DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-01504
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2022

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Decision on Remand

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guidelines J (Criminal Conduct), H (Drug Involvement and Substance Misuse), and E (Personal Conduct). The Guideline H and J concerns are mitigated, but the Guideline E concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 2007, and he received a security clearance. He submitted another SCA in February 2017, seeking to continue his clearance. On July 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J, H, and E. The DOD CAF acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on November 4, 2019, and requested a decision on the written record without a hearing. On January 30, 2020, Department Counsel requested a hearing. Department Counsel was ready to proceed on February 20, 2020, and the case was assigned to me on March 12, 2020. On the same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 31, 2020. The hearing was cancelled on March 17, 2020, because of the COVID-19 pandemic.

On April 7, 2021, I notified Applicant by email that his hearing was tentatively rescheduled for April 29, 2021, by video teleconference. He telephonically requested a later date, and the hearing was rescheduled for May 12, 2021, by video teleconference. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 13 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on May 26, 2021.

I kept the record open until May 21, 2021, to enable Applicant to submit documentary evidence. I issued my decision on June 10, 2021, in which I concluded that he had not submitted any documentary evidence. Applicant appealed my adverse decision, contending that he had submitted evidence on May 20, 2021, that I had not considered. The Appeal Board remanded the case and directed me to reopen the record and provide Applicant an opportunity to submit additional evidence.

In accordance with the Appeal Board mandate, I reopened the record. I reviewed all email sent to me on May 20, 2021, and a found an email transmitting the evidence that Applicant had sent. (Hearing Exhibit (HX) I.) The email had been overlooked because the sender of the email was identified by a series of letters and numbers bearing no resemblance to Applicant's name. Applicant's email was discovered by opening all emails with attachments that had been received on May 20, 2021. I admitted his documentary evidence as Applicant's Exhibits (AX) A through F.

On September 25, 2021, I notified Applicant by email that I would consider the additional evidence that he had submitted on May 20, 2021, and I gave him until October 1, 2021, to submit any additional materials that he wanted me to consider. In order to make sure that Applicant received my email, I sent it by replying to Applicant's May 20, 2021 email that he used to submit his additional evidence. (HX II.) I did not receive any additional evidence beyond AX A through F. I issued my decision on remand on October 14, 2021.

On November 5, 2021, I received a letter and a fax from Applicant submitting additional evidence. I informed him that I had issued my decision on October 14, 2021, and I no longer had jurisdiction over the case. I suggest that if he wished to submit additional matters, he should send them to the Appeal Board. (HX III.)

Before the Appeal Board, Applicant contended that he did not receive the email of September 25, 2021; that he was unaware of the opportunity to submit additional

evidence, and that I did not consider all the evidence submitted on May 20, 2021. In his appeal, he submitted letters from his mother, cohabitant, and a friend, attesting to his good character; a photograph of his 15-year clock; a photograph of a montage of his 15-year memorabilia; two pages from his response to interrogatories; a certificate of completion of an anger-management course; a document reflecting completion of an alcohol-safety program; and a certificate of his child's dedication ceremony. (HX IV.) The Appeal Board remanded the case again and directed me to reopen the record and provide Applicant an opportunity to submit additional evidence.

On January 28, 2022, I notified Applicant by certified mail that I had opened the record to consider all the items that he had submitted. I also afforded him the opportunity to submit any additional documents for my consideration. (HX V.)

On February 8, 2022, Applicant submitted the following documents:

- Three documents attesting to his good character: (1) a statement from a friend (previously admitted as AX A); (2) a statement from his mother (previously admitted as AX B), and (3) a statement from his cohabitant (marked and admitted as AX H;

- A photograph of his daughter's dedication certificate (previously admitted as AX F);

- A photograph of a 15-year tenure clock (previously admitted as AX D);

- A photograph of 15-year memorabilia (previously admitted as AX E.);

- Two pages from the summary of a personal subject interview conducted on September 27, 2018, in which he stated that he last used marijuana at age 24, bearing his notarized signature (previously admitted as GX 3 at 4; marked and admitted as AX I);

- A certificate of completion of a 12-session anger-management program (marked and admitted as AX J); and

- A certificate of completion of an Alcohol Safety Action Program, including 8 weeks of alcohol education, 16 weeks of group outpatient substance abuse treatment, and completion of an interlock requirement (marked and admitted as AX K).

I admitted Applicant's additional evidence as AX G through K and reconsidered my decision in accordance with the Appeal Board's remand.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.f, alleging multiple arrests for various offenses between April 2008 and November 2018. He denied the allegation in SOR ¶ 2.a, alleging purchase and use of marijuana with varying frequency from 2001 to about 2013 or 2014. He admitted the allegations in SOR ¶¶ 3.a and 3.b, alleging that he falsified his SCAs in February 2007 and February 2017 by deliberate failure to disclose his drug involvement. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old vehicle refueler employed by a defense contractor since October 2005. He received a security clearance in May 2007. He has never married, but he has lived with a cohabitant since October 2016. He and his cohabitant have a daughter who was born on December 17, 2019. (Tr. 19; AX F.)

Applicant testified that he began using marijuana in occasional social settings in 2001, when he was 14 years old, and he used it until about 2013 or 2014. He testified that he stopped using it because his employer started random drug testing, and he realized that it could jeopardize his job. (Tr. 23.)

In Applicant's first SCA in February 2007, he answered "No" to the question whether he had used a drug or controlled substance within the past seven years. (GX 1 at 23.) During a personal subject interview in September 2018, he told an investigator that he last used marijuana at age 24. (GX 3 at 4.*)* At the hearing, he testified that he could not remember why he did not disclose his marijuana use in his 2007 SCA. (Tr. 27-28.) He also testified that there was no reason why he continued to use marijuana until 2014, except stupidity. (Tr. 30.)

Applicant was arrested in April 2008 and charged with brandishing a firearm. His arrest occurred after he was involved in a bar fight, and one of the participants told police that he had brandished a firearm. The police stopped him as he drove away from the scene of the fight. He testified that he has never owned a firearm. The police searched the vehicle and did not find a firearm. He appeared in court and was found not guilty because the police were unable to find a firearm. (GX 4 at 3; Tr. 34-35.)

Applicant was arrested in February 2009 and charged with possession of marijuana. After the police stopped him for speeding, they found marijuana in the center console of his car. He appeared in court and adjudication was deferred. He was placed on probation for one year, required to attend drug-education classes, and was subjected to random urinalysis. He successfully completed his probation and the charges were dismissed. (GX 4 at 3; GX 5.)

In November 2010, Applicant was arrested and charged with possession of marijuana and having defective equipment on his car. After Applicant completed a period of probation and drug classes, the prosecutor filed a *nolle prosequi.* (GX 12.) Applicant

did not disclose his drug-related arrests to his employer. He testified that he was unaware of any requirement to disclose arrests to his employer. (Tr. 39.)

In January 2011, Applicant was charged with reckless driving, having an open container of alcohol in his car, and possession of marijuana. Applicant was with his cousin, and he told the police that the marijuana was his, because he did not want his cousin to get in trouble. (Tr. 44-45.) Applicant was convicted of the open-container offense and reckless driving, but the marijuana charge was dismissed. (GX 13.)

In November 2013, Applicant was arrested for maliciously causing bodily injury to his cohabitant. He testified that his cohabitant was driving home after they had been drinking at a bar, they began arguing, his cohabitant began swerving, and he grabbed the steering wheel to keep the car from striking a guardrail. The police officer who noticed the swerving stopped them, noticed a cut on the cohabitant's forehead, and concluded that Applicant had hit her in the face. Applicant spent a week in jail after his arrest. (Tr. 53-55.) The charge was later reduced to assault and battery. In February 2014, the court found "facts sufficient to find guilt," but deferred adjudication for one year. The charge was dismissed in February 2015. (GX 7.)

Applicant submitted his second SCA in February 2017. He answered "No" to a question whether, during the last seven years, he had illegally used any drugs or controlled substances. He also answered "No" to a question whether he had ever used or otherwise been involved with a drug or controlled substance while possessing a security clearance. (GX 2 at 26.)

Applicant did not disclose the February 2009 arrest, the November 2010 arrest, or the January 2011 arrest in his February 2017 SCA. He testified that he did not disclose his January 2011 arrest because he was told that his arrest record would be expunged. (Tr. 31.)

When Applicant was interviewed by a security investigator in September 2018, he told the investigator that he had never been charged with an offense related to alcohol or drugs. He did not disclose his drug involvement until the investigator confronted him with evidence of his arrest record, which included drug offenses. He then disclosed his marijuana use, beginning in his teenage years and ending in 2014. He told the investigator that he did not disclose his marijuana use while holding a security clearance because it did not matter, since he had stopped using marijuana. He also told the investigator that he did not disclose his marijuana use because he misread the question and thought he was required to disclose only what had occurred in the last seven or ten years. (GX 3 at 12-13.) At the hearing, he admitted that he did not disclose his marijuana involvement because he was nervous, scared, and afraid that it would jeopardize his security clearance or his job. (Tr. 31-33.)

In July 2018, Applicant was charged with assault and battery on his cohabitant. Applicant testified that he was driving home after work after a long work day and spending some time after work at a friend's house. He fell asleep and hit the rear of an 18-wheel

truck. His cohabitant came to the scene and was taking him home when they began arguing, because his cohabitant refused to take him to a hospital. Applicant became angry and cracked the windshield of their car by punching it with his fist. His cohabitant called the police, who concluded that they had been fighting. (Tr. 57-63.) A protective order was issued, prohibiting Applicant from having any contact with his cohabitant for three days. (GX 9.)

Applicant testified that he was charged and the protective order was issued because his cohabitant "got all hysterical" and told the police that he had smacked her. He admitted that, on several occasions, he grabbed her and shook her after she said things intended to provoke him. (Tr. 50-51.) In September 2018, he appeared in court and pleaded no contest. The judge found "facts sufficient to find guilt," placed Applicant on probation, and deferred adjudication until September 2020. (GX 8.) Applicant completed his probation and the charge was dismissed. (Tr. 63.)

Applicant and his cohabitant stayed apart for about seven or eight months after his arrest. (Tr. 64.) He testified that most of their arguments arose from his cohabitant's desire that he stay at home instead of socializing with friends away from home and her practice of saying things that she knew would provoke him. He testified that the arguments and physical violence stopped after their daughter was born. (Tr. 51-52.)

In November 2018, Applicant was arrested and charged with driving under the influence (DUI). His blood-alcohol content (BAC) was 0.17. In the jurisdiction where he was arrested, jail time is mandatory for a BAC at or above 0.15. In March 2019, Applicant was convicted and sentenced to 180 days in jail, with 175 days suspended, and a $250 fine. He was placed on unsupervised probation for one year. His driver's license was restricted for one year, and he was required to install an ignition interlock on his vehicle. (GX 10.) He served his jail sentence on weekends. (Tr. 66.) He completed eight weeks of alcohol education in August 2019, and 16 weeks of group outpatient substance abuse treatment in October 2019. He was allowed to remove the ignition interlock in January 2020. The record of his treatment does not include a diagnosis or prognosis. (AX K.)

Applicant admitted that many of his arrests were related to alcohol, but he does not believe he has an alcohol problem. He has reduced his drinking since the birth of his daughter. He testified that he drinks mainly on weekends and limits himself to about two drinks or two beers. (Tr. 67.)

A friend of Applicant who has known him for 12 years submitted a statement describing Applicant as "a very respectful and honest gentleman" and "the type of person that will give you the shirt off his back." The friend did not indicate whether he was familiar with Applicant's criminal record. (AX A.)

Applicant's mother submitted a statement acknowledging that Applicant has done things "that have not been pleasing to the way of his teaching," but stating that he is now a family-oriented person who is striving to be a better person. His mother states that

Applicant speaks often of his job and his love for it, and that he is proud of his 15 years of service with his employer. (AX B.)

Applicant submitted photographs of a clock and various memorabilia containing the numeral 15, which he received in recognition of 15 years of service. (AX C, D, and E.)

Applicant's cohabitant submitted a letter (AX H) including the following comments:

> [Applicant] has gone through a lot of changes and learning experiences whether good or bad. He strives to be a better person and a better man. One thing I can say is that [Applicant] is a hard worker, dedicated and always willing to learn new things.
>
> After separating we decided to work on getting back together and decided to attend church. We've made a commitment to attend church and hoped that our relationship would get better. After all these years God blessed us with our first child. [Applicant] was there fully committed while I was pregnant and was there for most of my doctor appointments as long as his job permitted it. And when our daughter was born I saw the look on his face as a proud first-time father.
>
> He is an awesome father who is there for our daughter hand in hand. With our work and busy schedules he makes sure that he is there to pick her up from daycare and make sure that she is well taken care of at all times. He loves our daughter with all his heart and he works very hard to make sure she has everything that she needs.

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 J, Criminal Conduct

The SOR alleges that Applicant was arrested in April 2008 and charged with brandishing a firearm (SOR ¶ 1.a), arrested in February 2009 and charged with possession of marijuana (SOR ¶ 1.b), arrested in July 2013 and charged with assault on a family member (SOR ¶ 1.c), arrested in November 2013 and charged with felony malicious injury and unlawful wounding (SOR ¶ 1.d), arrested in July 2018 and charged with assault on a family member and placed under an emergency protective order (SOR

¶ 1.e), and arrested in November 2018 and charged with driving under the influence (DUI) (SOR ¶ 1.f).

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Applicant's admissions and the evidence presented at the hearing establish the disqualifying condition in AG ¶ 31(b): "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted."

The following mitigating conditions are potentially relevant:

> AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and
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> AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) is not established. Applicant's arrests and convictions are numerous and did not occur under circumstances making recurrence unlikely.

AG ¶ 32(c) is established for SOR ¶ 1.a (brandishing a firearm), for which there was no evidence, but not for the other criminal conduct alleged in the SOR.

AG ¶ 32(d) is established. Applicant's last arrest was in November 2018. He successfully completed the terms of his probation in March 2020, almost two years ago. In my previous decision, I noted that much of his criminal conduct was alcohol-related, and I expressed concern that his volatile relationship with his cohabitant would recur. Based on the passage of time and my consideration of AX H, J, and K, I have reconsidered my adverse decision regarding the allegations of criminal conduct under Guideline J. The severe consequences of Applicant's last DUI conviction apparently gained his attention. The birth of his daughter was a significant event for him. He has moderated his alcohol consumption since her birth, and he and his cohabitant have reevaluated and adjusted their relationship. Applicant no longer spends his off-duty time drinking with friends and is now focused on caring for their daughter.

Guideline H, Drug Involvement and Substance Misuse

The SOR alleges that Applicant purchased and used marijuana with varying frequency from about 2001 to 2013 or 2014, and that his use of marijuana continued after he was granted access to classified information in May 2007 (SOR ¶ 2.a). The concern under this guideline is set out in AG ¶ 24:

> 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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

> AG ¶ 25(a): any substance misuse (see above definition);
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> AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
>
> AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable:

> 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 mitigating conditions are established. Applicant has acknowledged his drug involvement. It is not clear whether he has disassociated from his drug-using associates or changed the environment where drugs were used, and he has not provided the signed statement of intent. However, he has abstained from marijuana since 2014.

The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant's abstinence from marijuana has been for a "significant period of time," motivated by the realization that marijuana use can jeopardize his security clearance and his job. I conclude that the security concerns raised by Applicant's drug involvement have been mitigated by the passage of time.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his 2007 and 2017 SCAs by deliberately failing to disclose his marijuana involvement. (SOR ¶¶ 3.a and 3.b). The security concern under this guideline is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

Applicant's admissions and the evidence submitted at the hearing establish that he deliberately did not disclose his marijuana involvement in either of his two SCAs, raising the following disqualifying condition:

> 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 following mitigating conditions are potentially relevant:

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

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant did not correct either of his SCAs until he was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant falsified two SCAs, including his most recent, on which this adjudication is based. Falsification of an SCA is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) A deliberately false answer on a security clearance application is a felony, punishable by a fine or imprisonment for not more than five years, or both. 18 U.S. C. §1001.

Applicant's falsification was not infrequent, but was part of a pattern of falsifications. When Applicant was interviewed by a security investigator in September 2018, he said that he had never been charged with an offense related to alcohol or drugs. When the investigator confronted him with the evidence, he admitted that he had been charged with possession of marijuana. At the hearing, he testified that he could not remember why he did not disclose the marijuana charge in his 2007 SCA. When asked by the investigator why he did not disclose his marijuana involvement in his 2017 SCA, he told the investigator that he did not disclose his marijuana use while holding a security clearance because it did not matter since he had stopped using marijuana. He also told the investigator that he did not read the SCA carefully and thought he was required to disclose marijuana use during the last seven or ten years. At the hearing, he admitted that he did not disclose his marijuana involvement because he was afraid that it would jeopardize his clearance and his job. (Tr. 32-33.)

Applicant's false statement to a security investigator, which he later retracted after being confronted with the evidence, was not alleged in the SOR. His implausible and contradictory explanations for his false statements also were not alleged in the SOR. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant

circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

I have incorporated my comments under Guidelines J, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. I have considered that Applicant has worked for a defense contractor since October 2005 and held a security clearance since May 2007. The birth of Applicant's daughter apparently was a significant event for him, and it caused him to reconsider his previous lifestyle.

Applicant offered considerable evidence in mitigation, but it is offset by his years of deceptive conduct. He used marijuana for many years while holding a security clearance, but he did not disclose his drug-related arrests to his employer. He lied about his drug involvement in his February 2007 SCA and again in his February 2017 SCA. He lied to a security investigator in September 2018, until the investigator confronted him with his arrest record. Even after admitting his drug involvement to the investigator, he gave inconsistent and implausible explanations for his false answers in his SCA. He eventually admitted at the hearing that he did not disclose his drug involvement because he was afraid it might jeopardize his clearance or his job.

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown,* 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). I am not convinced that Applicant has put his long record of concealment and deception behind him. After weighing the disqualifying and mitigating conditions under Guidelines J, H, and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his criminal conduct and drug involvement, but he has not mitigated the security concerns raised by his personal conduct.

Formal Findings

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

Paragraph 1, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Paragraph 2, Guideline H (Drugs):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge