



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



In the matter of:)
)
-----) ISCR Case No. 20-01825
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: Todd Stephens, Esq.

08/09/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On October 23, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on November 11, 2020, and requested a hearing. The case was assigned to me on February 21, 2021. A hearing was scheduled for April 5, 2021, and heard on the date as scheduled. At the hearing, the Government's case consisted of five exhibits. Applicant relied on three witnesses (including herself) and 13 exhibits. The transcript (Tr.) was received on June 30, 2021.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used cocaine in at least March 2019, while holding a security clearance. The allegations are incorporated under Guideline E.

Additional allegations are made under Guideline E. Allegedly, Applicant was charged with two driving under the influence (DUI) offenses between 2007 and 2012: one in July 2007, for which he received probation before judgment and (b) another in March 2012, in which she was convicted and sentenced to 15 days detention and two years probation.

In her response to the SOR, Applicant admitted all of the allegations under each of the cited SOR guidelines with explanations and clarifications. She claimed her cited use of cocaine in March 2019 was an isolated one-time incident that she never previously engaged in (not being a drug user) and will not repeat in the future (citing the negative results of a recent drug test). She claimed she has cut ties with the acquaintance who gave her the cocaine and maintains no contact with this person.

Applicant claimed her DUI offenses occurred in 2007 and 2012 under unusual circumstances. Addressing her 2007 DUI incident, she claimed it followed the passing of her grandmother. Covering her 2012 DUI incident, she claimed it was the result of a poor decision to drive after celebrating a St. Patrick's Day gathering. Applicant further claimed that she learned lessons from her DUI offenses and has taken her professional training very seriously. To support her claims, she cited her successful completion of 29 courses, classes, and training sessions which she claimed to represent positive steps taken to ensure that she remains a trustworthy and reliable contributor to the success of her assigned U.S. Army mission. She identified mitigating conditions relevant to her situation as a valuable contributor to her defense contractor employer and the U.S. Army.

Findings of Fact

Applicant is a 37-year-old configuration management specialist for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never married or entered into a legally recognized domestic partnership and has no children. (GEs 1-2 and 4) She earned a high school diploma in May 2001 and a bachelor's degree in May 2005. (GEs 1-2 and AE K) She reported no military service.

Since May 2019, Applicant has been employed by her current defense contractor. (Item 3) Previously, she worked for other defense contractors in various jobs. (GEs 1-2 and 4 and AE K) She reported unemployment between March 2019 and May 2019 following her termination for a cited positive drug test in March 2019. (GES 1 and 5) Other reported periods of unemployment by Applicant occurred between February 2005 and May 2005 and between August 2001 and October 2001. She held a security clearance between November 2012 and March 2019. (GEs 1 and 5; Tr. 69-70)

Applicant's drug history

On a Sunday afternoon In March 2019, Applicant spent the afternoon at her home with a male friend venting about events that were causing her emotional grief and distress: a recent breakup with her boyfriend and a large water break at her new townhouse residence that caused major damage and substantial repair costs. (GE 4; Tr. 31-32, 72-74, 76-77) This friend was not a coworker but a contractor at her work site who would infrequently interact with her contractor friend over a three-month period. (Tr. 72)

Feeling drained and without much energy, she turned to her contractor friend for emotional support and assistance in painting her damaged townhouse. (Tr. 33-34, 73) This friend offered her cocaine to relieve her stress. (GE 4; Tr., at 72-73) At the time, Applicant was aware that her contractor friend was a cocaine user. (Tr. 34, 74) Shocked to see this friend produce two lines of cocaine in her presence, she accepted the lines offered her by her friend and felt immediate remorse. (GE 4; Tr. 34, 74-75) Both Applicant and her friend were sober in their moment of shared cocaine use. (Tr. 73-76)

With a security clearance she possessed since 2012, Applicant was intimately familiar with the anti-drug policies in place with her employer and the DoD and the likely loss of both her job and security clearance in the event of a positive drug test. (GE 4; Tr. 69-71) Before accepting cocaine from her friend in March 2019, Applicant had never used any illegal drugs while holding a security clearance that was first issued in 2012. (Tr. 36, 75)

Waking up the next morning (a Monday in March 2019), and feeling the effects of her cocaine use the previous day, Applicant went to work. (Tr. 34-35, 72) With an opportunity to self-report her cocaine use incident to her facility clearance officer (FSO) when she arrived at work that day, she declined to do so, citing concerns about her security clearance and employer's termination policy covering illegal drug use. (GE 4; Tr. 35-36, 70-71, 77-78) Applicant acknowledged her employer's self-reporting requirement and expressed regret for not self-reporting the incident to her FSO before being referred to drug testing. (Tr. 70-71)

Fearing the moment of accountability with her employer, Applicant waived over self-reporting her cocaine use to her supervisor or (FSO) and ultimately demurred. By failing to promptly self-report her cocaine use with the first opportunity available to her when she reported for work on the Monday following her acceptance of cocaine, she

missed a sizable opportunity to openly account for her judgment lapse and reinforce her understanding and appreciation of her employer's anti-drug policy. Failing to promptly self-report her cocaine use incident, she opened herself to candor and credibility challenges about her access to and use of illegal drugs in general.

While offloading a flatbed at work the following Tuesday (in March 2021), Applicant chose the wrong forklift for unloading, and her load fell off the forklift. (GE 4; Tr. 35, 77) Applicant promptly reported her forklift accident to her supervisor knowing she would be referred for drug testing in accordance with her employer's accident protocols. (GE 4; Tr. 35-36, 70-71)

Once Applicant reported her forklift accident, her supervisor referred her to the expected drug testing Applicant anticipated. Once faced with an involuntary drug test, Applicant volunteered to the testing official prior to submitting to a drug test that she could be at risk to a positive test result due to the cocaine she ingested the previous Sunday (less than 48 hours earlier). (Tr. 70-71)

Returned test results were positive for cocaine ingestion. Applicant, while embarrassed and ashamed, did not challenge the test results and was terminated from her employment the following Tuesday of March 2019. (GE 4; GE 4; Tr. 36-37, 78-79) Although she did not lose her security clearance with her job termination, she is not eligible for rehire. (Tr. 78) And, as a result, she was able to obtain new employment with her current employer. (GEs 1 and 4; Tr. 79)

In the security clearance application Applicant completed in October 2019, she acknowledged her not being compliant with her employer's drug policy as the basis for her separation from the company without admitting her March 2019 cocaine use. When asked about her prior drug use in a separate section of the application covering drug use within the previous seven years, she acknowledged her cocaine use in 2019. (GE 1)

Before her positive drug test in March 2019, Applicant had never been subjected to random drug testing; although her employer at the time did have a random testing program. (Tr. 68-70, 74-75) Since her positive drug test in March 2019, Applicant has twice been tested for illegal drugs, once in November 2020 to satisfy state medical requirements for prescribed Adderall and again in January 2021 on the suggestion of her attorney. (AEs F and L; Tr. 37-39) Non-randomized test results were negative for illegal substances in her system. (AEs F and L)

In November 2020, Applicant assured under oath that she would abstain from all future drug involvement and substance misuse and specifically avoid any use of cocaine or any other illegal drug in the future, and immediately report any future use of an illegal drug to her security officer. She acknowledged her understanding that should she violate her statement of intent, her security clearance and accesses will be denied or revoked. (AE A)

For the past 27 months, Applicant credibly assured that she has avoided cocaine and any other illegal drugs and disassociated from the friend who provided the cocaine to her in March 2019. (Tr. 48-52) Her assurances are accepted.

Applicant's history of alcohol-related incidents

Besides Applicant's reported 2019 cocaine use incident, she was involved in two separate alcohol-related incidents. The first such incident occurred in July 2007 when she was arrested and charged with DUI. (GEs 2 and 4) Stressed by the passing of her maternal grandmother, Applicant consumed too much alcohol while at a friend's home for a barbeque. (GE 4; Tr. 39-40) While driving home from the barbeque, she was stopped by a police officer and arrested and charged with DUI. (GEs 2 and 4; Tr. 40) Embarrassed by the incident, she pre-enrolled in an alcohol and substance abuse program. (GE 4; Tr. 40)

Appearing in court to answer the pending DUI charges stemming from her 2007 DUI incident, Applicant pled guilty and was sentenced to probation before judgment. Probation conditions included community service completion of her already-enrolled substance abuse program. Applicant is credited with successfully completing all of the requirements of her substance abuse program and satisfying the court's imposed probation conditions. (GEs 2 and 4 and AE G; Tr. 40)

While her 2008 security clearance application was still pending, Applicant was involved in a second alcohol-related incident. Returning home in March 2012 from a St. Patrick's Day celebration with friends, where she consumed multiple drinks before departing the tavern in the early morning hours, Applicant was stopped by a state police officer and arrested and charged with DUI. (GEs 1 and 3-4; Tr. 41-42, 60-61) At the time she was stopped and arrested in March 2012, Applicant held a security clearance. (GEs 1 and 4-5; Tr. 42-43) Breathalyzer test results administered to Applicant by the arresting officer confirmed a blood-alcohol content (BAC) of .16%. (GE 4; Tr. 61) Applicant self-reported this incident to her FSO. (Tr. 42)

Before making her court appearance to address her 2012 DUI charges, Applicant enrolled in an outpatient alcoholic substance abuse program that did not include a diagnosis or abstinence recommendation. (GE 4; Tr. 42, 61-62) When she did appear for her scheduled August 2012 court hearing, she pled guilty to the charges in court and was sentenced to 15 days in jail followed by two years of supervised probation that included an ordered interlock installed on her vehicle. Her imposed sentence included a fine of \$2,889 (inclusive of court costs). (GEs 3-4; Tr. 43-44)

Applicant served 13 days of her imposed 2012 sentence before her early release for good behavior and made monthly payments of \$112 to repay her court-ordered fines. (GEs 3-4; Tr. 44-45) She completed her alcoholic substance abuse program after attending regular classes between April 2012 and October 2012. (GE 4)

In October 2012, Applicant was interviewed by an investigator from the Office of Personnel management (OPM) in October 2012. In this personal subject interview

(PSI), Applicant disclosed her alcohol history to the investigator. (GE 4) Covered in her PSI were the facts surrounding her two DUI arrests, court dispositions, and her counseling sessions. (GE 4)

Between 2001 and 2012, Applicant typically consumed alcohol in social situations with friends and acknowledged her drinking to the point of intoxication three to seven times a year in social events. (GE 4) Since her 2012 DUI offense, Applicant never consumes alcohol to excess and confines her drinking to social settings. (GE 4; Tr. 65-66) Based on the information and data compiled by OPM investigators in 2012, Applicant was granted a security clearance. (GEs 3 and 4; Tr., 69-71,102)

Endorsements and certificates of training and achievement

Applicant is well-regarded by her supervisors, colleagues, customers, and friends. (AEs B-E and H) All credit her with good character, self-discipline, professionalism, and a disposition for adhering to rules and regulations at work while providing daily support for her sister (a single mother) and her parents. While acknowledging their awareness of her drug and alcohol issues, two of her close friends expressed confidence in her ability to avoid irresponsible drinking and future lapses in judgment that produced her isolated incident of cocaine use in 2019. (AE B-C)

Other friends of Applicant who hold positions of trust expressed strong support for Applicant's maintaining her security clearance eligibility. One hearing witness is a lifetime friend of Applicant with knowledge of her two past DUIs and 2019 cocaine use incident. This witness credited Applicant with exemplary dedication to her work and family and expressed confidence in Applicant's ability to maintain a healthy regimen without any alcohol excess or use of illegal substances. (Tr. 84-88)

Another friend and neighbor of Applicant's, with daily contact over the past two plus years, is a federal court commissioner with over 25 years of experience. (Tr. 98-99) With knowledge of Applicant's two DUIs and 2019 cocaine use incident, she, too, expressed total confidence in Applicant's ability to maintain responsible drinking habits and keep her promises not to use or engage in any activities involving illegal drugs. (Tr. 98-100)

These hearing accounts represent strong character endorsements from individuals in trust positions and are entitled to considerable weight in making whole-person character assessments of Applicant. Not provided by Applicant were potentially helpful accounts of direct supervisors and coworkers who have worked closely with her at her current and previous places of employment. Performance evaluations from her current employer were not included in her exhibit submissions.

Over the past two years, Applicant has completed courses in classification and annual ethics training. (AE H) With her educational background and experience, she has received offers of employment from defense contractors looking for configuration management specialists. (AE I) Her performance and contributions to her current employer earned her a year-end bonus of \$2,200 for 2020. (AE M) Her employer credited

her with being one of a select group of employees to receive a salary bonus for calendar year 2020. (AE M)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Drug Involvement and Substance Misuse

The Concern: 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 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. AG ¶ 24.

Personal Conduct

The Concern: 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 ¶ 15.

Burdens of Proof

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 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 "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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Security concerns are raised over Applicant’s use of cocaine in March 2019 while holding a security clearance. Additional security concerns are raised over Applicant’s history of alcohol-related offenses (two in all) in 2007 and 2012, respectively, which taken together with her 2019 cocaine use incident, reflect pattern behavior incompatible with the judgment, reliability, and trustworthiness requirements for gaining access to classified information.

Drug involvement concerns

Applicant’s admission to using cocaine on a single occasion in March 2019 while holding a security clearance she was granted in 2012 raises security concerns over risks of recurrence as well as judgment issues. On the strength of the evidence presented, three disqualifying conditions of the Adjudicative Guidelines (DCs) for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position.”

Applicant justified her isolated use of cocaine provided by a friend on a single occasion in March 2019 on the stated grounds that she was emotionally stressed by her recent break-up with her boyfriend and water damage to her home and succumbed to the offer of a warehouse friend who was helping her paint her home. While her statements are not challenged by any conflicting accounts in the record, they do raise serious questions about her judgment and appreciation of the importance of the anti-drug policies administered by her employer and the DoD. Whether Applicant has learned enough as a longstanding clearance holder from her use of an illegal substance (cocaine) in 2019 to be trusted to avert any future recurrence and maintain compliance with the drug-free requirements for holding a security clearance under the DoD’s

clearance guidelines, is a core issue for deciding based on a consideration of all of the facts and surrounding circumstances in the case.

Under the terms and conditions of the Controlled Substance Act (CSA)(21 U.S.C. ¶ 801 *et seq.*), Congress generally prohibited the cultivation, distribution, and possession of marijuana. (Item 10) It established significant penalties for these crimes. (21 U.S.C. ¶ 841 *et seq.*) These statutes reflect Congress's determination that cocaine, along with other covered controlled substances, is a dangerous drug and that cocaine activity (inclusive of use) is a serious crime. DoD guidelines implementing the federal legal ban covering cocaine and other illegal substances require federal prosecutors to weigh all relevant considerations when making prosecution decisions.

When the CSA has been challenged on federalism grounds, the courts have not attempted to validate any enabling provisions of a state's statute covering banned substances under the CSA. See *United States v. Oakland Cannabis Buyers Cooperative*, 532 U.S. 483, 495-499 (2001), reaffirming the federal preemption of the state's competing law legalizing marijuana use for medicinal purposes. In doing so, the *Oakland Cannabis Buyers* Court extended its oversight role in ensuring that federal preemption jurisdiction over illegal drug violators without regard to the state's marijuana exception. *Accord, Raich v. Gonzales*, 545 U.S. 1, 8-14 (2005)

In this case, heightened judgment concerns exist over Applicant's one-time use of cocaine in March 2019 while holding a security clearance that she has held since 2012. Not only did her cocaine use violate her own state's laws banning the use of cocaine and other illegal substances, but her cocaine use (isolated as it was) violated both federal law and DoD's mandated drug-free workplace and drug-free federal workplace policies in place for both DoD employees and DoD contractors. By her own acknowledgements, Applicant was at all times aware of these laws and DoD policies in place, in addition to her employer's anti-drug policies in force.

For Applicant, her 2019 cocaine use, while holding a security clearance, violated federal law and both DoD and her employer's drug-free guidelines. Because of the credited isolated nature of Applicant's one-time cocaine use in 2019, and the passage of time (over two years), she may claim some benefit of two of the mitigating conditions covered by the drug involvement guideline. MC ¶¶ 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 26(b), "the individual acknowledges his or her drug involvement and substance misuse, provides evidence of factions 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 abuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility," are partially applicable.

Although Applicant's cocaine use was limited and isolated during a stressful time in her life, it occurred while she held a security clearance and was thoroughly familiar with the anti-drug policies of both her employer and the DoD. She anticipated the likelihood of losing both her job and her clearance were she to test positive for illegal drugs in 2019. And, while she did not lose her clearance at this point in time as the result of her confirming positive drug test for cocaine, she lost her job under her employer's drug-free standards that appear to bear even more stringent enforcement criteria in practice than those imposed by the DoD. Because the DoD and its contractors who sponsor employees for security clearances are responsible for administering common anti-drug policies for employees holding security clearances, security clearance decisions generally should not be expected to sanction drug use criteria less demanding than those applied by employers in their administering of their anti-drug policies.

To mitigate Applicant's cocaine use under the facts presented requires an overall assessment that takes account of not only her work and personal history but her track record of observance of rules and regulations in other civil contexts. While Applicant's one-time use of cocaine under cited stressful circumstances in March 2019 might be isolated and capable of mitigation if considered alone and free of other compounding incidents reflecting poor judgment, different findings may be warranted when considered contextually as a part of an unbroken pattern of substance abuse incidents reflecting reckless behavior and poor judgment.

While each of the incidents covered by the SOR might conceivably be resolved favorably to Applicant if assessed individually, resolution of the security significance of these incidents cannot be considered piecemeal and still satisfy overall clearly consistent with the national interest eligibility requirements for holding a security clearance. So, while Applicant can be credited with no known history of prior drug abuse beyond her experimenting with marijuana as a teenager and no known recurrence of illegal drug use since her March 2019 cocaine incident, her 2019 cocaine incident cannot be considered separately and apart from her earlier DUI incidents in making an overall assessment of the security significance of her 2019 cocaine incident and its impact on her continued security clearance eligibility.

Personal conduct concerns

Security concerns over Applicant's one-time use of cocaine in March 2019 are cross-alleged and incorporated anew under Guideline E, along with two prior DUIs to establish a pattern of Applicant's disregard of DoD rules, regulations, and guidelines related to drugs and alcohol abuse. The three combined drug and alcohol-related incidents, while spaced and covered by different guideline concerns, share a common thread of security concerns over questionable exercises in judgment. These collective errors in judgment, when considered together contextually, reflect an overall pattern of poor judgment, unreliability, and untrustworthiness under the personal conduct guideline.

To be sure, neither of Applicant's DUIs would likely meet appellate requirements for denying clearances under Guideline G (alcohol consumption), if cross-alleged separately under that guideline. Historically, the Appeal Board has generally required a track record of alcohol-related incidents of more recent occurrence than the dated incidents (2007 and 2012) in this record. See ISCR Case No. 95-0731 at 3 (Sept. 1996); ISCR Case No. 94-1081 at 5 (August 1995).

Based on the evidence produced at hearing, one of the DCs covered by the personal conduct guideline is applicable to the developed facts in evidence. DC 16(d), ¶ 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations. . . ." applies to Applicant's situation.

Applicant's use of cocaine while holding a security clearance, although fully covered by Guideline H, represents a more recent lapse of judgment to form a common pattern of reckless behavior, inclusive of Applicant's earlier alcohol-related incidents in 2007 and 2012. When considered together in this context, the three SOR-covered incidents support a cross-alleged pattern of questionable judgment, untrustworthiness, and unreliability properly alleged and proven under Guideline E.

Mitigating conditions are for the most part have only partial applicability to the acts of this case. In recognition of her previous use of alcohol counseling in conjunction with her 2012 DUI incident and stated intent to avert any future use of illegal drugs and associations with persons known to use them, some application of MC ¶¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," and MC 17(g), "association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations," are available to Applicant.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of cocaine and alcohol abuse over an extended period of time (spaced over 12 years) that violated both federal law and her employer's anti-drug policies over ten years) in violation of federal law and lengthy history of alcohol-related incidents and is incompatible with her holding a security clearance. While Applicant is entitled to credit for her civilian contributions to the defense industry, her contributions are not enough at this time to overcome her pattern history of alcohol-related and drug-related incidents covered by the drug involvement and personal conduct guidelines.

Summarized, more time is needed for Applicant to demonstrate her understanding and commitment to adhering to the rules and regulations placed in force by her employer and the DOD for enforcing their anti-drug and other security policies. Applicant's collective actions to date fall short of what is required to carry her persuasive burden of demonstrating she meets the minimum eligibility criteria for gaining access to classified and sensitive information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude drug involvement and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph 2.a-2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Roger C. Wesley
Administrative Judge