



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



In the matter of:)
)
) ISCR Case No. 21-02624
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Pro se

April 10, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On March 28, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 25, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct; Guideline H, Drug Involvement and Substance Misuse; Guideline G, Alcohol Consumption, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on May 26, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on August 19, 2022, and the hearing was convened as scheduled on October 14, 2022. The Government

offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 25, 2022.

Findings of Fact

Applicant is 31 years old. He is divorced and has four children, two with his ex-wife, and two with his current girlfriend who resides with him. He has completed two years of college. He is employed by a defense contractor as an Electronic Technician. He is seeking to obtain a security clearance in connection with his employment.

Applicant has a history of criminal conduct, drug abuse, alcohol abuse, and dishonesty, evidenced by numerous arrests and convictions spanning over most of his adult life. (Government Exhibits 2, 4, 5, 6, and 7.) Applicant admits to each of the allegations set forth in the SOR. (See Applicant's Answer to the SOR.)

After finishing high school, Applicant joined the U.S. Army. He served in the U.S. Army from June 2009 to December 2016, and held a security clearance. He received an Honorable Discharge for his first six-year tour of service. He then re-enlisted for a second two-year tour where most of his problems began. During his military career, he received a number of awards and commendations for his service, including the Army Good Conduct Medal, (2nd award); the Army Achievement Medal, (2nd Award); the Afghanistan Campaign Medal with 2 campaign Stars; the Global War on Terrorism Medal; the National Defense Medal; and the Combat Action Badge for his service in Afghanistan. (Applicant's Exhibit F.)

During his second tour in the military, Applicant's excessive alcohol consumption and alcohol dependence caused him to be arrested on a number of occasions for Driving Under the Influence of Alcohol (DUI). This excessive criminal conduct resulted in him being disciplined. (Tr. p. 31-32.) His rank was reduced from an E-4 to an E-1. He was eventually discharged from the Army with an "Other than Honorable" discharge in December 2016. (Government Exhibit 7.) Following his discharge, Applicant applied for VA disability. He is currently receiving 100 percent VA disability for his Post Traumatic Stress Disorder (PTSD). (Applicant's Exhibit F.)

Applicant explained that he was born and raised in Iowa to a drug and alcohol-addicted mother. His father was never in the picture. He experienced a very difficult childhood and still suffers from this trauma. He described bouncing from foster care home to foster care home and always feeling out of place. He witnessed his 11 month old sister being molested by one of his foster care parents, and was beaten for trying to stop the abuse. As a five or six year old child he described staying in a drug house with his biological mother and being allowed to roam the streets with no supervision. His mother was not present and his two older siblings sometimes took care of him. He was also molested at age 5 or 6. (Tr. p. 37.)

In March/April 2017, Applicant began working as a civilian for a defense contractor. Since obtaining this employment, he states that he has never violated company policies and procedures nor has he violated any proprietary interests of the company. He states that he has received favorable performance evaluations, and has been promoted for good job performance. He contends that for the past four years, he has greatly improved himself and changed his life for the better.

Guideline J - Criminal Conduct

Applicant's criminal conduct began while he was in the Army. His extensive arrest history includes six arrests for Driving Under the Influence of Alcohol (DUI), and other related charges and convictions. 1.a. In October 2010, Applicant was charged with underaged drinking. He was found guilty and received an Article 15. 1.b. In July 2014, he was apprehended for Spousal Abuse and Child Endangerment. 1.c. In October 2015, Applicant was arrested and charged with DUI, with a BAC of .08% or higher, and Driving without a license. 1.d. In March 2016, while on probation for his October 2015 DUI offense, Applicant was arrested and charged with DUI, and hit and run. 1.e. In June 2016, while still on probation for his March 2016 DUI offense, Applicant was arrested and charged with DUI, and registered a BAC of .13%. His Army post privileges were revoked, and he received a letter of reprimand. He was found guilty of an Article 15, given extra duty, and suspended forfeiture of pay. 1.f. In December 2016, he was administratively separated from the Army for misconduct, (namely his multiple DUI's) and he received an Other than Honorable Discharge. 1.g. In February 2017, while still on probation for the offense in October 2015, he was arrested and charged with DUI, and Driving While License Suspended for DUI, after registering a BAC of .08% or higher. 1.h. In September 2018, while still on probation and diversion for the offenses in October 2015 and February 2017, Applicant was arrested and charged with DUI, and Driving While License Suspended for DUI, after registering a BAC of .08% or higher. 1.i. In October 2018, while still on probation and diversion for the offenses in October 2015 and February 2017, Applicant was arrested and charged with DUI, and Driving While License Suspended for DUI, after registering a BAC of .08% or higher. Applicant states that his criminal conduct occurred because he was young, immature, and made unwise choices while drinking. (Answer to SOR.)

In each of the cases listed above, except for the Spousal Abuse and Child Endangerment claim, Applicant was found guilty or pled guilty to the charge against him. He was either sentenced to pay a fine, complete an alcohol course, and a driver's license suspension; or he was placed in a military diversion program; and/or ordered to complete an 18 month Traffic, Alcohol, and Awareness School for multiple offenders. (Government Exhibits 4, 5, 6, and 7.)

Guideline H - Drug Involvement and Substance Misuse

Applicant has used a variety of illegal drugs while possessing a security clearance. In his answer to the SOR, he admitted using cocaine, but denies ever using any other illegal drug. (Answer to SOR.) He testified at the hearing that he does not recall ever using any other illegal drug besides cocaine. (Tr. p. 59.) 2.e. From

November 29, 2018, to February 27, 2019, Applicant voluntarily entered an inpatient treatment for conditions diagnosed as Cocaine Use Disorder (Severe), Cannabis Use Disorder (Mild), Stimulant Use Disorder (Moderate), and PTSD. (Tr. p. 57-69, and Government Exhibit 3.) 2.a. Medical records from the facility reflect that from 2014 until November 2018, Applicant used cocaine with varying frequency, including at times daily, while granted access to classified information. 2.b. From 2012 until at least September 2018, he used marijuana with varying frequency, while granted access to classified information. 2.c. From June 2018 until at least November 2018, he used methamphetamine with varying frequency while granted access to classified information. 2.d. In late 2017 and/or in 2018, he used MDMA (molly and ecstasy) with varying frequency while granted access to classified information. 2.f. Applicant has also on occasion, between 2017 and 2018, shown up late for work under the influence of illegal drugs and alcohol. (Government Exhibit 3.)

Guideline G - Alcohol Consumption

Applicant's history of alcohol abuse includes at least six arrests for DUI and one arrest for Underaged Drinking, that all occurred between 2015 and 2018. Applicant's excessive alcohol abuse was the reason he was administratively separated from the Army and the reason why he received an "Other than Honorable" discharge. After his discharge from the Army, Applicant continued to abuse alcohol. He enjoyed consuming alcohol and would often drink while using illegal drugs. He also abused alcohol while possessing a security clearance. Applicant denies ever showing up for work late or under the influence of alcohol. 3.b. However, medical records from the treatment center indicate that on several occasions between 2017 and 2018, he arrived to work under the influence of alcohol and drugs and on occasion was late for work because of this overindulgence. (Government Exhibit 3.)

3.c. Following his last arrest for DUI in October 2018, Applicant voluntarily entered an Alcohol and Drug treatment program for his addictions. Records from the treatment center indicate that from November 29, 2018 to February 27, 2019, he received inpatient treatment for 90 days and was diagnosed with Alcohol Use Disorder (Severe), among other conditions. (Applicant's Exhibit F, and Government Exhibit 3.) After completing the inpatient treatment program, he attended the one-year outpatient treatment program and successfully completed it on November 26, 2019. (Applicant's Exhibit F.) Applicant stated that he last consumed alcohol on October 16, 2019. (Tr. p. 53.) He states that he has been sober for the past four years. (Tr. p. 54.) His intent is to never drink alcohol again. (Tr. p. 69.)

Guideline E – Personal Conduct

Applicant has a history of dishonesty. Recently, during his security clearance background investigation, he has been dishonest and untruthful in response to the Government's questions on his security clearance application, in his interrogatories, and during the interviews about his past arrests and illegal drug use while possessing a security clearance. Applicant admits each of the allegations set forth under this guideline, except allegations 4.h., and 4.i.

4.a. On March 28, 2017, he completed a security clearance application. Section 15 - Military History, asked him if he was discharged from military service? He answered, "NO". (Government Exhibit 1.) This was a false response. He failed to disclose that he received an "Other than Honorable Discharge" in December 2016. (Government Exhibit 7, and Applicant's Exhibit F.)

4.b. Section 22 – Police Record, of the same security clearance application asked the Applicant if in the last seven years he has been issued a summons, citation, or ticket to appear in court in a criminal proceeding filed against him?; has he been arrested by any police officer or sheriff, marshal or any other type of law enforcement official?; has he been charged, convicted, or sentenced of a crime in any court?; has he been or is currently on probation or parole?; is he currently on trial or awaiting a trial on criminal charges? Applicant answered, "NO." (Government Exhibit 1.) This was a false response. He failed to disclose his extensive arrest history discussed above. (Government Exhibits 4, 5, 6, and 7.)

4.c. Section 23-Illegal Drugs, of the same security clearance application asked the Applicant if in the last seven years he has illegally used any drugs or controlled substances? Applicant answered, "No." (Government Exhibit 1.) This was a false response. He failed to list his illegal drug use discussed above.

4.d. Section 23 also asked the Applicant if he has ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed? Applicant answered, "NO." (Government Exhibit 1.) This was a false response. He failed to list his illegal drug use while possessing a security clearance discussed above.

4.e. During an interview on April 11, 2019, with an investigator for the Defense Department, Applicant denied ever receiving letters of reprimand while in the Army. Only after being confronted by the investigator did he admit to receiving the letters of reprimand. (Government Exhibit 2.)

4.f. During the same interview on April 11, 2019, with an investigator for the Defense Department, Applicant denied ever having any DUI arrests, other than the arrest in October 2015. Only after being confronted by the investigator did he admit to this arrest. (Government Exhibit 2.)

4.g. During the same interview on April 11, 2019, with an investigator for the Defense Department, Applicant denied being arrested for DUI in February 2017. Only after being confronted by the investigator did he admit to this arrest. (Government Exhibit 2.)

4.h. During an interview on August 9, 2021, with an investigator for the Defense Department, Applicant stated that he had only used cocaine three times and that he had never used drugs while possessing a security clearance. Applicant blatantly lied to the investigator. Applicant has actually used cocaine more than three times and has used

a variety of other illegal drugs, including cocaine, while possessing a security clearance. (Government Exhibit 2.)

4.i. Applicant was asked to respond to interrogatories dated January 3, 2022. When asked to provide the month and year of his last use of marijuana/THC, amphetamine/methamphetamine, and molly/ecstasy, Applicant denied ever using these drugs by answering "NA." (Government Exhibit 2.) He was not truthful in answering this question. In fact, the Applicant's last use of these illegal drugs is discussed above.

4.j. On at least five to ten separate occasions between 2016 and 2020, Applicant drove a vehicle while knowing that his driver's license was suspended or revoked. (Government Exhibits 4, 5, 6 and 7.)

Applicant was not truthful when he answered the questions on his security clearance application in Sections 22 and 23 discussed above. He should have answered "Yes." He was also not truthful during his interview with the investigator in April 2019, or in his interrogatories in January 2022. Applicant's deliberate attempt to deceive the Government is unacceptable and shows immaturity, irresponsibility, and poor judgment.

Regarding his history of alcohol and drug abuse, Applicant states that while in the military, he did not receive the help he needed for his addiction. (Tr. p. 67.) Since completing his inpatient and outpatient treatment programs, he has learned mechanisms for self-control. He has also attended Alcoholics Anonymous (AA) meetings, and has been receiving counseling from the VA Substance Abuse program that has been helpful. He states that he now avoids the triggers that have caused him to abuse alcohol and drugs in the past. (Tr. p. 56.) He believes he is a changed man. In August 2020, he received full custody of his children and is a very active and involved father who participates in their lives and extracurricular activities. (Tr. p. 58.) He states that he no longer associates with people who abuse alcohol and illegal drugs. His girlfriend who has been with him since 2015, is not a drug user, and has been very supportive in his sobriety. (Tr. pp. 73-74.)

Applicant's performance appraisals for the periods from May 1, 2020, through April 30, 2022, reflect ratings of "meets expectations" and "exceeds expectations" in every category. (Applicant's Exhibit B.)

Letters from the Vice President of the inpatient treatment program dated February 28, 2019, and from the Director of the outpatient treatment program dated June 27, 2019, and January 21, 2020, confirm that Applicant successfully completed each program. Applicant was also involved in the VA Substance Abuse program in January 2020, and diagnosed with "Post-Traumatic Stress Disorder Chronic," with "alcohol abuse in sustained remission." (Applicant's Exhibit F.)

Applicant successfully completed a diversion program and three of his DUI arrests and convictions have been dismissed by the court. (Applicant's Exhibit C, D, and E.)

Letters or recommendation from Applicant's immediate supervisor, coworkers, and the branch representative, attest to his reliability and trustworthiness. (Applicant's Exhibit F.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (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 judgement, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matter of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are applicable.

- (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
- (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.

Applicant’s extensive criminal record aggravated by his alcohol dependence demonstrates poor judgment, immaturity and a total disregard for the law. Applicant’s misconduct was extreme, outrageous, and inexcusable. His most recent conviction was in October 2018, a little over four years ago. However, he has not established that he is sufficiently reliable and trustworthy to access classified information. His many violations

of the law give rise to serious concerns about his judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains four conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and
- (f) Any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (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
- (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.

None of the mitigating conditions are applicable. Although Applicant's illegal drug use last occurred in 2018, and Applicant states that his drug abuse has stopped, he used a variety of illegal drugs while possessing a security clearance, in total disregard for DoD policy, procedure and Federal law. He also lied about his drug use on his security clearance application. This shows immaturity, and an attempt to hide information from the Government. In fact, at the hearing he claims that he has only used cocaine and no other illegal drug, when in fact his medical records show that he has used a variety of illegal drugs. This raises questions as to whether he has actually stopped his illegal drug use. He has not shown the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Guideline G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption 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 guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Four conditions may apply:

- (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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

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

(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.

Applicant's long history of excessive alcohol abuse and dependence raises the above security concerns.

The guideline at AG ¶ 23 contains conditions that could mitigate security concerns:

(b) 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;

(c) 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;

(d) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(e) 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.

His extensive history of alcohol dependence, coupled with his illegal drug use fail to establish mitigation. Applicant's extensive history of alcohol consumption reflects questionable judgment, unreliability and untrustworthiness.

Guideline E- Personal Conduct

The security concern for Personal Conduct 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 guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

- (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;
- (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; and
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here.

- (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; and

- (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.

Applicant lied to the Government on his security clearance application, in his interrogatories, and during his interviews with the DoD investigators about his criminal history, misconduct in the military, and his illegal drug use. He deliberately failed to disclose any derogatory information until he was confronted with it by the investigator. On the security clearance application, he simply lied by answering, "NO," to the questions, when he knew he should be answering "Yes". This raises serious questions about his credibility. Applicant has not demonstrated that he can be trusted. In totality, his conduct still shows a high degree of immaturity and poor judgment. None of the mitigating conditions are applicable here.

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 relevant 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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, H, G and E, in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Criminal Conduct, Drug Involvement and Substance Misuse, Alcohol Consumption, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i.	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.f.	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a. through 3.c.	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a. through 4.j.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge