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

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| In the matter of: | ) | |
| | ) | |
| [Redacted] | ) | ISCR Case No. 20-00892 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2022

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## Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines (H) Drug Involvement and Substance Misuse), G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). Applicant mitigated the security concerns raised by his alcohol consumption, but he has not mitigated the security concerns raised by his drug involvement, criminal conduct, and personal conduct. Eligibility for access to classified information is denied.

## Statement of the Case

Applicant submitted a security clearance application (SCA) on February 21, 2019. On October 27, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, G, J, and E. The 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), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on December 22, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 21, 2021. Scheduling of the hearing was delayed by the COVID-19 pandemic. The case was assigned to me on December 21, 2021.

On January 10, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on January 27, 2022. The hearing was cancelled on January 25, 2022, after Applicant contracted COVID. It was rescheduled for February 3, 2022, but it was cancelled again due to technical difficulties with the video teleconference system. The hearing was rescheduled to be conducted in person on March 8, 2022. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D and admitted without objection.

I kept the record open until March 22, 2020, to enable Applicant to submit additional documentary evidence. He timely submitted AX E through J, which were admitted without objection. DOHA received the transcript (Tr.) on March 16, 2022.

## Amendment of SOR

At the hearing, Department Counsel moved to amend SOR ¶ 4.a, alleging falsification of the SCA, by striking the words "1.a through 1.c and," because the conduct alleged in SOR ¶¶ 1.a through 1.c occurred after the SCA was submitted. I granted the motion. (Tr. 10.)

## Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶ 1.a-1.g, 2.a-2.d, 3.a, and 3.b. He denied the allegations in SOR ¶ 4.a and 4.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 62-year-old instrument repairer employed by a defense contractor since September 1982. He served on active duty in the U.S. Army from August 1978 to August 1982. He married in November 1990.

Applicant received a security clearance shortly after he was hired by a defense contractor in September 1982. (GX 5 at 2.) He applied to continue his clearance in June 2008. His application was denied in September 2008 after a hearing by an administrative judge. (GX 5.) He applied again in March 2012, and his application was denied. (GX 1 at 32.). After he reapplied in 2013, his security clearance was reinstated.

In January 1990, Applicant was charged with felony possession of marijuana with intent to distribute. At the hearing, he testified that he was riding in a car with two other individuals, but he did not know that the driver had marijuana in the car. (Tr. 33-34.) The record indicates that he was represented by an attorney and pleaded guilty to a

misdemeanor to avoid risking a jail sentence. He was convicted of misdemeanor possession of marijuana and was fined. (GX 5 at 2.)

In October 1994, Applicant was charged with possession of marijuana. He testified that he was visiting a young woman outside an apartment complex. He gave the woman his jacket because it was cold. She walked inside the apartment complex and then returned, wearing the jacket. While she was inside, security guards challenged Applicant for being in the apartment complex and asked for identification. His identification was in his car, but he responded that he did not have any identification. After Applicant was arrested for trespassing, the young woman gave his jacket to the police, who found marijuana in the pocket. (Tr. 35-39.) Court records reflect that he pleaded guilty to misdemeanor possession of marijuana. Although he testified that he was also convicted of trespassing, a trespassing charge is not reflected in the record. He was sentenced to 30 days in jail (suspended) and fined $100 (GX 4 at 13.)

In August 1998, Applicant was stopped for making an illegal stop on a highway to let a passenger out of his vehicle. His arrest occurred during a time that a labor strike was ongoing. He submitted to a breathalyzer and was charged with driving under the influence of alcohol (DUI). (Tr. 41-42.) He was convicted and required to attend an alcohol-education program once a week for six months. (GX 5 at 3.) He completed the program as required. (Tr. 42.)

In September 2000, Applicant was charged with felony possession of cocaine. During his September 2019 security interview, he told an investigator that a bag containing a few rocks of cocaine was found nearby in a parking lot. During the interview and at his hearing, he denied that the cocaine was his. (GX 2 at 15; Tr. 42-43.) He pleaded not guilty, but he was convicted and sentenced to five years in jail (suspended) and one year of supervised probation. (GX 4 at 11.)

In July 2009, Applicant was charged with possession of marijuana, drunk in public and felony assault on a law enforcement officer. He testified that one of his sons had hidden a marijuana cigarette in the garage. When he found it, he confronted his son while holding it in his hand. He had consumed alcohol and admitted that he was "a little irate." A police officer approached and told Applicant he needed to go into the house. The record does not reflect what caused the police officer to approach the house. Applicant told the police officer that he was in his own yard and that he would not go into the house. The factual basis for charging him with felony assault on a law enforcement officer is not reflected in the record. The charges of marijuana possession and drunk in public were disposed of by *nolle prosequi.* Pursuant to a plea agreement, he was convicted of misdemeanor assault and battery and sentenced to 180 days in jail, with 160 days suspended. (GX 4 at 5.) He served his jail time on weekends. He testified that the charge of felony assault was in retribution for "talking back" to the police officer, and his guilty plea to misdemeanor assault and battery was a non-negotiable element of his plea agreement. (Tr. 50-51.)

In March 2016, Applicant was charged with DUI and refusing a blood or breath test. At the hearing, he testified that he hit a broken drainage grate in the road and ran into a retaining wall. The airbags went off and he was stunned. He had no memory of refusing a blood or breath test. He told a security investigator that he requested a blood test, which was refused. (GX 2 at 12.) He pleaded guilty to reckless driving and was sentenced to 12 months in jail (suspended), unsupervised probation for two years, and a $250 fine. He was required to participate in 26-week substance-abuse program, which he completed. (GX 2 at 10; GX 4 at 1-2.) The charge of refusing a blood or breath test was disposed of by *nolle prosequi*. (GX 4 at 3) He testified that he did not inform his employer about this incident because he was convicted only of reckless driving and not an alcohol-related conviction.

Applicant testified that he usually consumed two or three beers a day before the March 2016 incident. Now that he has started attending church, he seldom drinks beer, but when he does, it is not more than two beers. He last consumed two beers at a wedding on the weekend before his hearing. He has not received any treatment for alcohol use since he completed the court-ordered 26-week program after his conviction in March 2016. The program included attendance at Alcoholics Anonymous meetings, but he did not actively participate in the meetings or continue his attendance after completing the program. (Tr. 60-63.)

On July 4, 2019, Applicant used cocaine at a party, and he subsequently tested positive for cocaine on a urinalysis test. He held an active security clearance at the time. During a security interview in September 2019, he told an investigator that he had invited friends to join him for a July 4 party, that a friend brought cocaine to the party, and that he snorted two lines of his friend's cocaine at the party. At the hearing, Applicant testified that his use of cocaine was not due to peer pressure, but "just a little stupidity" on his part. (Tr. 68-69.) After he tested positive in the urinalysis, he was referred to the Employee Assistance Program. He was enrolled in a six-week program at a behavioral health facility, which he successfully completed. (GX 2 at 14) The SOR alleges that he was diagnosed with cocaine use disorder (moderate), and Applicant admitted the allegation in his answer to the SOR. However, at the hearing, he testified that he was unaware of any diagnosis. There is no evidence of a diagnosis in the record. Applicant testified that the friend who brought cocaine to the party lives in another area and it has been years since they have had any contact. (Tr. 68.) He testified that he no longer associates with drug-users. (Tr. 92.)

When Applicant submitted his most recent SCA in February 2019, he answered "No" to the questions in Section 22, which included asking if he had ever been charged with any felony offense and if he had ever been charged with an offense involving alcohol or drugs. He also answered "No" to the questions in Section 23, asking if he had illegally used any drugs or controlled substances in the last seven years, if he had ever used or otherwise been involved with a drug or controlled substance while possessing a security clearance, and if he had ever been ordered, advised or asked to seek counseling or treatment as a result of illegal use of drugs or controlled substances. (GX 1 at 27.) He did not disclose that he was charged with felony possession of marijuana with intent to

distribute in January 1990, charged with possession of marijuana in October 1994, charged with DUI in August 1998, charged with felony possession of cocaine in September 2000, charged with possession of marijuana in July 2009, charged with being drunk in public in 2009, and charged with felony possession of cocaine in September 2000.

Applicant's testimony regarding his failures to disclose his drug and alcohol involvement in his February 2019 SCA, Department Counsel's cross-examination about his non-disclosure, and Applicant's responses to cross-examination were repetitive and circular, with both parties talking past each other and apparently not understanding each other. However, the following facts were established. Applicant was generally familiar with the security-clearance process. He received a security clearance around 1983. He had previously submitted two paper versions of the SCA in 2006 and 2008 and two electronic versions in 2013 and 2019. He found the completion of an SCA "really hard stuff" and he had been "pinged" by an administrative judge in 2008 for not disclosing all his criminal conduct. (Tr. 78; GX 5 at 3.) He had admitted during his 2008 hearing that he did not report his criminal conduct because he was embarrassed. (Tr. 44; GX 5 at 3.) The record does not reflect what Applicant disclosed in the SCAs he submitted in 2012 and 2013. He testified that when he was filling out the 2019 SCA, he asked a woman, whose identity and duties are not reflected in the record, whether he needed to "go all the way back." The woman replied that she did not know. Applicant testified that he believed that "the government" already knew about his criminal record, and so he did not disclose it in the SCA. (Tr. 73-75.).

During a follow-up interview in September 2019, Applicant initially denied any illegal drug use during the past seven years. After the investigator asked him about involvement in any drug incidents at work, he disclosed his cocaine use and positive urinalysis in July 2019. (GX 2 at 14; Tr. 89.)

At the hearing, Applicant attributed some of his criminal record to racism, resulting in arrests and charges that would otherwise have not occurred. (Tr. 19-24.) I have considered his concern, especially with respect to his arrest for marijuana possession in January 1990, his arrest for trespassing in October 1994, his arrest for making an illegal stop on a highway in 1998, and his arrest for being drunk in public in July 2009.

In May 2019, Applicant was selected by his employer as an "Excellence in Action" honoree for his outstanding performance of duty. (AX F.) In September 2020, he received an "on-the-spot" recognition certificate for "honesty and integrity when no one was looking." He had raised a "red flag" on a ship's hull after noticing that cables were damaged. (AX A.)

Applicant's general foreman attested to his unquestionable integrity, technical knowledge, deck-plate experience, and leadership. (AX E.) A coworker who has known Applicant for almost 40 years describes him as dependable, responsible, honest, talented, and patriotic. (AX G.) Another coworker who has known Applicant for 32 years admires his technical experience, leadership, and commitment to his job. (AX H.) A

coworker who has known Applicant for 18 years considers him the subject matter expert in their shop, a caring coworker, and a person of honesty and integrity. (AX J.) Another coworker who has worked with Applicant for three years similarly attests to his loyalty, reliability, and technical skills. (AX I.) Applicant's pastor describes him as a devoted husband, a loving father, and "an extremely humble, considerate, and trustworthy person." (AX B.) A church member who has known him for five years regards him as loyal and dependable, with great interpersonal skills (AX D.) A personal friend who has known Applicant for more than 30 years considers him an honest, trustworthy, and dependable person. (AX C.) Applicant testified that the individuals submitting letters on his behalf might know about his past, but they probably do not know about his criminal convictions. (Tr. 92.)

## 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 H, Drug Involvement and Substance Misuse

The SOR alleges the following conduct by Applicant:

- He used cocaine in July 2019 while having access to classified information (SOR ¶ 1.a), tested positive in a urinalysis (SOR ¶ 1.b), and received outpatient treatment from July 2019 to September 2019 for cocaine use—moderate (SOR ¶ 1.a-1.c).

- He was charged with marijuana possession in July 2009 (SOR ¶ 1.d).

- He was arrested and charged in September 2000 for felony possession of cocaine and sentenced to five years' confinement (suspended), 10 years' unsupervised probation, one year of supervised probation, and court costs (SOR ¶ 1.e).

- He was arrested and charged in October 1994 with marijuana possession, pleaded guilty, and was sentenced to confinement for 30 days (suspended) and fined $100 plus court costs (SOR ¶ 1.f).

- He was arrested and charged in January 1990 with felony possession of marijuana with intent to distribute and convicted of misdemeanor possession of marijuana and fined. (SOR ¶ 1.g)

Applicant admitted all the allegations in his answer to the SOR. I have noted the SOR ¶ 1.c alleges Applicant's treatment for cocaine use. The treatment was a consequence of his cocaine use, but not a separate disqualifying act. Therefore, I have resolved SOR 1.c for Applicant. The remaining allegations under this guideline are established.

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.

At the hearing, Applicant asserted that he was not guilty of felony possession of cocaine in September 2000, alleged in SOR ¶ 1.e and cross-alleged under Guideline J in SOR ¶ 3.b. Under the doctrine of collateral estoppel, he is estopped from denying his guilt of this felony conviction. The doctrine of collateral estoppel generally applies in DOHA hearings and precludes applicants from contending that they did not engage in criminal acts for which they were convicted. ISCR Case No. 95-0817 at 2-3 (App. Bd. Feb. 21, 1997). There are exceptions to this general rule, especially with respect to misdemeanor convictions based on guilty pleas, but they are not applicable to this felony conviction. The doctrine of collateral estoppel does not preclude applicants from explaining their conduct and presenting it in a meaningful context, in an effort to mitigate the security concerns raised by it. ISCR Case No. 11-00180 at 7 (App. Bd. Jun. 19, 2012).

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);

AG ¶ 25(b): testing positive for an illegal drug;

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;

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; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) is not established. The first prong of this mitigating condition 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 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 last drug involvement was in July 2019, almost three years ago, which is "a significant period of time." However, he has been under pressure since that time to protect his clearance and his job. His drug involvement has been frequent and did not occur under unusual circumstances. He admits that his use of cocaine while holding a security clearance was an act of stupidity. His use of cocaine while holding a security clearance and while a decision was pending on his application to continue his clearance was a grave breach of trust that casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not fully established. Applicant has acknowledged his drug involvement and completed an outpatient treatment program. He testified that he no

longer associates with his drug-using friends. However, he has not submitted the statement of intent provided for in AG ¶ 26(b)(3).

AG ¶ 26(d) is not fully established. Applicant completed an outpatient treatment program and has not used illegal drugs since September 2019, but he provided no evidence of a favorable prognosis.

**Guideline G, Alcohol Consumption**

The SOR alleges that in March 2016, Applicant was charged with DUI, convicted of reckless driving, and sentenced to confinement for 12 months (suspended), unsupervised probation for two years, a fine and court costs, and required to participate in a substance abuse program. (SOR ¶ 2.a). He was also charged with refusal of a blood or breath test during the same incident. (SOR ¶ 2.b)

The SOR also alleges that in July 2009, he was charged with being drunk in public. (SOR ¶ 2.c), and that in August 1998, he was charged with DUI, fined, and required to participate in an alcohol safety program (SOR ¶ 2.d)

The security concern under this guideline is set out in AG ¶ 21:" Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

The following disqualifying conditions are potentially applicable:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed; and

AG ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

AG ¶¶ 22(a) and 22(c) are established by Applicant's DUI arrests alleged in SOR ¶¶ 2.a and 2.d. Applicant's arrest for being drunk in public, alleged in SOR ¶ 2.c, is not supported by the evidence. Assuming that Applicant was intoxicated, it is questionable

whether his front porch was "public," and the charge was disposed of by *nolle prosequi.* The blood or breath refusal charge alleged in SOR ¶ 2.b was not established by the evidence, which showed that Applicant was incapable of taking a breath test after the vehicle accident, and a blood test was not offered.

AG ¶¶ 22(d), 22(e), and 22(f) are not established. There is no evidence of an alcohol-related diagnosis and no evidence that Applicant received treatment advice that was violated.

The following mitigating conditions are potentially applicable:

> AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
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> AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and
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> AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶ 23(a) is established. Applicant's last instance of maladaptive alcohol use was in March 2015, and there have been no recurrences
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AG ¶ 23(b) and 23(d) are partially established. Applicant completed an alcohol-safety program in 1998 and a substance-abuse program in 2016, but there is no evidence that he received treatment recommendations limiting his use of alcohol.

**Guideline J, Criminal Conduct**

The SOR alleges that in July 2009, Applicant was charged with felony assault on a law enforcement officer, convicted of misdemeanor assault and battery, and sentenced to 180 days of confinement (160 days suspended) (SOR ¶ 3.a). The SOR also cross-alleges the conduct alleged in SOR ¶¶ 1.a, 1.d-1.g, and 2.a-2.d under this guideline (SOR ¶ 3.b).

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 submitted at the hearing establish the following disqualifying conditions:

> AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
>
> 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; and
>
> 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.

Neither mitigating condition is established, for the reasons set out in the above discussion of Guidelines H and G and the discussion of Guideline E below.

**Guideline E, Personal Conduct**

The SOR alleges that Applicant falsified his February 2019 SCA by answering "No" to questions asking (1) if he had illegally used any drugs or controlled substances during the last seven years; (2) if he had illegally used or been involved with a drug or controlled substance while holding a security clearance; and (3) if he ever had been ordered, advised, or asked to seek counseling or treatment as a result of his illegal use of drugs or controlled substances (SOR ¶ 4.a). It also alleges that he falsified material facts during his September 2019 security interview by initially denying that he used any illegal drugs during the past seven years and not disclosing his illegal use of cocaine in July 2019 until he was asked about drug incidents at work (SOR ¶ 4.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. . . .

The following disqualifying conditions under this guideline are potentially applicable:

> 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; and
>
> AG ¶16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

AG ¶ 16(a) is established. Applicant had considerable experience with completing an SCA. He has a history of attempting to conceal his drug involvement in order to protect his security clearance. He knew that the literal meaning of the questions required him to disclose his drug involvement. His negative answers to some of the questions in Section 23 were correct, because he had not been involved with drugs during the seven years preceding his SCA, and his only drug-related treatment was after he submitted the SCA.

However, Applicant first received a security clearance around 1983, and he was charged with multiple felonies, drug-related offenses, and alcohol-related offenses while holding a clearance. His answers to the two questions in Section 22 were false, but falsifying the answers to the Section 22 questions was not alleged. Thus, Applicant's falsification of the Section 22 questions may not be a basis for revoking his clearance, but I will consider it for the limited purposes of deciding 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; and as part of my whole-person analysis. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

Applicant's falsification of his answers in Section 23 are sufficient to establish AG ¶ 16(a). His answer to two of the questions was true. He had not been involved with drugs

during the seven years preceding his SCA, and his only drug-related treatment was after he submitted his SCA. However, one of the questions in Section 23 was whether he had ever used or otherwise been involved with a drug or controlled substance while possessing and security clearance. He falsely answered "No" to this question and did not disclose the drug-related arrests that occurred between about 1983 and 2008, while he held a security clearance.

AG ¶ 16(b) is established. During the follow-up interview in September 2019, Applicant denied any illegal drug use during the last seven years. He did not disclose the positive urinalysis until the investigator asked him about drug involvement at work, which apparently caused Applicant to believe that the security investigator knew about it.

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 attempt to correct his omissions from the SCA until seven months later, after he realized that a security investigator probably knew about his positive urinalysis. Similarly, he did not "correct" his false answer to the investigator's questions in September 2019 until he was asked about drug involvement at work.

AG ¶ 17(c) is not established. Falsification during the security-clearance process is not "minor." It "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) Applicant's multiple falsifications have not occurred under unique circumstances.

**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 H, G, J, 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 Applicant's military service and his long service as a contractor employee. I have considered the accolades he has received for his technical expertise, loyalty, and dependability. I have considered his recent involvement in his church and the reputation that he has developed in the church community. However, his serious breach of trust by using cocaine while holding a security clearance and while a decision on his most recent SCA was pending, combined with his lack of candor during the security-clearance process, leave me with grave doubts about his trustworthiness and good judgment. After weighing the disqualifying and mitigating conditions under Guidelines H, G, J, 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 alcohol consumption, but he has not mitigated the security concerns raised by his drug involvement, criminal conduct, and personal conduct.

## Formal Findings

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

| | |
|---|---|
| Paragraph 1, Guideline H (drugs): | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraphs 1.d-1.g; | Against Applicant |
| Paragraph 2, Guideline G (alcohol): | FOR APPLICANT |
| Subparagraphs 2.a-2.d: | For Applicant |
| Paragraph 3, Guideline J (criminal conduct) | AGAINST APPLICANT |
| Subparagraphs 3.a and 3.b: | Against Applicant |
| Paragraph 4, Guideline E (personal conduct): | AGAINST APPLICANT |
| Subparagraphs 4.a and 4.b: | Against Applicant |

## Conclusion

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

LeRoy F. Foreman
Administrative Judge