuana use that he had on his 2009 e-QIP. Also, when he took the polygraph, he was no longer seriously pursuing a career with CBP. He testified that with the birth of his first child in 2012, he had made the decision to find a new career. In November 2012, he commenced working for a U.S. military contractor. At the time Applicant took the polygraph in July 2013, he was invested in his new career. His testimony revealed that answering the questions completely and honestly was important to him. A possible job opportunity with CBP was no longer his career ambition.

The Examination Summary prepared by a polygraph examiner in the Credibility Assessment Division of the CBP's Office of Internal Affairs is highly credible. The Examination Summary was prepared by a trained U.S. Government employee and this critical statement about Applicant's marijuana use is the first item listed under the heading "Relevant Admissions." Since this admission is the most derogatory information in the Summary, it would be expected that the examiner was especially carefully in preparing this portion of his report. Applicant admitted that all of the other information in the exhibit was correctly summarized. There is no reason to believe that the polygraph examiner provided erroneous information, either intentionally or inadvertently, about the dates Applicant admitted using marijuana. Moreover, Federal officials such as the polygraph examiner are entitled to a presumption of good faith in the conduct of their duties. See, e.g., ISCR Case No. 11-05079 at 5 (App. Bd. Jun. 6, 2012); ISCR Case No. 11-12641 at 5 (App. Bd. Mar. 14, 2013).

Applicant made a full, truthful disclosure of his past illegal drug use to the polygraph examiner. I find his statements to the examiner to be accurately summarized. In making my conclusion that Applicant used marijuana until 2012, I have given careful consideration to Applicant's testimony disputing the accuracy of that date set forth in GE 3. I find that Applicant's testimony denying his illegal drug use after 2004 lacked credibility. This was not the first time Applicant tried to minimize or falsify his past drug use in a security clearance application to help his career. In light of my conclusion that Applicant has used marijuana in the past, further review is required.

The guideline in AG ¶ 26 contains four conditions that could mitigate security concerns arising from Applicant's drug involvement. Two of the conditions potentially apply:

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; and

AG ¶ 26(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 or misuse is grounds for revocation of national security eligibility.

Both of the above mitigating conditions have been established. Applicant's last use of marijuana occurred about eight years ago, and his use was infrequent. Accordingly, his past use of marijuana does not cast doubt on his current reliability, trustworthiness, or good judgment. In addition, he has acknowledged, in general, his past drug use, and has established a long period of abstinence. He avoids friends and situations where drugs might be used. He has also provided a signed statement pursuant to AG ¶ 26(b)(3). **Guideline H security concerns are resolved in favor of Applicant.**

### **Guideline E, Personal Conduct**

The security concern under this guideline is set out in AG ¶ 15 as follows:

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.

The guideline at AG ¶ 16 contains seven potentially disqualifying conditions that could raise security concerns. One condition potentially applies to the facts found in this case:

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.

The record evidence established that Applicant falsified his response to a question in Section 23 of his December 2017 SCA regarding his illegal drug use during the prior seven years. Applicant failed to disclose his drug use during the period December 2010 to August 2012. I conclude this omission was deliberate because he admitted using drugs during that period in his 2013 polygraph examination. AG ¶ 16(a) applies. Accordingly, further review is required.

The guideline in AG ¶ 17 contains seven conditions that could mitigate security concerns arising from Applicant's personal conduct. Two of the conditions potentially apply:

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; and

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

Neither of the above mitigating conditions are established. The adverse information regarding Applicant's drug use from 2000 to August 2012 is substantiated by GE 3, a reliable and accurate source. Applicant's testimony denying this information lacked credibility and was insufficient to raise questions about the accuracy and reliability of the information. The offense of falsification is not minor, and only three years have passed since he signed his SCA. In light of his further denials at the hearing, which I found to be not credible, it is likely this behavior will recur. His lack of candor in his SCA and at the hearing cast doubt on his reliability, trustworthiness, and good judgment. **Guideline E security concerns are resolved against Applicant.**

## 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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

(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 F, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some factors warrant additional comments. Applicant has matured and overcome many of his past mistakes. He has a job with significant responsibilities. His character evidence is impressive. He provided significant evidence in mitigation of security concerns under Guidelines F and H. He was unsuccessful, however, in establishing that the information in the CBP polygraph report was incorrect. Furthermore, his testimony that he did not use marijuana as recently as 2012 was not credible. After weighing the disqualifying and mitigating conditions under Guidelines F, H, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns under Guidelines F and H, but did not mitigate concerns under Guideline E raised by his deliberate omission in his 2017 SCA of information regarding his past use of an illegal drug.

### Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2. Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3. Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

## **Conclusion**

In light of the entire record, I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

John Bayard Glendon  
Administrative Judge