



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



In the matter of:)
)
) ISCR Case No. 22-01907
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esquire, Department Counsel
For Applicant: Matthew J. Thomas, Esquire

04/08/2024

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant successfully mitigated the security concerns regarding drug involvement and substance misuse but failed to mitigate the security concerns regarding personal conduct. Eligibility for a security clearance is denied.

Statement of the Case

On August 20, 2019, and again on February 9, 2022, Applicant applied for a security clearance and submitted Questionnaires for National Security Positions (2019 SF 86 and 2022 SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories and asked her to verify the accuracy of an investigator’s summary of an interview. She responded to those interrogatories and verified the summary on October 12, 2022. On January 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to her under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4),

National Security Adjudicative Guidelines (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) and detailed reasons why the DCSA CAS adjudicators were unable to find that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated February 15, 2023, Applicant responded to the SOR, and she requested a hearing before an administrative judge. The Government was prepared to proceed on March 14, 2023. The case was assigned to me on September 11, 2023. A Notice of Microsoft TEAMS Video Teleconference Hearing was issued on January 18, 2024, scheduling the hearing for February 7, 2024. I convened the hearing as scheduled.

During the hearing, Applicant and three witnesses testified. Government Exhibits (GE) 1 through GE 3, and Applicant Exhibits (AE) A through AE H were admitted into evidence without objection. The transcript (Tr.) was received on February 20, 2024. I kept the record open to enable the parties to supplement it with additional evidence, but neither party took advantage of that opportunity. The record closed on March 6, 2024.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. through 1.d.) as well as the allegations under personal conduct (SOR ¶¶ 2.a. through 2.c.). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Background

Applicant is a 26-year-old employee of a defense contractor working in a rather high level of the federal government. She has been serving as an executive assistant with her current employer since about January 2022. She was previously employed by other employers as a receptionist and program assistant (July 2020 – January 2022) and receptionist (August 2019 – July 2020). A 2015 high school graduate, she received a bachelor's degree with a major in criminal justice in 2019 and earned additional college credits but no other degree. She has never served with the U.S. military. She was granted a secret clearance in 2019. She has never been married and has no biological children.

Drug Involvement and Substance Misuse and Personal Conduct

Applicant grew up in a household where both parents were substance abusers, and the house was littered with burnt pipes and baggies. Her parent's substance of choice

was phencyclidine (PCP). Child Protective Services (CPS) eventually removed her from that environment until she was 10 or 11 years old and placed her with her grandmother until she turned 18. Applicant's father passed away from a drug overdose when Applicant was about 12 years old. Because her mother has been in rehabilitation, safe houses, and sobriety throughout the past 20 years, Applicant and her mother have attended Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings as well as a convention. (Tr. at 146-147)

Despite attending NA and AA meetings over the years (Tr. at 151-152), Applicant became a social and recreational multi-substance abuser whose substances of choice during a five-year period were tetrahydrocannabinol (THC), known as marijuana – a Schedule I Controlled Substance; cannabidiol (CBD) – either derived from THC, the hemp plant, or manufactured in a laboratory, and may be legal or illegal depending on its source; lysergic acid diethylamide (LSD) – a Schedule I Controlled Substance; and cocaine – a Schedule II Controlled Substance. (<https://www.dea.gov/drug-information/drug-scheduling>)

On two occasions during December 2015 until some date in 2016, Applicant attended fraternity parties with friends. Cocaine was commonly used among her group of friends, and succumbing to peer pressure, she experimented by inhaling cocaine – provided to her but not purchased by her – through her nose. She recalled being nervous and sweaty but was unable to determine if those effects were due to her anxiety over using the substance or because of the substance itself. Applicant claims to be embarrassed and ashamed over her cocaine experimentation and does not intend to use it again. (GE 1 at 35-36; GE 3 at 12; Tr. at 98-100, 125-129)

In December 2015, Applicant started smoking marijuana sporadically with her "friend group." In March 2016, her frequency of use increased to weekly, and that frequency continued – smoking about one to three grams per week – until December 2016. Her "friend group" pooled funds to give to one particular member of the group, who would purchase it. Applicant's use of marijuana was initially calming, but over time she began to experience weight loss, trouble with sleeping, and anxiety, and noticed that her grades were slipping. She made four or five efforts to stop using marijuana for brief periods, but she generally resumed using it. In December 2017, she decided to stop using marijuana because she did not want to be like her parents. Applicant never felt the need to undergo counseling for her marijuana use. She does not intend to use it in the future. (GE 1 at 36; GE 3 at 12-13; Tr. at 96-98, 101, 122-125)

In March 2016, Applicant was at a party with a friend, and while at the party, she was offered LSD by her friend. Following her ingestion of the LSD, she felt nauseated and had persistent chills lasting five hours. She felt uneasy and could not eat or drink. After a few hours with the group, she returned to her dormitory room and vomited. She also was unable to sleep for a day or two, and felt unfocused, scattered, and anxious. She does not intend to use it in the future. (GE 1 at 37; GE 3 at 13; Tr. at 100-101, 128-130, 132)

In February 2020 – approximately five months after being granted a security clearance – Applicant was with a friend skiing. She was nervous about skiing, so her friend offered her a CBD gummy, containing 10 mg of CBD. Applicant claims she was unaware if the CBD contained THC. After consuming the gummy, she experienced chills and panic attack-like symptoms. She knew that CBD was legal in the state where she was skiing but was not sure if the gummy was derived from THC or hemp. She was not sure if the incident warranted reporting, so she did not do so. She has no intent to use CBD personally in the future but does continue to give it to her dog to ease canine anxiety. (GE 1 at 38; GE 3 at 13; Tr. at 101-104, 117-122)

At the federal level, the Agriculture Improvement Act of 2018, Pub. L. 115-334, (the 2018 Farm Bill) was signed into law on Dec. 20, 2018. Among other things, this new law changes certain federal authorities relating to the production and marketing of hemp, defined as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." These changes include removing hemp from the CSA, which means that cannabis plants and derivatives that contain no more than 0.3 percent THC on a dry weight basis are no longer controlled substances under federal law.

<https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#farmbill>

Applicant no longer associates with her friends who were and are still drug users. (GE 3 at 13; Tr. at 104, 111) With regard to her future intentions, she submitted 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. (AE A) She completed a 16-hour Drug and Alcohol Awareness Class on November 9, 2023 – approximately ten months after receiving the SOR. (AE C) On January 25, 2024, she underwent a drug test for marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP), and the results were negative for all of those drugs. (AE B)

When Applicant completed her 2019 SF 86, in response to a question in Section 23 – *Illegal Use of Drugs or Drug Activity – Illegal Use of Drugs or Controlled Substances*: "In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance," Applicant answered "no." (AE at 33-34) The SOR allegation was that Applicant falsified material facts by saying "no," when in truth, she had admittedly used a variety of illegal substances between 2015 and 2017 as noted above during the period that was covered by the question. She admitted that she had deliberately falsified material facts and claimed that she had been advised by family and friends that since there was no paper trail, she did not need to answer truthfully. She added that at the time, she was unsure where she wanted her career path to take her and was nervous as it was her first time completing

such a security form. Nevertheless, she knew that a truthful answer could jeopardize her chance of getting a security clearance. (GE 3 at 13-14; Tr. at 106-109, 133-135)

Applicant was interviewed by an investigator with the U.S. Office of Personnel Management (OPM) on three occasions: September 18, 2019; January 23, 2020; and March 29, 2022. During the initial interview, in September 2019, Applicant was primarily questioned about her employment history and history of alcohol consumption – issues that were raised because of her response in her SF 86. At the time, although she was aware of her prior involvement with drugs and substance misuse, she failed to disclose that information because she was still ashamed, leading the investigator to conclude that she was not susceptible to blackmail or coercion over any matter. (GE 3 at 7; Tr. at 137-139) She did not reveal her drug involvement until her 2022 SF 86, followed by her March 2022 interview. (Tr. at 140-141)

Character References and Work Performance

The principal deputy assistant (and senior intelligence oversight official for all intelligence and intelligence-related activities executed under the cabinet member's authority) of the office running five separate directorates in which Applicant works, would be considered Applicant's higher-level reviewer if she were a civil servant rather than a contractor. He has a kind of mentor relationship with her, and they essentially work together. Applicant has a very difficult job of holding senior executives accountable for doing what they need to do, and in his decades of service, he has not seen anyone who does it better, even with him. Her work product and ethic are consistent and fantastic. With respect to her reliability, trustworthiness, and ability to exercise sound judgment, he has absolutely no concerns. At some point after she received the SOR, Applicant approached him, and they discussed what she had done regarding drugs and on her 2019 SF 86. He recognizes that everyone falls but believes that "integrity is about what happens when we make those mistakes, and . . . do we move forward," citing Trevor Moawad's book *It Takes What It Takes*, when Moawad says, "My destiny will be determined by what I do next." Now, despite knowing everything about her, he absolutely does not have any hesitancy putting her in a position of trust or supporting her access to classified information. (Tr. at 25-50)

The principal advisor to the cabinet member and supervisor of the principal deputy assistant referred to above, in the office in which Applicant works, and Applicant generally interact daily, and sometimes multiple times during the same day. Applicant is very proactive in preparing and coordinating packages and preparing correspondence throughout the department, and she is very dedicated, collaborative, and courteous in her interactions. Applicant confided with the principal advisor regarding the SOR. The principal advisor has no concerns regarding Applicant's ability to handle classified or sensitive materials and has no hesitation in recommending her for a security clearance. (Tr. 52-63)

The deputy program manager for the contract between the contractor and the government office in which Applicant works serves almost as a chief of staff to the above two individuals. She and Applicant work in the same office three or four days a week. She

was also on the interview panel that interviewed Applicant for the position that she now holds. Applicant is personable, professional, capable, confident, diligent, and knowledgeable, and is the most dependable and reliable contractor she has. Applicant disclosed to the witness her prior experimentation with drugs while in college, as well as her omissions on her first SF 86, which she attributed to not understanding the process. Nevertheless, because Applicant has grown professionally since she has been in the office, the witness recommends that she be given the requested security clearance. (Tr. at 65-83)

Several of Applicant's college friends, newer friends and neighbors, and a nursery school classmate are very supportive of her. They essentially characterize her as extremely motivated, determined, selfless, honest, loyal, kind, cherished and loved, trustworthy, resilient, caring, dedicated, adventurous, generous, reliable, focused, committed, very mature, and responsible, with mature judgment, great integrity, and moral values. (AE D) Her employer's annual review for fiscal year 22-23 is positive. She meets expectations for goal 1: displaying corporate values, and goal 2: corporate citizenship; and is outstanding for goal 3: strengthening of high value work. (AE E)

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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). “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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. 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).)

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse 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.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In addition, on December 21, 2021, the DNI issued Memorandum ES 2021-01529, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, which states in part:

[D]isregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position. . . .

Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 . . . , Questionnaire for National Security Positions.

With respect to the use of CBD products, agencies should be aware that using these cannabis derivatives may be relevant to adjudications in accordance with SEAD 4. Although the passage of the Agricultural Improvement Act of 2018 excluded hemp from the definition of marijuana within the Controlled Substances Act, products containing greater than a

0.3 percent concentration of delta-9 tetrahydrocannabinol (THC), a psychoactive ingredient in marijuana, do not meet the definition of “hemp.” Accordingly, products labeled as hemp-derived that contain greater than 0.3 percent THC continue to meet the legal definition of marijuana, and therefore remain illegal to use under federal law and policy. . . . [T]here is a risk that using these products may nonetheless cause sufficiently high levels of THC to result in a positive marijuana test under agency-administered employment or random drug testing programs. Should an individual test positive, they will be subject to an investigation under specific guidelines established by their home agency.

The guideline notes some conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant was a recreational multi-substance user who admittedly experimented with cocaine by inhaling it on two separate occasions from December 2015 to 2016; and experimented with LSD on one occasion in March 2016. She routinely used marijuana with varying frequency from December 2015 until December 2017. She was granted a security clearance in September 2019. Approximately five months later, in February 2020, she consumed a CBD gummy that a friend offered her to reduce her anxiety about skiing. Applicant was not sure if the gummy was derived from THC or hemp, and the Government is unable to determine the source. AG ¶ 25(a) has been established, but for reasons described below, AG ¶ 25(f) has not been established.

Applicant’s ignorance regarding the source of the CBD – hemp or THC – and the Government’s inability to otherwise determine (or allege) that the CBD was THC-derived, in the absence of a positive drug test result, severely limits the Government’s ability to prove its case with respect to the CBD allegation. There is no evidence that Applicant’s CBD gummy contained THC at any level, and it would require speculation to assume it contained a prohibited amount of THC to do so. It appears that she did not check the CBD labels to determine the source. The facts herein differ substantially from those in ISCR Case 22-011476 (App. Bd. Mar. 11, 2024). In that case the applicant claimed ignorance regarding the source of the CBD he used and denied recent use of marijuana. But that applicant had a positive drug test, and his credibility was questioned. Here, there was no use of marijuana for over two years or a positive test for the Government to base its allegation that the CBD contained “an unknown level of THC.” Accordingly, I conclude that the Government failed to meet the necessary evidentiary burden of proof.

With respect to the remaining illegal substances that Applicant used (marijuana, cocaine, and LSD), the guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶¶ 26(a) and 26(b) apply. Although Applicant grew up in a household where both parents were substance abusers; her father died of a drug overdose; and for many years she and her mother attended NA and AA meetings, when she changed her environment and went to college, she joined a “friend group” of drug users. The result was isolated recreational experimentation with cocaine (two times) and LSD (one time), and regular use of marijuana. Her last use of any illegal substance took place in December 2017 – six years ago, when she was 20 years old. The results of her experimentations were unpleasant. She finally decided that she didn’t want to be like her parents, so she stopped. Applicant no longer associates with her friends who were and are still drug users. She submitted 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. Applicant claims that she was embarrassed by her actions, and she finally acknowledged her drug involvement in 2022. She completed a 16-hour Drug and Alcohol Awareness Class in November 2023. In January 2024, she underwent a drug test for marijuana, cocaine, amphetamines, opiates, and PCP, and the results were negative for all of those drugs. Applicant’s drug involvement actions before she was an adult, ending six years ago and followed up by abstinence, no longer cast doubt on her current reliability, trustworthiness, and good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes examples of conditions that could raise security concerns under 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;

(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

(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. . . .

AG ¶¶ 16(a), 16(b), and 16(e) have been established. Applicant's "youthful" indiscretions in experimenting with, or regularly using, various illegal substances ceased in December 2017. In August 2019 – after about 20 months of drug-free living – she responded to a simple question in the SF 86: "In the last seven (7) years, have you illegally used any drugs or controlled substances?" Rather than telling the truth about her drug history, she deliberately lied and concealed the truth. Omitting or falsifying information to improve one's eligibility for a security clearance or to conceal unfavorable information are relatively common. Mistakes early in life can be forgiven if one has become older and wiser, as suggested by her character references, but covering up past mistakes during the security clearance process changes the recency analysis and brings the record of unreliable or untrustworthy behavior up to the current time.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct:

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

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

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

None of the conditions apply. In this instance, the truth remained hidden from August 2019 until February 2022, well after Applicant had been granted a security clearance based on her earlier false responses in her 2019 SF 86 and subsequent OPM interview of September 2019. Applicant majored in criminal justice in college. Her work colleagues and friends have characterized her with such positive terms as reliable, trustworthy, sound judgment, integrity, and honest. However, as an adult, rather than exercising those positive traits when she was faced with a selection as to which fork in the divided road to take, honesty versus dishonesty, she twice chose the latter – both in her SF 86 and during a subsequent OPM interview.

Applicant has offered several explanations for her deliberate actions: (1) there was no paper trail, so her friends and family advised her to lie; (2) she was still unsure of her future career path; (3) she was embarrassed about her drug use; and (4) she was nervous about completing the form as it was her first time doing so. Another explanation was more recently made to a work colleague: she did not understand the process. In this instance, the truth is straightforward, it does not deviate. But Applicant has chosen to explain differently why she lied. As Moawad said, “My destiny will be determined by what I do next.” Unfortunately, Applicant’s next step following her drug involvement was to lie.

Applicant’s work colleagues seemingly chose to overlook her deliberate omissions, falsifications, and concealments even though she obtained a security clearance because of her lies. As noted above, two of her character references are in high level senior positions, yet neither of them informally suggested or formally recommended that I follow any exception under SEAD 4, App. C, in either granting a waiver or condition to her continued eligibility for access to classified information or to hold a sensitive position.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline H and Guideline E in my whole-person analysis, and I have considered the factors in SEAD 4, App. A. After weighing the disqualifying and mitigating conditions under Guideline H and Guideline E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was more than sufficient to overcome the disqualifying conditions established under Guideline H. Her youthful indiscretions in experimenting with, or regularly using, various illegal substances ceased in December 2017 – six years ago – and she has been abstinent ever since. However, Applicant's more recent actions under Guideline E raised substantially more serious issues in the context of the whole person. She lied twice in 2019, while she was about 22 years old, leading to her being granted a security clearance and assigned to a sensitive position. The truth was hidden by her, and it went unreported until February 2022, when she was about 25 years old.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her personal conduct but has successfully mitigated the security concerns arising from her drug involvement and substance abuse. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

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 H:	FOR APPLICANT
Subparagraphs 1.a. through 1.d.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a.:	For Applicant
Subparagraphs 2.b. and 2.c.:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge