



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 22-01553
)
 Applicant for Security Clearance)

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 3, 2019. On December 12, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, I, and E. The CAS 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 December 20, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January

17, 2023, and the case was assigned to me on June 30, 2023. On July 24, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 22, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until September 7, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on August 31, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a in part. He admitted SOR ¶¶ 1.b-1.f, 1.h-1.i, 2.a-2.d, and 3.a-3.j, with explanations. He denied SOR ¶ 1.g. His admissions are incorporated in my findings of fact.

Applicant is a 34-year-old fiber optics technician employed by a defense contractor since September 2020 (Tr. 15) He has never held a security clearance.

Applicant attended a community college from July 2010 to May 2013 and January 2016 to May 2016, but he has not obtained a degree. He married in November 2012 and separated on a date not reflected in the record. He testified that he was divorced but could not recall when it occurred. (Tr. 14).

When Applicant submitted his SCA in April 2019, he disclosed that he illegally used Oxycontin between September 2013 and December 2017. He did not disclose illegally using any other controlled substances.

In response to DOHA interrogatories in September 2022, Applicant admitted using marijuana twice a month from January 2006 to January 2007. He admitted using Oxycontin once a week from September 2013 to January 2014 and three times a week in December 2017. (GX 3 at 4.) He declared that he did not intend to use marijuana in the future. (GX 3 at 6) At the hearing, he testified that he last used marijuana around 2020. (Tr. 16)

In Applicant's response to the SOR in December 2022, he admitted using opioids, including Oxycontin, Percocet, and Roxicodone on various occasions between 2007 and December 2017, using cocaine in 2007, abusing Adderall in 2012, and using LSD on various occasions until 2017. He also admitted using mushrooms on one occasion in 2006. He denied using phencyclidine (PCP), but he admitted that it was possible that other drugs were laced with PCP. He admitted that in October 2012, he was diagnosed with cannabis dependence, that in December 2017 he was diagnosed with opiate/benzodiazepine dependence and sedative/hypnotic dependence, that his dependence was continuous and severe, and that his prognosis was fair.

Applicant testified that he used Adderall in high school in greater quantities than prescribed, and he continued to use it in college. He also started stealing opioids from his father, who had a prescription for them, and used them to counteract the Adderall. (Tr. 18)

In 2007, Applicant "threw a fit" because his parents would not give him the keys to the family car. His parents called the police, and he was charged with disorderly conduct. The charges were dismissed. (Tr. 21-22; GX 9 at 5) He was admitted into a behavioral health center for three days and diagnosed with a major depressive disorder, single episode, severe; cocaine abuse; opiate abuse; and cannabis abuse. His prognosis was "good with adequate follow up and support." (GX 5)

In 2012, Applicant punched his father in the face because of something that his father said. His father was in a wheelchair at the time. (Tr. 39) Applicant was charged with assault and battery on a family member. He spent a week in jail. He was convicted, adjudication was deferred, and he was required to complete anger management training. (GX 9 at 5)

In October 2012, after the incident with his father, Applicant was involuntarily admitted to a psychiatric center and diagnosed with major depressive disorder, generalized anxiety disorder, and cannabis dependence. He did not complete this treatment program. He was discharged in August 2013 because he stopped attending appointments and did not respond to efforts to contact him. (GX 6) The records of the psychiatric center do not include a prognosis.

In May 2013, Applicant was charged with destruction of property. He testified that after he and his father had an argument, he broke a handrail in the house. He testified that at that time, he would sometimes break something when he was angry. (Tr. 43) He failed to appear in court, was convicted of contempt of court, and was sentenced to 90 days in jail, suspended for 90 days. (GX 4 at 6)

In mid-2016, Applicant's father committed suicide. Applicant went into "deep depression" and resumed use of opioids. On December 15, 2017, he self-admitted into a psychiatric center for opioid detoxication. On admission, he was diagnosed with opioid withdrawal, sedative hypnotic withdrawal, opioid use disorder, benzodiazepine use disorder, sedative hypnotic use disorder, substance induced mood disorder, and anxiety disorder not otherwise specified. (GX 7 at 4) He was discharged on December 29, 2017, and diagnosed with opiate dependence, continuous, severe; sedative and hypnotic dependence, continuous, severe; and generalized anxiety disorder. (GX 7 at 41) His prognosis was "fair." (GX 7 at 6)

After Applicant was discharged from the psychiatric center, he was referred to a psychiatric nurse practitioner, and he began participating in group therapy in January 2018. His diagnosis upon admission was opioid dependence, uncomplicated; and sedative, hypnotic, or anxiolytic dependence, uncomplicated. (GX 8 at 2) A progress note from June 2018, reflected that he continued to exhibit symptoms of an emotional disorder

and substance abuse disorder. (GX 8 at 47) Group members were required to attend meetings of Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) three times a week. In November 2018, the psychiatric nurse practitioner suspected that some of the signatures on his NA attendance sheets appeared to have been forged. Applicant denied forging signatures, and the issue was not resolved. (GX 8 at 80) During the treatment program, he tested positive for marijuana at least twice. (GX 8 at 48) He actively participated in the group therapy sessions. The group therapy records reflect that Applicant was admonished frequently to follow medication instructions and advised him against premature tapering off the use of drugs to control the craving for opioids. (GX 8 at 82) At the hearing, Applicant admitted that he stopped taking the drugs sooner than his therapist recommended and contrary to the advice of his peer support group. He considers himself “completely clean.” (Tr. 32) The records of the group therapy facility do not include a prognosis.

In June 2022, Applicant was evaluated by a board-certified psychologist at the request of the DCSA CAS. (GX 4) The psychologist had him complete a personality assessment inventory (PAI). The psychologist noted that Applicant responded to items carelessly and did not pay attention to the content of the questions. He attributed Applicant’s answers in the PAI were due to “general carelessness, reading problems, attention problems, or idiosyncratic thinking.” The psychologist concluded that the PAI was invalid because Applicant’s responses to questions were “indicative of respondents who attempt to portray themselves in the most positive light and exceptionally free of the common shortcomings to which most others will admit.”

The psychologist also noted that Applicant “was not highly motivated to put forth the mental energy needed to provide a detailed accounting of his mental health and substance use history and treatment history.” Instead, Applicant simply referred to his SCA and report of investigation multiple times as the source of information that the psychologist asked for.

Applicant told the psychologist that he stopped using marijuana when he was hired by his current employer in September 2020, but later in the interview he admitted that he had “smoked weed here and there” since he was hired. (GX 4 at 4) He admitted to the psychologist that he stopped taking the opioid-withdrawal drugs sooner than his therapist recommended and contrary to the advice of his peer support group. The psychologist reported that it was difficult to fully understand Applicant’s current substance-abuse status, because the information he provided during the assessment was inconsistent with past records (such as his SCA and responses to interrogatories) and his own statements during the assessment. He noted that there was “hard evidence” that Applicant had recovered from his last episode of opioid abuse, but there was also evidence that he did not follow the treatment recommendations from his last treatment that ended in December 2018. The psychologist concluded:

At best, [Applicant] has abstained from opioid and other drug use since 2017 and from marijuana use since 2020. At worst, he misrepresented himself to me and he continues to use illegal drugs and/or misuse prescription drugs

with an unknown frequency and intensity. . . . At best, [Applicant] is free of interfering mental health symptoms at this time. At worst, he continues to suffer from a range of symptoms to a degree that interferes with his interpersonal and work life. I am simply unable to tell.

The psychologist concluded, "The results of the present evaluation are inconclusive regarding whether [Applicant] has any active mental health or substance abuse condition that could negatively impact his reliability, trustworthiness, or judgment in safeguarding national security information." (GX 4 at 6-7)

Applicant's girlfriend since December 2020 met him while they were both working for his current employer. She regards him as a kind and loving person who is "always trying to improve himself despite the things he did in the past." She believes that he has grown into a "healthy and reliable person, coworker, and future husband." (AX A)

Applicant's lifelong friend, who now shares an apartment with him, has known him since they were teenagers. He witnessed Applicant's "blatant disregard for himself and others around him, destructive behavior, and rampant substance abuse." He believes that Applicant has "both figuratively and literally turned his life around in roaring totality for the better." Although Applicant was told that he would "never be employed, never free of drugs, and never worth of affection," he now "has a great job, is long-term free of drugs, and is in a health relationship." (AX C)

Applicant's younger brother believes that the turning point in Applicant's life was the passing of their father. He describes the changes in Applicant's behavior as "someone that was on the path of self-destruction to someone [who] leads the path of self-improvement." He considers Applicant a role model to any who wishes to better themselves and enjoy a happy, successful adulthood. (AX D)

Applicant's mother states that she has watched him completely transform during the past ten years, when her view of him was "murky at best" to the present. He now talks about things that she never dreamed possible for him. (AX E) Applicant's former wife, who maintains a "strong friendship" with him, believes that he has undergone a significant positive transformation after the passing of his father. He now handles his mother's financial matters and has shown no interest in drugs. (AX G)

One of Applicant's coworkers, who has known him for the past year, describes him as "an individual who shows up earlier than asked, works hard, and carries [himself] in a polite, respectable manner. (AX H) Applicant's project lead describes him as a kind and generous person with a strong sense of duty and high integrity. (AX B) Applicant's current project manager describes him as an upstanding and reliable key employee, who plays a critical role in the fiber optic installation team. He strongly recommends approval of Applicant's application for a security clearance. (AX F)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The SOR alleges that Applicant used marijuana on various occasions between about 2006 and 2020 (SOR ¶ 1.a), abused opioids on various occasions between “a least” 2007 and December 2017 (SOR ¶ 1.b), used mushrooms on at least one occasion in 2006 (SOR ¶ 1.c), used cocaine in at least 2007 (SOR ¶ 1.d), abused Adderall in at least 2012 (SOR ¶ 1.e), used lysergic acid diethylamide (LSD) on various occasions until at least 2017 (SOR ¶ 1.f), used PCP on various occasions until at least 2017 (SOR ¶ 1.g), used Molly (Ecstasy) on various occasions until at least 2017 (SOR ¶ 1.h), and used morphine without a prescription (SOR ¶ 1.i).

The SOR also alleges that in approximately September 2007, Applicant was diagnosed with cocaine abuse, opiate abuse, and cannabis abuse (SOR ¶ 1.j); that he was diagnosed in approximately October 2012 with cannabis dependence (SOR ¶ 1.k); and he was diagnosed in December 2017 with opiate/benzodiazepine dependence and sedative/hypnotic dependences, continuous, severe; and his prognosis was “fair.” (SOR ¶ 1.l).

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 admitted all the allegations under this guideline except SOR ¶ 1.g, alleging use of PCP, which he denied. There is no evidence showing that he knowingly used PCP. Therefore, I have resolved SOR ¶ 1.g in his favor. His admissions and the evidence submitted at the hearing establish SOR ¶¶ 1.a-1.h and 1.h-1.l, and are sufficient to establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 25(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.

The disqualifying condition in AG ¶ 25(e) (“failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional”) is relevant and established by the evidence that he failed to complete his treatment program in August 2013, but it was not alleged in the SOR. Accordingly, I have considered it for the limited purposes of assessing Applicant's credibility, evaluating his evidence of extenuation, mitigation, or changed circumstances; considering whether he has demonstrated successful rehabilitation; and as part of my whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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 illegal drug use was frequent and did not occur under circumstances making recurrence unlikely. It was recent, because he admitted to the psychologist conducting the psychological evaluation at the CAS's request that he used marijuana "here and there" after he was hired by his current employer in 2020.

AG ¶ 26(b) is not fully established. Applicant has acknowledged his drug involvement and provided evidence of his efforts to overcome his addiction. However, he admitted that he used marijuana recently, after being hired by his current employer. He has not provided the statement of intent provided for in AG ¶ 26(b)(3).

AG ¶ 26(d) is not fully established. Applicant completed drug treatment in December 2017. He completed a second drug treatment program in December 2018, but he did not follow the medical advice regarding use of drugs to control his craving for drugs. He provided no evidence of a recent favorable prognosis. His prognosis in 2007 was "good with adequate follow up and support." His prognosis in December 2017 was "fair." He received no prognosis after completing his group therapy in December 2018. The psychologist who conducted the evaluation requested by DCSA CAS was unable to provide a prognosis.

Guideline I, Psychological Conditions

The SOR alleges that in approximately 2007, Applicant was hospitalized as a possible suicide risk, tested positive for cocaine and marijuana, and was diagnosed with major depressive disorder, single episode, without psychosis; cocaine abuse; opiate abuse; and cannabis abuse (SOR ¶ 2.a); that in approximately October 2012, he was involuntarily hospitalized for bizarre behavior, suicidal ideations, and homicidal threats toward his brother and father (SOR ¶ 2.b); that in approximately October 2012, he was diagnosed with major depressive disorder, generalized anxiety disorder, and cannabis dependence, with schizoaffective disorder and polysubstance abuse dependences ruled out (SOR ¶ 2.c); and that Applicant was evaluated by a licensed psychologist in June 2022, who determined that he was unable to determine his current psychiatric status (SOR ¶ 2.d)

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 allegations in SOR ¶¶ 2.a-2.c. However, the psychologist was unable to determine Applicant's current psychiatric status beyond what was alleged in SOR ¶¶ 2.a-2.c. Thus, I have resolved SOR ¶ 2.d in Applicant's favor. The evidence supporting SOR ¶¶ 2.a-2.c is sufficient to establish the following disqualifying conditions under this guideline:

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;

AG ¶ 28(b): an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

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

AG ¶¶ 28(a), 28(b), and 28(c) are established. Separate from the multiple drug-related diagnoses, Applicant has been repeatedly diagnosed with mental conditions related to his behavior. In 2007, he was diagnosed with a major depressive disorder. In 2012, he was diagnosed with major depressive disorder and generalized anxiety disorder. In 2016, he was diagnosed with generalized anxiety disorder.

AG ¶ 28(c) is established. Applicant was admitted to a behavioral health center in 2007, a psychiatric center in 2012, and a psychiatric center in 2017.

AG ¶ 28(d) ("failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.") is relevant but not alleged. While in group therapy in 2018, Applicant failed to follow the medication schedule for weaning himself from opioids. Because his failure to do so is not alleged in the SOR, I have considered the unalleged conduct it for the limited purposes set out above.

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 established. Applicant's conditions are treatable, but he has not demonstrated ongoing and consistent compliance with his most recent treatment plan. Contrary to the recommendation of a psychiatric nurse practitioner and his group therapy peer group, he accelerated his use of opioid-withdrawal drugs and terminated his use of them prematurely.

AG ¶¶ 29(c), 29(d), and 29(e) are not established. The psychologist who conducted the mental health evaluation for the CAS was unable to determine whether Applicant's condition was under control or in remission.

Guideline E, Personal Conduct

The SOR cross-alleges the conduct alleged in SOR ¶¶ 1.a-1.l and 2.a-2.d (SOR ¶ 3.a). In addition, it alleges that Applicant was charged with disorderly conduct in December 2007 (SOR ¶ 3.b), charged with assault and battery in March 2008 (SOR ¶ 3.c), charged with assault and battery in March 2012 (SOR ¶ 3.d), charged with destruction of property (SOR ¶ 3.e), charged with failure to appear in February 2014 (SOR ¶ 3.f), and charged with contempt of court (SOR ¶ 3.g).

The SOR also alleges that Applicant failed to disclose material facts in his April 2019 SCA (SOR ¶ 3.h), failed to disclose material facts in his responses to interrogatories in September 2022 (SOR ¶ 3.i), and failed to disclose material facts during his psychological evaluation in June 2022 (SOR ¶ 3.j).

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. . . .

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

In Applicant's answer to the SOR, he admitted that he did not fully disclose his use of illegal drugs or controlled substances in his April 2019 SCA, in which he disclosed his use of Oxycontin between September 2013 and December 2017 but did not disclose his use of marijuana, LSD, PCP, and Ecstasy during the same time period. He also admitted that in his responses to interrogatories, he did not disclose his use of Oxycontin and marijuana more extensively than he admitted. He explained that he was young, not in a sober mindset, and did not know what drugs were in his system when he was tested. However, his admissions to the Guideline H allegations establish that he knew what he had used.

The psychologist's observations about Applicant's carelessness and inattention to the questions in the PAI suggest that the same carelessness may have contributed to Applicant's incomplete answers to the questions in the SCA and the interrogatories. On the other hand, the psychologist also noted Applicant's tendency to answer questions in the light most favorable to him, which suggests that Applicant was trying to minimize his culpability when he submitted his SCA and answered the DOHA interrogatories.

The psychologist concluded that Applicant intentionally skewed the results of the PAI. His report does not recite any specific inconsistencies between Applicant's medical records and the information that he provided during the psychological evaluation. He reported that Applicant seemed ill-prepared to discuss his medical history in detail and was sometimes evasive about it. He noted that Applicant responded to questions by referring to his answers in the SCA, which were false. He specifically noted that Applicant told him that he stopped using marijuana when he was hired by his current employer in September 2020 but later admitted using marijuana after he was hired.

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(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 under this guideline are potentially relevant:

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

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

AG ¶ 17(a) is not established for Applicant's omissions from his SCA and DOHA interrogatories. Applicant made no attempt to correct his SCA or his responses to DOHA interrogatories until he was confronted with the evidence. However, AG ¶ 17(a) is established for his claim during his psychological evaluation that he stopped using marijuana in September, which he promptly corrected later in the interview.

AG ¶ 17(c) is not established. Falsification during a security-clearance adjudication is not "minor." It is a serious offense that undermines the integrity of the security clearance adjudication process.

Whole-Person Concept

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

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

I have incorporated my comments under Guidelines H, I, 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 by his drug involvement, psychological conditions, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement): AGAINST APPLICANT

Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Paragraph 2, Guideline I, (Psychological Conditions):	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Subparagraph 2.d:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 3.a-3.j:	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