



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



In the matter of:)	
)	
)	ISCR Case No. 22-01911
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2023

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 14, 2021. On February 23, 2023, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines E, H, and F. The DoD 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted her Answer to the SOR on March 14, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the

Government's written file of relevant material (FORM) on May 2, 2023, which pursuant to ¶ E.3.1.13 the Directive amended the SOR to add the following allegations, SOR ¶¶ 1.b-1.e and SOR ¶ 2.c. On May 3, 2023, a complete copy of the FORM was sent to Applicant, who was requested to provide answers to the additional allegations in her Response to the FORM. Additionally, she was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She submitted her Response to the FORM on June 16, 2023. The case was assigned to me on September 28, 2023.

The SOR (FORM Item 1) and the Answer (FORM Item 2) are the pleadings in the case. FORM Item 3 the SCA, FORM Item 4 (Interrogatories dated October 18 & 27, 2022), FORM Item 5 (Interrogatories dated July 13, 2022), and FORM Item 6 (Notice of Disciplinary Action, October 2021), as well as Applicant's exhibits included with her Answer and Response are admitted into evidence without objection. Applicant's exhibits cited in the decision will be identified as either Answer or Response at the applicable page number.

The Government in its FORM requested that the Administrative Judge take administrative notice of the Department of Health and Human Services (HHS) Substance Abuse and Mental Health Service Administration's (SAMHSA) position that passive exposure to a drug (e.g., second-hand marijuana smoke) is not a legitimate medical explanation for a positive marijuana test result under the Mandatory Guidelines and provided two documents (SAMHSA 1 and 2) in support of that position. Applicant submitted reports/articles from the National Institute on Drug Abuse (NIDA) and the Centers for Disease Control and Prevention (CDC). The NIDA report/article notes that there have been many studies of the effects of passive inhalation of marijuana and that one study "found that some nonsmoking participants exposed for an hour to high-THC marijuana (11.3% THC concentration) in an unventilated room showed positive urine assays in the hours directly following exposure." The CDC article discusses the impacts of secondhand marijuana smoke on infants and notes that some studies have found strong associations between reports of someone in the child's home using marijuana and the child having detectable levels of THC but does not address whether the THC is detectable in the child's blood or urine or whether any THC detected could rise to the level necessary to result in a positive urinalysis for marijuana. The Government's request for administrative notice is granted.

Findings of Fact

In Applicant's Answer to the SOR and in her Response to the FORM including the additional SOR allegations, she denied falsifying her answers on her SCA, SOR ¶¶ 1.a-1.d, and denied that she had been terminated by her previous employer, SOR ¶ 1.e. She admitted SOR ¶¶ 2.a-2.b and denied SOR ¶ 2.c. She admitted SOR ¶ 3.a. Her admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 37-year-old welding inspector employed by a defense contractor. since November 2021. Previously she had been employed by a defense contractor from March 2011, subject to intermittent periods where her status was in dispute, until October 2021. (Answer at 22; Item 3 at 7, 13.) She earned a bachelor's degree in August 2018. She has never held a security clearance. She has never married. (Item 2 at 12, 17, and 32.)

In her July 2021 SCA, Applicant denied any illegal drug use or drug activity. She listed a single employer from 2011 to the present. During her personal subject interview (PSI), she admitted that she voluntarily used marijuana on several occasions in the seven years prior to certifying her SCA, and detailed various employers and breaks in employment not listed in her SCA.

SOR ¶ 1.a: Falsified material facts in response to interrogatories dated October 27, 2022. Applicant asserted in her interrogatory response that the positive urinalyses alleged in SOR ¶¶ 2.a and 2.b were the result of secondhand smoke inhalation. She provided two Federal reports with her Answer to support her assertion, the first from NIDA and the second from the CDC. The NIDA found it was possible in an unventilated room to test positive urine assays in the hours directly following exposure and the CDC considered that someone using marijuana in a child's home could result in the child having detectable levels of THC but the CDC does not address whether the THC is detectable in the child's blood or urine stating people exposed to secondhand marijuana smoke can test positive on a urinalysis in the hours directly following exposure studies. (Answer at 13, 17.) She did not detail how her environment was akin to the studies she provided.

SOR ¶ 1.b: Falsified material facts on an SCA dated July 14, 2021, pertaining to "Section 23-Illegal Use of Drugs or Drug Activity" when you stated "No" to whether you had illegally used drugs or controlled substances in the last seven years. Applicant in her Response wrote "Yes, I said no on my [SCA] because at the time I didn't remember doing any kind of drug." She notes she admitted to two occurrences of drug use in her PSI which details the various instances where she smoked or consumed marijuana. (Item 4 at 8-9.) In her Response she stated "I said no on my [SCA] because at the time I didn't remember doing any kind of drug. At the time of my interview on page 8 of the interrogatories I did in fact mention 2 different occurrences." (Response.) She also had tested positive for marijuana on a urinalysis conducted in March 2021. (Item 4 at 9, 17; Answer at 5.)

SOR ¶ 1.c: Falsified material facts on an SCA dated July 14, 2021, pertaining to "Section 13A – Employment Activities" wherein you listed your dates of employment at Company A as continuous from March 2011 to the present. Applicant denied this allegation. Applicant was employed by Company A from March 2011 until September 2020, when she was terminated for having a firearm on company property. She failed to disclose her employment with Company B from October 2020 to March 2021. (Item 4 at 7.) In March 2021, she was hired by Company C. (Item 4 at 7.) In her Answer she admits that she was also briefly employed by Company C, and in her PSI, she details the events surrounding her brief time with Company C. (Answer at 5; Item 4

at 6, 17.) She provided a statement from Company C stating that she had been hired and left after one week. (Response at 12.) Also, in March 2021, her appeal with Company A was resolved. She states that she was reinstated with Company A without backpay. (Item 4 at 6.) In her Response she explains that she was told by her union representative that her “time would be bridged, making it look more like a six-month suspension.” (Response.)

SOR ¶ 1.d: Tested positive for marijuana in March 2021, during a pre-employment drug screening/urinalysis for a job with Company C, an employment activity that you did not disclose on an SCA executed by you on or about July 14, 2021. In her Response Applicant denied the allegation on the basis it was a not a company test but an in-house test. (Response at 2.) She explains in her Answer and PSI that she had tested positive during the preemployment screening process for Company C due to exposure to secondhand marijuana smoke and that Company C had let her “come on board with this explanation.” (Answer at 5; Item 4 at 9, 17.) The investigator noted she hesitated when asked if she had a positive urinalysis test and then she responded yes to testing positive for marijuana. She told the investigator she had been exposed to secondhand marijuana smoke. (Item 4 at 9.) She explained in her Response that the sample she provided showed a negative result based on the test’s standards, but her employer indicated a laboratory test could be positive because of faint presence. (Item 4 at 9.)

SOR ¶ 1.e: Terminated from employment at Company A in October 2021 after testing positive for marijuana during a urinalysis administered by your employer immediately after being involved in a motor vehicle accident on company grounds in September 2021. Applicant in her Response discusses the positive urinalysis. She stated that she “hates the fact that it happened” and her choice to party showed less than perfect judgment. (Response.) She offers that she does not party anymore and now she goes to work and goes home but that “sometimes [she] might relax with close friends, but not that often.” (Response.)

SOR ¶ 2.a: On or about March 2021, you tested positive for marijuana on a urinalysis test administered by your employer. Applicant admitted this allegation. In her Answer she stated she disclosed to Company C she might test positive and noted the urinalysis she took “was barely a positive.” (Answer at 5.) She claimed that she had tested positive due to exposure to secondhand marijuana smoke and that Company C had let her “come on board with this explanation.” (Item 4 at 9, 17; Answer at 5.) She provided a statement from Company C stating: “As per our organization's policies and procedures, all prospective employees are required to undergo a thorough pre-employment screening, which includes a drug screening. However, in the case of [Applicant] her employment duration was exceptionally short, spanning only from March 8, 2021, until March 15, 2021. Given the brevity of her employment [Applicant] did not require or undergo the pre-employment drug screening process.” (Response at 12.)

SOR ¶ 2.b: On or about September 2021, you tested positive for marijuana on a urinalysis test administered by your employer. Applicant admitted this allegation.

She tested positive on a urinalysis for marijuana administered after an accident on her worksite. She told the labor relations representative present at the urinalysis that it was likely she would be testing positive for marijuana. (Item 4 at 18, 21-22.) In her Answer she stated it was possible that she may have consumed an edible at a party. She explained that “at the party people can bring whatever they want, it’s not far-fetched to say that some of the desserts and food served had a little extra something in it, I would never know, I didn’t feel anything, I was already drinking.” She also cited her “sweet tooth” and a fondness for brownies and noted that she could “down a whole cookie tray” (Answer at 5.) She added that she was around people who were smoking marijuana and was “breathing in contaminated air.” (Answer at 5.)

SOR ¶ 2.c: From at least August 2014 to at least September 2021, you used marijuana with varying frequency. Applicant acknowledged in her PSI that she had used marijuana on at least “two occasions she could recall.” She acknowledged trying marijuana edibles and a marijuana lollypop that her family brought back from Europe. She described taking a marijuana cigarette from a neighbor when she was experiencing a very bad migraine. (Item 4 at 9.) She tested positive on a urinalysis taken after a workplace accident in September 2021. She completed her SCA in July 2021. (Item 3; Item 4 at 9; Item 6 at 4.)

SOR ¶ 3.a: You are indebted to the Federal Government for delinquent taxes in the amount of \$6,212.64 for tax year 2017. As of the date of this statement of Reasons, the taxes remain unpaid. In her Answer, Applicant admitted the allegation, and said that she had reduced the debt to about \$1,800, that she had an arrangement with the IRS to apply her income tax refunds to the debt, that she expected to significantly reduce or resolve the remaining debt with her tax year 2022 refund, and if the refund was insufficient to resolve the debt, that she would pay the remaining balance. (Answer at 2, 6.) She submitted documentary evidence that her income tax overpayments for tax years 2019 through 2022 were applied by the IRS to her 2017 tax year debt including accrued penalties, and that after the IRS applied her \$1,346 overpayment for tax year 2022. As of her Response her remaining debt balance was \$499. She did not provide documentary evidence of voluntary payments or of an arrangement or payment plan with the IRS. (Answer at 6, 13; Item 4 at 10; Item 5 at 11; Response at 3, 13.) Based solely upon the significant reduction in the tax debt through IRS recoupment of her tax refunds I find for Applicant on SOR ¶ 3.a.

Applicant cites the actions she has done to get her finances and lifestyle in order. She acknowledges she made “a mistake and got stung” and she is “still feeling the pain today.” She has “kicked out” the people who lived in her home that were smoking marijuana. She states she “won’t even be around it or put myself into a situation to be exposed again. I already know what it’s like to lose just about everything you’ve worked hard for behind marijuana.” (Answer at 6; Response.) She notes her finances are getting better and that she had reduced her tax debt to just under \$500 “even though everything is getting costly.” She included multiple letters from friends in her Response attesting to her character, as well as a letter from her current supervisor who noted she had demonstrated integrity and trustworthiness. Her Response included two letters from her

treating family nurse practitioner dated June 2022 and May 2023. Her treating family nurse practitioner noted that she had cared for Applicant since April 2022, that she was being treated for anxiety and psychoactive substance abuse, that it was her opinion that the diagnosis of “other psychoactive substance abuse’ [wa]s in remission,” that she was compliant with her treatment plan, and concurrently sees a therapist. (Response at 5-11, 14, 15.)

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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's intentional failure to disclose the full extent of her marijuana use in her SCA (two admitted uses of marijuana and a positive urinalysis), her failure to disclose her employment status in her SCA, and conduct in the workplace raise the following disqualifying conditions:

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;

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:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;
- (2) while in another country, engaging in any activity that is illegal in that country;
- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

The following mitigating conditions are potentially relevant:

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

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 (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; and

AG ¶ 17 (e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is established for SOR ¶¶ 1.b and 1.d but not for SOR ¶¶ 1.a or 1.c. The evidence reflects that Applicant promptly admitted her omission to an investigator during her PSI. While the PSI reflects, she hesitated regarding the incident alleged in SOR ¶ 1.d she admitted the circumstances.

Applicant has maintained her theory of secondhand smoke inhalation throughout the security clearance application process. Given these facts it appears that there may be some question as to her knowledge and intent to deceive with regard to SOR ¶ 2.a. Her intent to deceive is clear regarding SOR ¶ 2.b. AG ¶ 17(a) is not applicable to SOR ¶ 1.a. Her explanations regarding her continuous employment history with Company A were revealed under questioning. AG ¶ 17(a) is not applicable to SOR ¶ 1.c.

AG ¶ 17(c) is not established. Applicant's false statements concerning her drug use and employment history, SOR ¶ 1.b and SOR ¶ 1.c, were arguably "infrequent," but

they were not “minor,” because such statements strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). Applicant's false statements were recent and calculated to give her the most favorable hiring profile because they involved the current adjudication of her application for a security clearance. AG ¶ 17(c) is not established for SOR ¶ 1.e. The accident in the workplace while having marijuana in her system casts doubt on her reliability, trustworthiness, and good judgment.

AG ¶ 17 (d) and AG ¶ 17 (e) are not established. Applicant after her second positive urinalysis, SOR ¶ 1.e, may have removed the persons who smoked marijuana from her home and stopped partying but there is insufficient time given her actions and associations prior to her second positive urinalysis to mitigate SOR ¶¶ 1.d and 1.e.

Guideline H, Drug Involvement and Substance Misuse

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 admission in her Answer to the SOR and the information in the FORM are sufficient to raise the following disqualifying conditions under this guideline: AG ¶¶ 25(a): “any substance misuse (see above definition)”; and (c) “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.”

Applicant has not rebutted lack of knowledge. She admitted using marijuana on at least two occasions, tested positive twice, informed the labor relations representative present at the September 2021 urinalysis it was likely that she would test positive for marijuana, lived and associated with marijuana users, consumed edibles that she had good reason to believe contained controlled substances, lied about using marijuana, and her passive inhalation claims are not credible.

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; and

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.

AG ¶ 26(a) is not established. Applicant admitted using marijuana on at least two occasions. Additionally, she acknowledged testing positive on two different urinalysis tests for marijuana, March 2021 and September 2021 respectively. The second positive urinalysis was the result of an ordered urinalysis after her job site accident. She told a informed the labor relations representative she would likely test positive for marijuana, and she did. The urinalysis was administered while her July 2021 SCA was being processed. Her secondhand smoke exposure and innocent ingestion claims are not credible. The Appeal Board has “long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.” ISCR Case No. 20-01772 at 3 (App. Bd. Sep. 14, 2021). See *a/so* ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023) (“[A]fter applying for a security clearance and being adequately placed on notice that such conduct was inconsistent with holding a security clearance, an applicant who continues to use marijuana demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant’s judgment, reliability, and willingness to comply with laws, rules, and regulations.”)

The Appeal Board has also stated the Administrative Judge is tasked to resolve apparent conflicts in the evidence. See, *e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). In this case Applicant raises whether she knowingly used or consumed marijuana. Applicant has admitted using marijuana and not disclosing it on her SCA, which diminishes her credibility. Before her September 2021 urinalysis she told the labor relations representative present she would likely test positive for marijuana, and after testing positive for marijuana, she said that marijuana may have been in an edible or in food she consumed at a party where people were smoking marijuana. I conclude she either knew or reasonably should have known or suspected under the circumstances that marijuana was present in the food she consumed. See ISCR Case No. 22-01176 (App. Bd. Oct. 24, 2023).

AG ¶ 26(b) is not established. Applicant acknowledges her use in her PSI. Her supporting documents allow her to make her Response argument that her two positive urinalysis tests could have been from exposure to secondhand marijuana smoke. The

absence of circumstances akin to those reflected in either document show Applicant has not fully acknowledged her drug involvement and substance misuse. She stated her intention to no longer be associated with marijuana users and her intent to abstain from all drug involvement and substance misuse. She did not offer a letter of intent to abstain, or evidence of abstinence or actions taken to overcome the problem, except for a general letter about care and concurrent therapy the credibility concerns with this Applicant are relevant to uncorroborated pledges. While she is acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility, she does not precisely incorporate all the terms of AG ¶ 26(b)(3).

Someone who picks and chooses what laws she will follow is not a good candidate for a security clearance. Applicant does not currently hold a security clearance. Her recent acknowledgement of her mistakes and poor judgment and assurance she will do whatever it takes to be granted a security clearance does not generate confidence that she has not continued to use illegal drugs or that she will not use them in the future. None of the mitigating conditions are applicable, and Applicant's illegal drug use is not mitigated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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.

Applicant in her Response provided various character letters, which attested to her integrity, trustworthiness, resiliency, and positive nature, as well as the correspondence from her therapist, which I have considered. I have incorporated my comments under Guidelines E, H, and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines E, H, and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her conduct.

Formal Findings

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

Paragraph 1: Guideline E:	AGAINST APPLICANT
Subparagraph 1.d:	For Applicant
Subparagraphs 1.a, 1.b, 1.c, and 1.e:	Against Applicant
Paragraph 2: Guideline H:	AGAINST APPLICANT
Subparagraph 2.a - 2.c:	Against Applicant
Paragraph 3: Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For 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.

Charles C. Hale
Administrative Judge