



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 22-00757
)
 Applicant for Security Clearance)

Appearances

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

08/30/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines I (Psychological Conditions), J (Criminal Conduct), H (Drug Involvement and Substance Misuse), and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on September 22, 2018. On June 2, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines I, J, H, 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), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 23, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 18, 2022,

and the case was assigned to me on June 2, 2023. On June 9, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 26, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 13 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until July 6, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. DOHA received the transcript (Tr.) on July 7, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 2.a-2.f, 3.a, 3.c, and 4.d. He denied the allegations in SOR ¶¶ 3.b, 4.b, 4.c, 4.e, and 4.f. On September 21, 2022, Department Counsel amended SOR ¶¶ 1.b, 2.c, 3.a, and 4.a. The amendment purported to amend SOR ¶ 5.f, but there was no paragraph 5 in the original SOR. Applicant admitted all the amended allegations. At the hearing, Department Counsel corrected the erroneous references to SOR ¶¶ 5.f and 5.g and submitted a corrected amendment with the amended language in italics. The corrected version of the SOR as amended before and during the hearing, with the changes in italics, is attached to the record as Hearing Exhibit I. Applicant indicated on the record that he understood the amendments and corrections of the SOR. (Tr. 8) His admissions are incorporated in my findings of fact.

Applicant is 31 years old. He has been offered a position with a defense contractor, contingent on obtaining a security clearance. He married in December 2014, and they had two children, now ages 6 and 7. He divorced his first wife on a date not reflected in the record. He married his current wife in November 2020, with whom he has a 10-month-old daughter.

Applicant served on active duty in the U.S. Navy from June 2014 to November 2016 and received an other than honorable discharge. He received a security clearance while on active duty.

In April 2015, Applicant received nonjudicial punishment under Article 15, Uniform Code of Military Justice, 10 U.S.C. § 815, for assaulting another sailor. The incident involved a fist fight that occurred when Applicant asked a fellow sailor to help out on a project and the fellow sailor did not respond. (GX 6 at 12) His punishment was restriction for 30 days, extra duties for 30 days, reduction in rate, and forfeiture of one half of his basic pay per month for two months. (GX 8 at 8)

In August 2016, Applicant and his wife had an altercation over his text messages with another woman. At the hearing, he testified that his wife choked him, and he slapped her to stop her from choking him. (Tr. 35-36) Applicant received nonjudicial punishment for this incident, which consisted of reduction in rate, and forfeiture of one half of his pay per month for two months, suspended for six months. (GX 8 at 2)

In November 2016, Applicant was charged with misdemeanor assault and battery on a family member. This incident occurred when Applicant was playing a video game when his wife was talking to him. When he ignored her, she broke the game controller, and he responded by smashing the television screen. (GX 6 at 9) His wife claimed that he struck her in the face and head, knocking her to the floor. At the hearing, he denied hitting her, but admitted that he pushed her. He was charged by civilian authorities with misdemeanor assault and battery on a family member. The civilian prosecution was deferred in February 2019 to enable Applicant to complete court-ordered counseling. (GX 7 at 6; Tr. 40-41)

During the November 2016 altercation, Applicant's wife was holding their baby daughter. A protective order was issued against Applicant, and in January 2017, he was listed as a child abuser in the state child abuse and neglect registry. (GX 11; GX 12) He will remain on the registry until November 2023. (Tr. 41)

Applicant testified that he did not tell his commanding officer or the police that his wife was the aggressor in the domestic incidents. His wife was on active duty in the Navy and he kept silent in an effort to enable her to retain her military benefits. (Tr. 43)

On the day after the November 2016 altercation, Applicant attempted to commit suicide by overdosing a prescribed muscle relaxant. He called his wife and told her that he had ingested the drugs. His wife called an ambulance, and he was taken to an emergency room and then admitted to a military hospital. He received medical treatment and was diagnosed with an adjustment disorder with depressed mood. He was hospitalized for two or three days and discharged. The medical authorities recommended that he attend outpatient psychotherapy. He testified that he did not obtain psychotherapy as recommended, but he began obtaining therapy about six months later and was diagnosed with anxiety. He stopped the therapy when his therapist retired around 2019. He resumed therapy for about six months in 2020 but stopped when his insurance would no longer cover it. (Tr. 43-47; GX 5; GX 6 at 9)

Applicant used marijuana with varying frequency from 2012 to 2013. He resumed his marijuana use in 2017, after he was discharged from the Navy, using it once or twice a month. (GX 6 at 20). He testified that he has not smoked marijuana since 2020, because most of his friends with whom he smoked marijuana are married and have children, and several are DOD employees. (Tr. 66)

In April 2017, Applicant was charged with driving under the influence of drugs, possession of marijuana, tampering with evidence, driving with defective equipment, and operation of a vehicle with an expired license tag. The evidence tampering charge was based on a police officer accusing him of attempting to eat marijuana that was in the vehicle when he and an acquaintance were stopped by police. (GX 6 at 14)

The police report for the April 2017 incident recites that the police were operating a driver's license checkpoint, and they observed Applicant's vehicle turn around in a parking lot in an apparent attempt to avoid the checkpoint. At the hearing, Applicant

admitted avoiding the checkpoint because he knew that his license tags were expired. (Tr. 52)

When the police officer stopped Applicant's vehicle, he noticed a strong smell of marijuana, and observed that Applicant's eyes were glassy and he seemed "out of it." He observed small pieces of what appeared to be marijuana in Appellant's lap and on his shirt. When Applicant exited the car, the piece of marijuana that was on his lap fell onto the ground. The police officer asked Applicant to open his mouth and he saw small pieces of marijuana on his tongue, and his tongue was covered with a green film. Applicant declined to be tested for drugs. (GX 13)

At the hearing, Applicant testified that he believed he was innocent of the drug charges, but he was told that his trial would not be until eight months later unless he pleaded guilty. (Tr. 57-58) In June 2017, he pleaded guilty, was convicted of driving under the influence of drugs, and was sentenced to eight days in jail and community service. He was placed on probation for 60 months. For the marijuana possession, he was fined \$1,200 and placed on probation for 12 months. For tampering with evidence, he was fined \$750 and placed on probation for 12 months. (GX 7 at 9; GX 9)

In January 2019, Applicant failed to report to his probation officer as required. (GX 10) At the hearing, he testified that he failed to report because he was unsuccessful in trying to contact the new probation officer who was assigned to his case. (Tr. 60-61) The probation officer's affidavit, dated January 24, 2019, recited that the probation officer had called Applicant at least twice at a telephone number that is the same telephone number as Applicant provided in his answer to the SOR. As of the date of the hearing, Applicant had not contacted his probation officer. As a result, the running of his time on probation has been tolled since January 24, 2019, and he is still on probation. (Tr. 63)

At the request of the DOD CAF, Applicant was evaluated by a psychologist in October 2021. The psychologist concluded that Applicant "does not appear to have any mental health conditions that would negatively impact his ability or willingness to safeguard classified information." However, the psychologist also noted that Applicant "has personality characteristics and behavioral tendencies that could negatively impact his judgment and trustworthiness." (GX 3 at 8)

When Applicant submitted his SCAs in December 2013 and September 2018, he did not disclose that he used marijuana with varying frequency between 2012 and 2013. (GX 1 at 30-31; GX 2 at 19) In his answer to the SOR amendment and at the hearing, He admitted intentionally not disclosing it in both SCAs. He testified that a military recruiter advised him not to disclose it. (Tr. 14, 67)

Applicant admitted that he did not disclose his arrest for assault and battery in his September 2018 SCA, because he believed it was not reflected in his record. (Tr. 68) He disclosed his arrest for DUI and stated that he was awaiting trial. He did not disclose that he was also charged with possession of marijuana, was convicted and sentenced, and that he was on probation. When he was interviewed by a security investigator in

December 2018, he admitted that he did not disclose his probation because he was concerned that it would affect his application for a security clearance. (GX 6 at 15) When he was evaluated by a psychologist in October 2021, he admitted that he thought he might be able to get by with not disclosing his probation. (GX 3 at 5)

When Applicant responded to DOHA interrogatories in May 2022, he disclosed that he used marijuana a few times in 2017. He did not disclose that he used marijuana in 2020. (GX 6 at 20) During his psychological evaluation, he disclosed that he last used marijuana in 2020, and he confirmed that disclosure at the hearing. (GX 3 at 5; Tr. 66) At the hearing, he testified that he did not know why he did not fully disclose his marijuana use in 2020 but he “probably didn’t think about it too hard.” (Tr. 72)

Applicant’s spouse submitted a statement describing him as an exceptional father and husband with unwavering commitment to the wellbeing of his family. (AX A) A friend of Applicant for more than eight years describes him as a gifted manager who is forthright, fair, discreet, and “supremely knowledgeable.” (AX B) A former shipmate describes him as a hardworking, self-driven, and effective leader. (AX C) A joint statement from 14 sailors with ratings and ranks ranging from petty officer second class to lieutenant describes Applicant as an outstanding sailor and lists his multiple accomplishments while in the Navy. (AX D; AX E) A retired sailor who has known Applicant for nine years describes him as very respectful of privacy, classified information, rules, and restrictions. (AX F). A petty officer second class with nine years of Navy service admires Applicant for his exemplary work ethic, innate generosity, steadfastness, and dependability. (AX G)

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 I, Psychological Conditions

The SOR alleges that Applicant attempted to commit suicide in November 2016 (SOR ¶ 1.a), received inpatient treatment in November 2016 and was diagnosed with adjustment disorder with depressed mood (SOR ¶ 1.b), and was evaluated by a licensed psychologist in October 2021, who concluded that he did not appear to have any mental health condition but exhibited evidence of personality characteristics and behavioral tendencies that could impact judgment and trustworthiness. (SOR ¶ 1.c)

The concern under this guideline is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required

for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

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

AG ¶ 28(a): behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and

AG ¶ 28(c): voluntary or involuntary inpatient hospitalization.

The following mitigating conditions are potentially applicable:

AG ¶ 29(a): the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

AG ¶ 29(c): recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

AG ¶ 29(d): the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

AG ¶ 29(e): there is no indication of a current problem.

AG ¶ 29(a) is not fully established. After Applicant's suicide attempt and hospitalization for three days, he did not follow the recommendation of medical authorities that he attend outpatient therapy. After about six months, he began some kind of therapy not reflected in the record, but he stopped it when his therapist retired in 2019, resumed therapy for about six months, and then stopped it because his insurance would not cover it.

AG ¶¶ 29(c) and 29(d) are not fully established. The psychologist who evaluated Applicant at DOD CAF's request did not specifically find that his previous condition was under control or remission, but he concluded that Applicant does not appear to have any

current mental health conditions. However, he expressed concern that Applicant's personality and behavioral tendencies could have a negative effect on his judgment and trustworthiness.

AG ¶ 29(e) is not established. The psychologist found no mental health conditions, but he expressed concern that Applicant's personality characteristics could have a negative effect on his judgment and trustworthiness. The behavior alleged under Guidelines J, H, and E validates the psychologist's concerns.

Guideline J, Criminal Conduct

The SOR alleges that Applicant received nonjudicial punishment for an assault on a fellow sailor (SOR ¶ 2.a); that he was charged with assault and battery a family member (SOR ¶ 2.b); that he received nonjudicial punishment for the same assault on a family member (SOR ¶ 2.c); that he was listed in the state child abuse and neglect registry as a child abuser because his infant daughter was present during the assault and battery on a family member (SOR ¶ 2.d); that he was charged and convicted of DUI, possession of marijuana, tampering with evidence, defective equipment, and an expired license tag (SOR ¶ 2.e); and that he violated the terms of probation imposed for the criminal conduct alleged in SOR ¶ 2.e (SOR ¶ 2.f).

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

SOR ¶¶ 2.b and 2.c allege the same conduct but different consequences. As such, they are duplicative. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegation should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved SOR ¶ 2.c in Applicant's favor.

The registration of Applicant in the child abuse and neglect registry was a consequence of the conduct alleged in SOR ¶ 2.b, but it was not a separate act of misconduct. Accordingly, I have resolved SOR ¶ 2.d in Applicant's favor.

Applicant's admissions and the evidence submitted at the hearing establish the conduct alleged in SOR ¶¶ 2.a, 2.b, 2.e, and 2.f and are sufficient to establish the following disqualifying conditions under this guideline:

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;

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;

AG ¶ 31(c): individual is currently on parole or probation; and

AG ¶ 31(d): violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

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. Applicant used marijuana as recently as 2020. He is still on probation and has not complied with the terms of his probation.

Guideline H, Drug Use and Substance Misuse

SOR ¶ 3.a alleges Applicant used marijuana with varying frequency from approximately 2012 through 2013 and again in 2017. SOR ¶ 3.b cross-alleges that he possessed marijuana as alleged in SOR ¶ 2.c. SOR ¶ 3.c alleges that he used marijuana with varying frequency in 2020.

SOR ¶ 3.b mistakenly cross-alleges SOR ¶ 2.c, which alleges an assault. It apparently was intended to cross-allege SOR ¶ 2.e, which alleges Applicant's arrest for multiple offenses, including possession of marijuana. I have resolved SOR ¶ 3.b for Applicant.

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules,

and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

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

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

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. Applicant's marijuana use has been recent, frequent, and did not occur under unusual circumstances making recurrence unlikely

AG ¶ 26(b) is not established. Applicant still associates with marijuana users, although many of his former marijuana-using friends have stopped using it because of

family obligations or federal employment. He has not changed his environment, and he has not provided a statement of intent to abstain from drug involvement.

AG ¶ 26(d) is not established. Applicant has received counseling and treatment, but none of it was specifically for drug use.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

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

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

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; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . : engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions are relevant:

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

AG ¶ 17(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; 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 make any effort to correct the omissions in his two SCAs or the DOHA interrogatories until he was confronted with the facts.

AG ¶ 17(b) is partially established for Applicant's omission from his SCA in 2013, which was based on advice from a military recruiter. However, he made no effort to correct his omission. Instead, he repeated the same omission in his September 2018 SCA. It is not established for the omissions in his SCA in 2018 or his responses to DOHA interrogatories in 2022.

AG ¶ 17(c) is not established. Falsification 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 falsifications were numerous and recent.

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 I, J, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guidelines I, J, H, and E.

Formal Findings

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

Paragraph 1, Guideline I (Psychological Conditions): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

Paragraph 2, Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant

Subparagraphs 2.c-2.d: For Applicant

Subparagraphs 2.e-1.f: Against Applicant

Paragraph 3, Guideline H (Drug Use) AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.c: Against Applicant

Paragraph 4, Personal Conduct: AGAINST APPLICANT

Subparagraphs 4.a-4.g: 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