DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03939
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: Troy Nussbaum, Esq.

12/07/2022

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Decision

_____

HARVEY, Mark, Administrative Judge:

The allegations in the statement of reasons (SOR) under Guideline E (personal conduct) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 25, 2004, June 5, 2014, and September 28, 2019, Applicant completed and signed Electronic Questionnaires for Investigations processing (e-QIP) or security clearance applications (SCA) SCAs. (Government Exhibit (GE) 1-GE 3). On October 15, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; 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. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline E.

On March 5, 2021, Applicant responded to the SOR and requested a hearing. (HE 3) On May 11, 2022, Department Counsel was ready to proceed. On June 16, 2022, the case was assigned to me. On July 19, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for August 30, 2022. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant offered six exhibits. (Transcript (Tr.) 14-18; GE 1-4; Applicant Exhibit (AE) A-AE F) There were no objections, except Department Counsel objected to AE F because of lack of relevance. (Tr. 16-17). The objection goes to the weight and not the admissibility of AE F. All proffered exhibits were admitted into evidence. (Tr. 15, 18; GE 1-GE 4; AE A-AE F) On September 12, 2022, DOHA received a transcript of the hearing. Applicant provided one post-hearing exhibit, which was admitted without objection. (AE G (44 pages)) On September 30, 2022, the record closed. (Tr. 108, 118)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

In Applicant's SOR response, he denied the SOR allegations in ¶¶ 1.a, 1.b, and 1.c. (HE 3)

Applicant is a 60-year-old level-four project manager employed by a DOD contractor for five and a half years. (Tr. 19-20) He has been married 26 years, and his two children are ages 23 and 25. (Tr. 19) In 1988, he received a bachelor's degree in electrical engineering. (Tr. 19) He has a project management professional certification and another specialty professional certification. (Tr. 19-20)

Personal Conduct

In the 1980s while in college, Applicant used marijuana, but not cocaine. (Tr. 60, 62) Around late 1995 to early 1996, he was using cocaine about every two weeks on paydays. (Tr. 63) He may have been addicted to cocaine in 1996. (Tr. 64)

In 1996, Applicant purchased some crack cocaine. (Tr. 32) When he was on his way back to his vehicle, the police arrested him. (Tr. 32) He dropped the cocaine onto the ground, and when the police searched him, they did not find any cocaine. (Tr. 32) The police accused him of delivering cocaine to the cocaine dealers. (Tr. 32) He was charged with felony-level possession of cocaine with intent to distribute. (Tr. 65; GE 1) The charge was reduced to misdemeanor-level cocaine possession. (GE 1) Applicant was prosecuted in state court and not in federal court. He was not prosecuted under the Controlled Substance Act, which is a federal statute. Applicant received probation before judgment. (Tr. 33; GE 1) He did not remember the length of the probation; however, he believed it was for less than one year. (Tr. 66-67) He successfully completed the probation period, and the cocaine possession charge was dismissed. (Tr. 33) On May 22, 2000, a state court ordered expungement of Applicant's arrest for cocaine possession and cocaine

possession with intent to distribute from local, state, and federal law enforcement and court records. (Tr. 33-34, 108; AE G at 7-11) A federal court did not order expungement of his state court charge.

This is Applicant's sole criminal arrest or charge. (Tr. 51, 65) He did not use illegal drugs after August 1996, and he never sold illegal drugs. (Tr. 33, 62, 71-73) He has never had problems at work or in school due to fraudulent or dishonest behavior. (Tr. 52) He has never been accused of a security violation. (Tr. 55) All of his character witnesses are aware of his cocaine offense. (Tr. 55-56) He apologized for the errors on his SCAs. (Tr. 58, 109) He described himself as an honest and trustworthy person. (Tr. 58, 110)

Applicant's attorney verbally advised him when he was in court on the cocaine charge that after the expungement, if he was asked on a job application about being charged, he "could truthfully answer no, that it never happened." (Tr. 34-35) His attorney never advised Applicant on the information to provide to complete his SCA. (Tr. 35) Applicant believed that after the expungement he could deny that he was charged on his SCA. (Tr. 35-36) He claimed he was not embarrassed by his conduct in 2004, and he is not embarrassed by it now. (Tr. 36-37) He has moved on from the offense. (Tr. 36)

SOR ¶ 1.c alleges Applicant deliberately omitted material facts on his March 25, 2004 SCA when he answered "No" in response to questions 21 and 24, which state as follows:

> 21. Your Police Record – Felony Offenses
> Have you ever been charged with or convicted of any felony offense? (include those under the Uniform Code of Military Justice.) (GE 3)
>
> 24. Your Police Record – Alcohol/Drug Offenses
> Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? (*Id*.)

Questions 21 and 24 included the following exception to disclosure:

> For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (*Id*.)

Applicant answered "No" to these questions on his 2004 SCA. (Tr. 78-79; GE 3) He said he did not remember his state of mind when he completed these two questions on his 2004 SCA. (Tr. 39) He remembered that there was a time constraint for completion of the 2004 SCA. (Tr. 76) He acknowledged it was his responsibility to ensure the 2004 SCA included accurate information. (Tr. 76) He believed he would have answered "No" because of the advice he received from his attorney about not needing to disclose the charge due to its expungement. (Tr. 39-40) He believed his answer was truthful because of the advice from his attorney. (Tr. 79) He did not believe his cocaine charge would have

affected his security clearance. (Tr. 40, 79-81) He did not receive a copy of his 2004 SCA, and he did not review it after completing it. (Tr. 77. 101)

SOR ¶ 1.a alleges Applicant falsified material facts in Section 22 of his July 30, 2014 SCA. Section 22-Police Records states:

> For this section report information regardless of whether record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. You need not report convictions under the Federal Controlled Substances Act for which the court ordered an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.
>
> Police Record (EVER) Other than those offenses already listed, have you EVER had the following happen to you? Have you EVER been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that crime, and incarcerated as a result of that sentence for not less than 1 year? Have you EVER been charged with any felony offense? Have you EVER been charged with an offense involving alcohol or drugs? (GE 2)

Appellant answered "No" to these last two questions, and he did not disclose his 1996 felony charge of possession of cocaine with intent to distribute. (GE 2) He said he probably did not thoroughly read the instruction about disclosing expunged information when he completed his 2014 SCA. (Tr. 41-42) He was probably thinking about his attorney's advice that he need not disclose the drug offense in 1996. (Tr. 41) He relied on his attorney's advice that he could answer "No" because the charge was expunged. (Tr. 84)

SOR ¶ 1.b alleges Applicant falsified material facts in Section 23 of his July 30, 2014 SCA, which states "Section 23 - Illegal use of Drugs or Drug Activity – Voluntary Treatment Have you EVER voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance?" (GE 2) Applicant answered "No." (GE 2) He did not disclose his drug treatment from February 1997 to about May 1997.

In 1997, Applicant attended a 12 to 16 week intensive outpatient treatment program, which entailed attendance three days a week for 90 to 120 minutes of daily group counseling. (Tr. 42, 68, 70) The treatment was voluntary and not court ordered. (Tr. 42) He successfully completed the treatment program. (Tr. 44) He also attended Narcotics Anonymous meetings. (Tr. 69) He answered "No" on his 2014 SCA probably because he was rushing and did not thoroughly read the question. (Tr. 43) His facility security officer told him to hurry up and complete the form. (Tr. 44-46, 87-88) He estimated that he took about two days to complete his 2014 SCA; however, he only worked on it at work and there were other work requirements. (Tr. 88, 102) He simply missed the question and the erroneous answer was an unintentional mistake. (Tr. 44) His attorney did not tell him that he could deny that he received drug treatment. (Tr. 84-85) He agreed that he should have answered "Yes" to this question. (Tr. 87)

Applicant did not review his 2014 SCA until he was preparing to complete his 2016 SCA. (Tr. 89, 102) When Applicant completed his September 28, 2016 SCA, he disclosed his arrest for possession of cocaine with intent to distribute, reduction of the charge to cocaine possession, probation before judgment, dismissal of the charge, and expungement. (Tr. 48; GE 1) He also disclosed his drug treatment in the 1996 to 1997 timeframe. (Tr. 49) He said he disclosed the charge and drug treatment because he read an article about clearances, which indicated expunged charges such as his 1996 cocaine offense needed to be disclosed, and he had more time to complete the SCA. (Tr. 48-51; AE F) The article he read was similar to the article Applicant provided at his hearing. (AE F) The article indicates it is a common error to believe a non-federal expungement applies to limit the disclosure requirement in SCAs.

Applicant did not remember the follow-up Office of Personnel Management (OPM) personal subject interviews (PSI) after he completed his 2004 and 2014 SCAs, and those PSIs were not exhibits in this case. (Tr. 57) In 2017, he told the OPM investigator that he did not list his cocaine charges on his previous SCAs because his attorney told him expungement was "like the incidents did not happen and there was no need to list it on his case papers." (Tr. 98) His 2017 OPM PSI states that in 2014, he researched the issue of expunged information and learned it was better to disclose the information especially since the investigation might find the expunged information. (Tr. 98-99) His emails to another government agency corroborate his statement about the timing of his research about expungement occurring after he completed his 2014 SCA. (AE G at 1-6) He denied that he told the OPM investigator that the reason he disclosed the charge of cocaine possession with intent to distribute was because he was worried about investigators finding the expunged information. (Tr. 104-105) Applicant's statement to the OPM investigator in 2017 was consistent with his hearing statement.

Character Evidence

Applicant provided his resume, nine character letter references, awards, and his performance appraisals from 2018 to 2020. (AE A; AE C-AE E) His employer, customers, coworkers, and friends praised his performance, diligence, trustworthiness, professionalism, and contributions to mission accomplishment. (Tr. 21-31; AE A; AE C-AE E) He frequently received bonuses and pay raises. (Tr. 23) He volunteered in his church and community. (Tr. 52-54) The general sense of the character evidence is that Applicant is an outstanding employee and citizen.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 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 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

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> 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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility: . . . (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 lists one condition that could raise a security concern and may be disqualifying. AG ¶ 16(a) states:

> (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.

AG ¶ 16(a) is established. This disqualifying condition will be discussed in the mitigation section, *infra*.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> 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. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (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;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
>
> (f) the information was unsubstantiated or from a source of questionable reliability.

In 1996, Applicant was charged with a felony-level cocaine possession with intent to distribute, and the charge was reduced to misdemeanor-level cocaine possession. He received drug treatment in 1997 for about three months. The cocaine possession charge was dismissed, and his arrest was expunged in 2000.

Applicant's 2004 and 2014 SCAs asked clear and easily understood questions about Applicant's record of charges, and his 2014 SCA asked a clear and easily understood question about drug treatment. Applicant has a bachelor's degree, and his character evidence establishes that is exceptionally intelligent. He understood the information the government sought. He was required to disclose any felony charges on his 2004 and 2014 SCAs, and his drug treatment on his 2014 SCA. He failed to disclose the cocaine-related charge on his 2004 and 2014 SCAs, and he failed to disclose his drug treatment on his 2014 SCA.

Applicant controverted the allegations of falsification in SOR ¶¶ 1.a, 1.b, and 1.c. The Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

I accept Applicant's statement as true that his lawyer advised him that he did not need to disclose his expunged arrest and charge of cocaine possession. Expungements of criminal records enable defendants to avoid the negative effects to their employment, damage their reputations, and for other reasons entailed with serious criminal arrests and charges. Applicant's counsel told him that the expungement meant it was as though the offense never happened, and he did not have to disclose the information about being arrested. Applicant admitted that his counsel's advice was not "**specifically concerning security processes**." *See* AG 17(b) (emphasis added). AG 17(b) does not apply.

Applicant misinterpreted his attorney's advice about expungements to be applicable to SCAs. He said his decision not to disclose the cocaine possession charge on his 2004 and 2014 SCAs was made in reliance on his counsel's advice. He did not provide a plausible reason for not disclosing the derogatory information other than his statement that it was expunged. A person of his intelligence would have recognized that the SCA's exclusion for expunged convictions was limited to federal drug charges or at least that he needed to checked with an attorney before assuming it enabled him not to disclose a felony-level drug charge.

As for the question on his 2014 SCA about his history of drug treatment, Applicant said he answered "No" probably because he was rushing and did not thoroughly read the question. His facility security officer told him to hurry up and complete the form. He claimed he simply missed the question, and the erroneous answer was an unintentional mistake. This statement about missing the question is not credible. His statement about missing the question will not be used for disqualification purposes; however, it is important is assessing his credibility and rehabilitation.

"Applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). "In analyzing Applicant's state of mind at the time he made the statements in

question, the Judge [is] required to examine Applicant's answers in light of the entire record. ISCR Case No. 09-08023 (App. Bd. Sept. 6, 2011) (citing Case No. 08-05637 at 2-3 (App. Bd. Sep. 9, 2010)).

In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

> When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's mens rea in light of the entirety of the record evidence. *See, e.g.*, ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id*.

None of the mitigating conditions fully apply to Applicant's failure to disclose his drug treatment on his 2014 SCA. His claim at his hearing that he did not carefully read the question sufficiently to understand what he was required to disclose was not truthful. He should have been sensitive to the issue of his cocaine involvement because of his arrest, prosecution, probation, drug treatment, and effort to have the incident expunged. A reasonable inference is that he realized that disclosure of his drug treatment may have led to follow-up questions during his OPM PSI about his involvement with illegal drugs.

Applicant failed to admit that when he completed his 2014 SCA, he read the question about voluntary drug treatment; he understood it; and he knowingly elected not to disclose his drug treatment on his 2014 SCA. His failure to candidly describe his mental state is an indication that he has not been successfully rehabilitated. "[W]hen an applicant is unwilling or unable to accept responsibility for his own actions, such a failure is evidence that detracts from a finding of reform and rehabilitation." *See* ISCR Case No. 21-00321 (App. Bd. Sept. 8, 2022) (citing ISCR Case 96-0360 at 5 (App. Bd. Sept. 25, 1997) (the passage of 14 years after offense without additional offenses did not establish rehabilitation because of absence of frank and candid description of offense in 2007).

Applicant failed to admit that he read the question in his 2014 SCA about drug treatment and understood it, and he relied upon his attorney's advice in the face of the clear language in the SCAs limiting the scope of the exception to disclosure. His failures to disclose information about his felony-level drug-related charge and drug treatment on his 2004 and 2014 SCAs continue to cast doubt on his reliability, trustworthiness, and good judgment. He failed to meet his burden of establishing mitigation of personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 60-year-old level-four project manager employed by a DOD contractor for five and a half years. In 1988, he received a bachelor's degree in electrical engineering. He has a project management professional certification and another specialty professional certification.

Applicant's resume, nine character letter references, awards, and his performance appraisals from 2018 to 2020 establish his excellent performance, diligence, trustworthiness, professionalism, and contributions to mission accomplishment. He frequently received bonuses and pay raises. He volunteered in his church and community. He is an outstanding employee and citizen.

The evidence against mitigation of Applicant's decisions not to disclose information about being charged in 1996 with felony-level cocaine possession with intent to distribute on his 2004 and 2014 SCAs and with drug treatment in 1997 on his 2014 SCA is more persuasive. He said his failure to disclose his 1996 charge of felony-level cocaine possession with intent to distribute on his 2004 and 2014 SCAs was based on his lawyer's advice about expungement; however, he admitted his lawyer did not advise him on completion of SCAs. Applicant's statement at his hearing that he overlooked or misinterpreted the question on his 2014 SCA about drug treatment is not credible, and it shows a lack of rehabilitation.

I have carefully applied the law, as set forth in *Egan,* Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Personal conduct security concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.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 interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Mark Harvey
Administrative Judge