



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



In the matter of:)
)
) ISCR Case No. 22-02080
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq.

01/18/2024

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline E (personal conduct) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 13, 1999, March 7, 2010, and April 23, 2020, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCA). (Government Exhibit (GE) 1, 5, 6) On April 4, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline E. (HE 2) On

June 7, 2023, Applicant provided a response to the SOR and requested a hearing. (HE 3) On July 25, 2023, Department Counsel was ready to proceed.

On July 28, 2023, the case was assigned to me. On August 8, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice, setting Applicant's hearing for September 28, 2023. (HE 1) The hearing was held as scheduled.

Department Counsel offered six exhibits into evidence; and Applicant offered nine exhibits into evidence. (Transcript (Tr.) 14-18; GE 1-GE 6; Applicant Exhibit (AE) A-AE I) Applicant objected to GEs 5 and 6, which are SCAs dated November 13, 1999, and March 7, 2010, because they are not recent, redundant with other evidence, of low probative value, and of low relevance. (Tr. 15-16) I overruled his objections and note the objections will be taken into consideration when evaluating the weight to be given to the evidence. There were no other objections, and I admitted all proffered exhibits into evidence. (Tr. 17, 18) On October 11, 2023, DOHA received a transcript of the hearing.

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

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.j with clarifications. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 61-year-old staff cybersecurity specialist, and he has worked for defense contractors for about 20 years. (Tr. 21-23) He was married for the first time from 1987 to 1996. (AE C at 2) He and his current spouse have been married for 25 years. (Tr. 20) He has been legally separated from his spouse since 2016; however, they still live together. (Tr. 19-20; AE C at 2) They each have two children from previous relationships. (Tr. 20) His two children are ages 29 and 34. (Tr. 21) In 1986, he was awarded a bachelor's degree in applied science. (AE D) In 1991, he was awarded a master's degree in business administration (MBA). (AE D) He has several information technology certifications. (AE C; AE E) His resume provides additional details of his professional experience. (AE C)

Personal Conduct

Substance Misuse

SOR ¶¶ 1.a and 1.b allege Applicant misused cocaine and Percocet "most days between at least approximately June 2016 and August 2016." SOR ¶ 1.c alleges Applicant "abused Xanax on various occasions between at least approximately June 2016 and August 2016." SOR ¶ 1.d alleges Applicant "used marijuana on various occasions between at least approximately June 2016 and August 2016."

The first time Applicant used cocaine was in 1982 when he was 20 years old. (Tr. 30) He may have used marijuana in 1982. (Tr. 32) From 1982 to 2016, he did not use cocaine. (Tr. 31) He was prescribed Xanax in the early 1990s to treat his anxiety. (Tr. 38)

In 1983, Applicant left college because he was consuming an excessive amount of alcohol and abusing illegal drugs. (Tr. 51) In 1983, he was in a serious motorcycle accident while under the influence of alcohol. (Tr. 51) Over the next 20 years, he drank alcohol to intoxication on some weekends. (Tr. 52) Around 2001, he attended Alcoholics Anonymous (AA) meetings, and he stopped drinking alcohol for one year. (Tr. 53) In 2005, he was getting intoxicated on a regular basis, and he attended an alcohol-treatment program. (Tr. 54) In February 2006, he completed the program, and he intended to remain sober. (Tr. 54) He was sober for about five months. (Tr. 55) He continued to attend AA meetings, and he had periods of alcohol consumption and sobriety over the next several years. (Tr. 55-59) In 2015, he moved to a different state from where his wife was living, and his alcohol consumption increased. (Tr. 59)

From June to August 2016, Applicant was living apart from his spouse, and he was unemployed because he quit his job with a defense contractor in May 2016. (Tr. 26-27, 62) He argued with his spouse about his alcohol consumption, and he was depressed. (Tr. 26, 28) He met a woman at a bar, and he had an affair with her. (Tr. 28-29) She also provided illegal drugs to him. (Tr. 29-31) He did not specifically remember using marijuana with her. (Tr. 32; HE 3 at 2) He denied that he used marijuana, cocaine, or Percocet after 2016. (Tr. 33)

From September to November 2016, Applicant attended an intensive outpatient substance abuse (IOSA) program. (Tr. 33-34) He primarily attended the IOSA program for alcohol treatment. (Tr. 34) In his initial IOSA diagnostic assessment on September 8, 2016, he disclosed: cocaine use most days for eight weeks with last use August 23, 2016; Percocet use "5-6 [pills]" most days for eight weeks with last use August 23, 2016; and Xanax use "2-3 5 mg [pills] twice a week for eight weeks with last use August 23, 2016. (GE 4 at 3) Applicant took Xanax for two or three years; however, he did not use Xanax in 2016. (Tr. 39) He believed his IOSA program medical records incorrectly indicated he used Xanax in 2016. (Tr. 29, 63; GE 4 at 3)

Applicant attended IOSA treatment three days a week, and on November 3, 2016, he successfully completed the IOSA program. (Tr. 34-36; AE A) He was honest about his substance abuse at the IOSA program. (Tr. 35) He has had some relapses when he consumed alcohol after completion of the IOSA program. (Tr. 36) He frequently attends AA meetings. (Tr. 36) When he responded to DOHA interrogatories on March 23, 2023, he said he most recently consumed alcohol in July 2021, when he drank about eight beers. (GE 2 at 25) At his hearing, he said he most recently consumed alcohol in July 2022, and on that occasion, he drank to intoxication. (Tr. 37, 71; GE 2) He did not explain the discrepancy about his most recent alcohol consumption at his hearing.

SOR ¶ 1.e alleges in about September 2016, Applicant was diagnosed with Alcohol Use Disorder, Severe; Stimulant Use Disorder, Cocaine Type, Severe; Opioid

Use Disorder, Severe; and Anxiolytic Use Disorder, Mild. He agreed with the accuracy of the diagnosis alleged in SOR ¶ 1.e. (Tr. 42; GE 4 at 8)

On May 16, 2023, Applicant provided a PSC specimen, which tested negative for alcohol evidence of moderate to heavy ethanol consumption. (AE B) On May 23, 2023, Applicant provided a hair sample, which tested negative for use of any illegal substances. (AE A)

On July 22, 2022, Dr. D, a licensed psychologist, evaluated Applicant at the behest of the DOD CAF. (GE 3) Applicant told Dr. D about his use of cocaine, marijuana, and oxycodone (Percocet) in 2016. (*Id.* at 4) He told Dr. D that he had not consumed any alcohol in the previous 12 months. (*Id.*) Dr. D's report concluded that Applicant "does not present with a condition at this time that could pose a significant risk to his judgment, reliability, or trustworthiness concerning his ability to handle classified information." (*Id.* at 6) He "meets the criteria for Alcohol Use Disorder, moderate, in self-reported remission over 12 months. . . . His use has apparently not caused any legal or occupational problems." (*Id.*)

Dr. D diagnosed Applicant as follows: Polysubstance Use Disorder (cocaine, marijuana, and prescription pain medications), mild, in self-reported remission for 6 years; Dysthymia, in self-reported remission/controlled with medication; and Generalized Anxiety Disorder, in self-reported remission/controlled with medication. (*Id.*) Dr. D concluded his "mental health condition appears to be well controlled with his current medications and participation in Alcoholics Anonymous meetings. For these reasons, [Applicant's] risk for problems with judgment and reliability appear to be LOW at this time." (*Id.*)

On May 3, 2023, Dr. L, a licensed psychologist, evaluated Applicant at Applicant's behest. (SOR response, AE C) Dr. L concluded: (1) Applicant has a serious drug and alcohol history; however, his substance use disorders are in remission; (2) his provision of false information during the security clearance process occurred "because he panicked and feared he would lose his job (i.e., a lie motivated by anxiety rather than a lie motivated by any malice or by shame that could be used to blackmail him)"; (3) the likelihood of him being dishonest in the future is relatively low; (4) he is remorseful about his prior substance abuse; (5) he seems motivated to do better and "his prognosis is fair to quite possibly good"; and (6) he "does not present with evidence of behavioral or personality patterns, or mental health conditions that could reasonably degrade his reliability, trustworthiness, or judgment." (Tr. 43; AE C at 7)

Provision of False Information during the Security Clearance Process

SOR ¶¶ 1.f and 1.g allege Applicant answered, "No," to two questions on his April 23, 2020 SCA: (1) "In the last seven (7) years have you illegally used any drugs or controlled substance?"; and (2) "In the last seven (7) years, have you intentionally engaged in the misuse of prescription drugs, regardless of whether the drugs were prescribed for you or someone else?" He deliberately failed to disclose the information set forth in SOR ¶¶ 1.a through 1.d, *supra*.

In his SOR response, Applicant said he failed to accurately report his illegal drug use on his SCA. (HE 3 at 3) He said he has learned from his mistakes. (*Id.*) He said:

During my subject matter interview in 2020, I inadvertently misrepresented the number of times I illegally used cocaine [and Percocet], as I had forgotten the exact details due to the passage of time since 2016. I could not recall the exact number of times that I used cocaine [and Percocet] or how much I used. It was never my intent to falsify or conceal information during the investigative process. (HE 3 at 1-2)

Applicant said he has learned from his mistakes. (HE 3 at 3) At his hearing, he admitted he failed to disclose accurate information on his SCA, and he said he was “extremely ashamed,” and he panicked. (Tr. 44) He knew it was wrong when he submitted the false denial of use of illegal drugs. (Tr. 44, 64)

SOR ¶ 1.h alleges Applicant denied, during his March 19, 2021 interview by an authorized investigator for the DOD, that he used any illegal drugs other than cocaine or misused any prescription drugs other than Percocet during the July 2016 to August 2016 timeframe. He deliberately failed to disclose the information set forth in SOR ¶ 1.c and 1.d, *supra*.

On June 5, 2020, an authorized investigator for the DOD interviewed Applicant, and he did not disclose his use of cocaine and use of any controlled substances without a prescription in 2016. (Tr. 64; GE 2 at 4-7) The investigative summary states, “[a]ll relevant adjudicative criteria were discussed with Subject. The interview disclosed no additional information.” (GE 2 at 7) He said he “was ashamed and scared to tell” the investigator about his use of cocaine and Percocet without a prescription. (Tr. 64) The allegation that he failed to disclose his cocaine use and Percocet use without a prescription is not alleged in the SOR.

On March 19, 2021, an authorized investigator for the DOD interviewed Applicant, and he disclosed that he used cocaine and Percocet without a prescription. (Tr. 45-46, 65.) The OPM investigator said if his use of illegal drugs was 10 times or less, it would be considered experimental, and Applicant agreed with this suggestion and said it was 10 times. (Tr. 45, 66) The investigative summary states that Applicant said, “he used [cocaine] about ten times over a two to three week period.” (GE 2 at 8) He said he used “two or three Percocet pills per day over the same two or three week period.” (*Id.*) He disclosed his Xanax use in the 1990s to the investigator. (Tr. 47; GE 2 at 8) He said he ended his Xanax use in 1995. (*Id.*)

Applicant did not disclose his marijuana use in 2016 to the investigator. He did not disclose the marijuana use because “it was so trivial” in comparison to his cocaine use. (Tr. 65) He did not know how many times he used cocaine and Percocet in the eight-week period of June to August 2016. (Tr. 47-49, 66-68)

SOR ¶¶ 1.i and 1.j allege Applicant said in response to DOHA interrogatories on March 23, 2023, that he only used cocaine on one or two occasions in 1982 and 10 times or less between June and July 2016, and he denied that he had ever been diagnosed with any condition or disorder related to drugs. He failed to disclose the information in SOR ¶¶ 1.a and 1.e, *supra*.

In his SOR response, Applicant said he failed to accurately report his cocaine use and past diagnosis during his response to DOHA interrogatories. (HE 3 at 4) He said he did not have access to his medical records. (*Id.*) In his answers to DOHA interrogatories, he said he used cocaine 10 times or less in the end of June and beginning of July 2016. (GE 2 at 23) At his hearing, he denied that he remembered how many times he used cocaine. (Tr. 67) In his response to DOHA interrogatories, he said he used Percocet on most days during the same period in 2016. (GE 2 at 23) At his hearing, he said he did not use Percocet more frequently than he used cocaine. (Tr. 72-73) When he told the investigator and responded to DOHA interrogatories and said he used cocaine 10 times or less, he knew that was not the truth. (Tr. 74) He made the claim that he used cocaine 10 times or less because he wanted to be labeled as an experimental cocaine user. (Tr. 74) When he used cocaine, sometimes he would snort six lines or more of cocaine on a single occasion. (Tr. 75)

When he was using cocaine in 2016, he did not have access to classified information. (Tr. 77) He held a sensitive position when he was working for the contractor; however, in 2016, when he was using cocaine, he was unemployed. (Tr. 78)

As to the allegation in SOR ¶ 1.j that he failed to disclose his substance-related diagnosis in his March 23, 2023 response to DOHA interrogatories, Applicant was unaware of his substance abuse diagnosis set forth in SOR ¶ 1.e until he reviewed his medical records in April 2023. (Tr. 41-42)

Character Evidence

The general sense of the statements of five coworkers is that they believe Applicant is honest, trustworthy, reliable, and professional. (AE F) His performance reviews for April 2017 to August 2020 indicate he is a highly effective employee who made contributions to his employer's mission accomplishment. (GE 2 at 48-56) His employer awarded a certificate of recognition to Applicant for five years of service and commitment. (GE 2 at 59)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the

national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern 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. . . .

AG ¶ 16 provides four personal conduct disqualifying conditions that are relevant in this case. AG ¶¶ 16(a), 16(b), 16(c), and 16(e)(1) read:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

Substance Misuse Allegations

Applicant used cocaine and Percocet in 2016 on an almost daily basis for eight weeks (56 days). Possession of a Schedule II controlled substance is a federal criminal offense. Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Cocaine and oxycodone (OxyContin®, Percocet®) are Schedule II controlled substances. See Drug Enforcement Administration listing. <https://www.deadiversion.usdoj.gov/schedules/#:~:text=Substances%20in%20this%20s,chedule%20have%20a%20high%20potential%20for%20abuse,Sublimaze%C2%AE%2>

[C%20Duragesic%C2%AE](#). Applicant was diagnosed with Polysubstance Use Disorder. He consumed excessive amounts of alcohol to the extent of intoxication. He resumed alcohol consumption several times after periods of sobriety. He was diagnosed with Alcohol Use Disorder. His conduct implicates Guidelines G (alcohol consumption), H (drug involvement and substance misuse), and J (criminal conduct) and shows a lack of judgment. However, his behavior in these areas is insufficient by itself for an adverse determination under those guidelines. This behavior is relevant under the whole-person concept. His history of misuse of alcohol and drugs adversely affects his personal, professional, and community standing, and AG ¶¶ 16(c) and 16(e) are established.

Falsification Allegations

“Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they [are] not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

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

Applicant answered, “No,” to two questions on his April 23, 2020 SCA: “In the last seven (7) years have you illegally used any drugs or controlled substance?” and “In the last seven (7) years, have you intentionally engaged in the misuse of prescription drugs, regardless of whether the drugs were prescribed for you or someone else?” He claimed that these omissions and false denials were inadvertent in his SOR response. I disagree. He deliberately failed to disclose the information about his use of cocaine and Percocet without a prescription in 2016 on his April 23, 2020 SCA because he was worried about his loss of employment, and he wanted to deceive security officials.

Applicant denied that he used any illegal drugs other than cocaine or misused any prescription drugs other than Percocet during the July 2016 to August 2016 timeframe during his March 19, 2021 interview by an authorized investigator for the DOD. I find that he did not use Xanax after 1995, and he was so focused on his use of cocaine and misuse of Percocet in July 2016 that he forgot to mention his infrequent use of marijuana in 2016 to the investigator. SOR ¶ 1.h and AG ¶ 16(b) are refuted because he lacked the intent to deceive security officials on these specific issues.

SOR ¶ 1.i alleges Applicant falsely said, in response to DOHA interrogatories on March 23, 2023, that he only used cocaine on one or two occasions in 1982 and 10 times or less between June and July 2016. Applicant admitted that he used cocaine on more than 10 occasions, and he intentionally minimized the extent of his cocaine use. The

reason he minimized the extent of cocaine use was because he intended to deceive security officials.

SOR ¶ 1.j alleges Applicant falsely denied that he had ever been diagnosed with any condition or disorder related to drugs. He admitted that he was diagnosed in about September 2016, with Alcohol Use Disorder, Severe; Stimulant Use Disorder, Cocaine Type, Severe; Opioid Use Disorder, Severe; and Anxiolytic Use Disorder, Mild. However, Applicant denied that he was aware of these diagnoses at the time he responded to DOHA interrogatories. SOR ¶ 1.j is not substantiated.

AG ¶ 17 includes six conditions which could mitigate personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th

Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2, [App. A] ¶ 2(b).

Substance Misuse Allegations

AG ¶¶ 17(c), 17(d), and 17(e) apply to Applicant’s use of cocaine, use of Percocet without a prescription, and excessive alcohol consumption. There is no evidence that he used cocaine or misused Percocet after August 23, 2016, which was seven years before his hearing. There is no evidence that law enforcement or the courts were involved in addressing his misuse of alcohol or possession of illegal drugs. From September to November 2016, he attended an IOSA program. On November 3, 2016, he successfully completed the IOSA program. He was honest about his substance abuse at the IOSA program. He has had some relapses when he consumed alcohol after completion of the IOSA program. He frequently attends AA meetings. At his hearing, he credibly stated he most recently consumed alcohol in July 2022, and on that occasion, he drank to intoxication. SOR ¶¶ 1.a through 1.e are mitigated.

Falsification Allegations

On March 19, 2021, an authorized investigator for the DOD interviewed Applicant, and he disclosed that he used cocaine and Percocet without a prescription. The investigative summary states that Applicant said, “he used [cocaine] about ten times over a two to three week period.” (GE 2 at 8) He said he used “two or three Percocet pills per day over the same two or three week period.” (*Id.*) Applicant intentionally minimized the frequency and duration of his cocaine use and use of Percocet without a prescription to the investigator; however, this falsification is not alleged in the SOR.

In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This non-SOR allegation (false

statement to the investigator about extent of cocaine use and misuse of Percocet) will not be considered except for the five purposes listed above.

Applicant intentionally provided false information to security officials on his April 23, 2020 SCA concerning his cocaine and Percocet use without a prescription in 2016. He intentionally minimized the frequency of his cocaine use in 2016 in his response to DOHA interrogatories on March 23, 2023. He made these false statements because he was worried that, if he disclosed the truth, the negative information would adversely affect his security clearance. His lies to security officials are serious and recent. I have lingering concerns that his lapses in judgment are likely to recur and continue to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

Whole-Person Concept

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

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

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

Applicant is a 61-year-old staff cybersecurity specialist, and he has worked for defense contractors for about 20 years. In 1986, he was awarded a bachelor's degree in applied science, and in 1991, he was awarded an MBA degree. He has several information technology certifications. His resume provides additional details of his professional experiences.

The general sense of the statements of five coworkers is that they believe Applicant is honest, trustworthy, reliable, and professional. His performance reviews for April 2017 to August 2020 indicate he is a highly effective employee who made contributions to his employer's mission accomplishment. His employer awarded a certificate of recognition to him for five years of service and commitment.

Applicant's use of Percocet without a prescription, use of cocaine, and use of marijuana in 2016 are mitigated because they are not recent. He has been sober since July 2022. He attends AA meetings. The security issues related to this conduct are mitigated.

Applicant intentionally provided false information to security officials on his April 23, 2020 SCA, during his March 19, 2021 investigative interview, and on his March 23, 2023 response to DOHA interrogatories. He made these false statements because he was worried that, if he disclosed the truth, the negative information would adversely affect his security clearance and employment. His lies to security officials are serious and recent. They cast doubt on his current reliability, trustworthiness, and good judgment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate personal conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e, 1.h, and 1.j:	For Applicant
Subparagraphs 1.f, 1.g, and 1.i:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge