



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00948
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

11/14/2014

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 30, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 5, 2014, detailing security concerns under Guideline J, criminal conduct; Guideline H, drug involvement; Guideline G, alcohol consumption; and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on June 23, 2014, and he answered it on June 30, 2014. He requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 21, 2014, and I received the case assignment on August 28, 2014. DOHA issued a Notice of Hearing on September 8, 2014, and I convened the hearing as scheduled on October 2, 2014. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on October 15, 2014. I held the record open until October 23, 2014, for Applicant to submit additional matters. Applicant timely submitted exhibits (AE) A - D, which were received and admitted without objection. The record closed on October 23, 2014.

## **Procedural Rulings**

### **Motions**

At the beginning of the hearing, Department Counsel motioned to Amend allegation 4.d of the SOR to conform with the evidence. Department Counsel requested to change the last sentence of allegation 4.d from “You responded ‘No,’ whereas in truth, you deliberately failed to list that you had used marijuana on multiple occasions over a period of many years, as sets forth above in Subparagraphs 2.c and 2.d” to “You responded ‘No,’ whereas, in truth, you deliberately failed to list that information as set forth above in Subparagraphs 1.c and 1.d.” Applicant did not object to the requested amendment. The Motion to Amend the SOR is granted, and the SOR is amended as requested.<sup>1</sup>

During the course of the hearing, Department Counsel motioned to withdraw SOR allegation 1.a based on Applicant’s testimony that on March 12, 2013 he appeared at the police station to have his fingerprints taken. Applicant did not object. The motion was granted. SOR allegation 1.a is withdrawn from the record. (Tr. 30)

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 2.a, 2.c, 2.d, and 3.b of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.c, 1.d, 2.b, 3.a, 4.d, and 4.e of the SOR.<sup>2</sup> He neither admitted nor denied the allegations in ¶¶ 4.a-4.c of the SOR. He also

---

<sup>1</sup>Tr. 9-10.

<sup>2</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern.” See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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

provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 60 years old, works as a systems engineer. He is a 1099 employee for a DOD contractor. Applicant has been working for this DOD contractor since 2010 and as a 1099 employee for other government contractors since 2006. From 2003 until 2006, he worked for a DOD contractor. From 1997 until 2003, he worked as an independent contractor in telecommunications. Applicant enlisted in the United States Navy after high school graduation and served in the Navy on a submarine for three years. After he left the Navy, he worked as a federal employee and in private industry.<sup>3</sup>

Applicant graduated from a state university with a bachelor's degree in mechanical engineering in December 1985. He received a master's degree in computer science and systems engineering from another state university in March 1997. Applicant and his first wife married in 1979 and divorced in 1983. Applicant married his current wife in September 1984. They have two sons, ages 29 and 26. His sons are grown, live separately from him, and are not dependent on him for support.<sup>4</sup>

### **Alcohol Consumption and Criminal Conduct**

Applicant completed a SF-86 (security clearance application) in August 1989. On his SF-86, he listed an arrest for driving under the influence (DUI) in April 1976. He indicated that the court fined him \$150. The Federal Bureau of Investigation's (FBI) criminal records report identifies a DUI arrest in March 1977. When the investigator confronted him with this DUI information, Applicant denied both arrests. In his response to the SOR, Applicant indicated that to the best of his recollection, the 1977 charge was for reckless driving and not for a DUI. He denied receiving a ticket of any type, including a DUI, in 1976. At the hearing, Applicant indicated that he has very little memory about being arrested for DUI in the 1970s. After much consideration, he believed that he may have been arrested for DUI and convicted of reckless driving in 1977. He again denied the 1976 arrest. The record contains conflicting information about Applicant's arrests for DUI in the 1970s. The information in his SF-86 and the FBI report each reflect one DUI arrest in the 1970s. Given he has little memory of these events which occurred almost 40 years ago and his adamant denial of an arrest in 1976, I find he was arrested once for DUI in the 1970s. It is not unreasonable for Applicant to have incorrectly stated the date of his arrest in his SF-86 as individuals often confuse dates year of a past event.<sup>5</sup>

---

ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>3</sup>GE 1; Tr. 20-23.

<sup>4</sup>GE 1; Tr. 20-22.

<sup>5</sup>GE 3 - GE 5; Tr. 30-33.

When he met with the Office Personnel Management (OPM) investigator, Applicant told the investigator that he generally consumed about three or four glasses of wine a day at home. He also expressed a concern that he may have had a problem with alcohol. On the evening of January 12, 2013, Applicant and his wife argued. He left the family home and drove to a nearby hotel where he spent the night. He took a sleeping medication, Ambien. He then consumed a large bottle of wine before going to sleep. He woke up the next day in the late morning and decided to drive to the home of a friend. When he left the hotel, the receptionist observed his walking and called the police to report him driving while drunk. He arrived at his friend's home. His friend also noticed that he was not in a condition to drive and drove him back to the hotel. When Applicant walked into the hotel lobby, the police arrested him and charged him with DUI after he failed the field sobriety test. Applicant believes his breathalyzer test result was around 2.0, but he is not sure.<sup>6</sup> Applicant pled guilty to misdemeanor DUI in July 2013. The court sentenced him to 12 weeks of alcohol education, 26 weeks of group therapy, revoked his driver's license for nine months, fined him \$689, and placed him on probation until either the end of 2014 or early 2015.<sup>7</sup>

Following his conviction, Applicant enrolled in a program at a local alcohol counseling center in August 2013. The counseling center records reflect that he received Level II education for 12 weeks and Level II Non-Intensive Outpatient services for 26 weeks. Upon his completion of this program, the counseling program did not recommend further follow-up treatment. The program conducted random alcohol urinalysis testing during his treatment. The first urine analysis test occurred on August 24, 2013, and the last test occurred on April 23, 2014. The counseling center performed 19 random urinalysis tests in this time period. All his tests showed no alcohol consumption. Applicant last consumed alcohol on January 13, 2013. He does not plan to consume alcohol in the future. He told the OPM investigator that he "did not miss the alcohol".<sup>8</sup>

The counseling center released Applicant from its program on May 20, 2014 without any recommendations for further treatment. Through his lawyer, Applicant applied for an early release from probation. The court issued an order releasing him from probation on June 25, 2014. Applicant does not participate in any alcohol counseling or support programs.<sup>9</sup>

---

<sup>6</sup>The police report is not in the record nor are any alcohol-related test results for this date.

<sup>7</sup>GE 1; GE 3; Tr. 24-29, 55-58.

<sup>8</sup>GE 3; AE C; AE D; Tr. 45, 59-60.

<sup>9</sup>AE B; AE C; Tr. 44, 61.

## Drug Involvement

Applicant first smoked marijuana in the 1970s while in the Navy. He believed he was 20 years old when he first used marijuana. He did not use marijuana when he was on duty on a submarine.<sup>10</sup>

From 1975 until 2014, Applicant used marijuana sporadically. He provided confusing statements about the frequency of his marijuana use. In his response to the marijuana interrogatories, he indicated that he used marijuana one to two times a year over the last ten years. When he met with the OPM investigator, he advised that he had used marijuana through the years about once a year, if someone had marijuana, and that after his discharge from the Navy, he smoked marijuana five to ten times, if someone had marijuana. At the hearing, he stated that he did not use marijuana between 1975 and 1980 and that he did not believe he used marijuana in the 1980s. He may have used marijuana one or two times a year between 1990 and 1998. He denied any drug use between 2003 and 2009. He advised that he did not use marijuana when he worked on a government contract.<sup>11</sup>

In 2005, Applicant underwent surgery for diverticulitis. He experienced complications following his surgery, which required a second surgery. After his second surgery, Applicant experienced periodic and severe pain, which has not been controlled by pain medication. When the prescription pain medication failed, Applicant sought and received a one-year prescription for medical marijuana in February 2013. He purchased the marijuana starting in February 2013. He used the marijuana for medical purposes on as needed basis until August 24, 2013. On this date, he underwent an urinalysis test for alcohol. Although he tested negative for alcohol consumption, he tested positive for marijuana use. Because he was using the marijuana for medical reasons, he did not think his use was a problem. The testing center advised him that his positive test for marijuana would be a problem with the court. He ceased using the marijuana for pain relief until he completed his urinalysis testing.<sup>12</sup> Since the SOR was issued in June 2014, he has used marijuana to relieve his pain, but he was not sure how often. He last used marijuana two weeks before the hearing. He indicated at the hearing that he would use marijuana as needed for pain in the future and that he still had some marijuana in his possession from when he purchased it with his medical prescription.<sup>13</sup>

Applicant has held a security clearance periodically over the years. He acknowledged that he held a security clearance from 2003 until 2006 while working for another DOD contractor and from 1981 until 1986 while a civilian employee of the Navy. He also completed a security clearance application in 1989. From 2006 until 2010, he

---

<sup>10</sup>Tr. 62.

<sup>11</sup>GE 2; GE 3; Tr. 37-38, 63-64.

<sup>12</sup>During this time, he used tylenol or aspirin for pain or he lived with the pain. Tr. 76.

<sup>13</sup>Response to SOR; GE 2; AE A; AE D; Tr. 38-39, 43-44, 65-70.

held a security clearance through the Transportation Safety Administration. He did not believe he had active clearance when he began his current job, and he was not sure his security clearance was active at the time of the hearing.<sup>14</sup>

The record lacks any evidence that Applicant has been arrested, charged, or convicted of any criminal offense related to drugs. In his response to the interrogatories concerning marijuana, he answered “no” to the question asking about such arrests. At the hearing, he denied any arrests for drugs and stated that he believed he had been arrested for reckless driving in 1977.<sup>15</sup>

## **Personal Conduct**

When Applicant completed his e-QIP on December 30, 2013, he answered “no” to the following questions about his drug use under:

### Section 22 - Police Record (EVER)

Have you **EVER** been charged with an offense involving alcohol or drugs?

### 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 substance? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.

Illegal Drug Activity - In the last seven years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance? and

While Possessing a Security Clearance - Have you **EVER** illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?

Concerning his answers to the questions in Section 23, Applicant stated in his response to the SOR that he did not consider his purchase of medical marijuana illegal since he had a prescription for it, and medical marijuana is legal under state law. He

---

<sup>14</sup>Response to SOR; GE 4; Tr. 39-43. His current Joint Personnel Adjudication System (JPAS) documentation is not in the record.

<sup>15</sup>GE 1 - GE 5.

also indicated that he never used marijuana while working for the U.S. government on a U.S. government contract.<sup>16</sup>

When Applicant met with the OPM investigator on January 29, 2014, he provided information to the investigator about his medical marijuana use prior to July 2013. He also indicated that he last used the marijuana for medical reasons in July 2013. He then told the OPM investigator that he had used marijuana through the years, even when he was in the Navy. He advised that he used it once a year with friends if someone had the marijuana. The interview summary does not indicate that the OPM investigator confronted him about his marijuana use.<sup>17</sup>

At the hearing, Applicant explained his “no” responses to these questions. He does not consider himself a marijuana user because he smoked marijuana infrequently and because he did not use marijuana while working on a project. He acknowledged that his answers to these questions were wrong and that when he was answering the questions, he mistakenly did not consider whether his clearance was active or not.<sup>18</sup>

Although not alleged in the SOR, Applicant acknowledged that he incorrectly answered question 14 in the marijuana interrogatories when he answered “no” to the interrogatory inquiry about having any marijuana in his possession. During his testimony at the hearing, Applicant had acknowledged using marijuana since April 2014. This marijuana had been purchased previously. Applicant’s other answers on this document are clear and direct and are not contradicted by other evidence.<sup>19</sup>

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing 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. According to AG ¶ 2(c), 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,

---

<sup>16</sup>Response to SOR.

<sup>17</sup>GE 3.

<sup>18</sup>Tr. 46-49.

<sup>19</sup>GE 2; Tr. 70.

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;



(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

(d) individual is currently on parole or probation.

Applicant has been arrested and charged with DUI on two occasions. In 1977, he was convicted of reckless driving, not DUI. In 2013, he pled guilty to DUI and was sentenced, fined, and placed on probation. A security concern is established by SOR allegations 1.b and 1.c.

At the time DOHA issued the SOR, Applicant was on probation. In an order dated June 25, 2014, the court granted his request for early release from probation. That part of SOR allegation 1.b, which alleges that Applicant is currently on probation, is not established.

The Criminal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through ¶ 32(d), and the following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant successfully completed his court sentence related to his DUI arrest and conviction. Since this time, he has abstained from using alcohol, and he has indicated an intent not to consume alcohol in the future. There is little likelihood that he will be arrested for an alcohol-related offense in the future. Applicant mitigated the security concerns about his criminal conduct under Guideline J.

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant used marijuana sporadically over many years. In 2013, he acquired a prescription for medical marijuana. With the prescription, he purchased marijuana in a state licensed facility and used the marijuana for the relief of abdominal pain. In August 2013, he tested positive for marijuana while being tested for alcohol consumption. Applicant has held a security clearance periodically over the years, and his use of marijuana may have been during a time when he held a security clearance. He indicated that he would continue to use marijuana in the future. The Government has established a security concern under AG ¶¶ 25(a)-25(c), 25(g), and 25(h).

The drug involvement guideline also includes examples of conditions that can mitigate security concerns under AG ¶ 26(a) through ¶ 26(d), which are as follows:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

I have reviewed the above mitigating conditions and conclude that none of these mitigating conditions apply. At the hearing, Applicant clearly stated that he intended to use marijuana in the future for medical purposes, namely to treat his continued pain from his 2005 surgery. Marijuana for medical purposes is allowed in his state of residence. However, under federal law, marijuana, even that used for medical purposes, is illegal and remains a security concern.<sup>20</sup> Applicant stopped using marijuana between August 2013 and at least the end of April 2014 after learning that the use of marijuana, for any reason, could be viewed unfavorably by the court in his DUI case. Once he completed the requirements of his DUI sentence, Applicant made a decision to again use marijuana for treatment of his pain. He used marijuana for medical purposes just two weeks before the hearing, a reflection of his intent to continue the use of marijuana. Applicant is not involved with known drug users or in an environment where drug use is common. Rather, Applicant's use of marijuana is personal and is not motivated by others, but by his desire to reduce continued pain. He completed a drug education and group therapy program as part of his DUI sentence. Since completing this program, he has not abstained from the use of marijuana. He has not mitigated the security concerns raised under Guideline H.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

---

<sup>20</sup>ES 2014-00674, Memorandum from the Director of National Intelligence regarding Adherence to Federal Laws Prohibiting Marijuana Use (October 25, 2014); February 13, 2013 Memorandum from the Office of the Assistant Secretary of Defense on Prohibition on the Use of Marijuana by Military Service Members and Department of Defense Civilian Employees; Department of Defense Instruction No. 1010.09 DOD Civilian Employee Drug-Free Workplace program (June 22, 2012).

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Applicant has been arrested and charged with DUI on at least two occasions, the most recent in 2013. Applicant acknowledged consuming three to four glasses of wine on a daily basis prior to his arrest in January 2013. The record does not contain any evidence that his daily consumption led to the point of intoxication or impaired judgment on a regular basis. His DUI arrest reflects his judgment was impaired on at least one occasion. Applicant expressed to the OPM investigator that he was concerned about his alcohol consumption. A security concern has been established under AG ¶¶ 22(a) and 22(c).

The alcohol consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following are potentially applicable:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual 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 alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant stopped consuming alcohol immediately after his arrest in January 2013. As part of his court sentence, he participated in an alcohol education and treatment program, which conducted random urinalysis testing over eight months. Applicant's test results showed no alcohol use. He told the OPM investigator that "he did not miss alcohol" and had stopped consuming alcohol after his arrest. Applicant knew alcohol caused him a problem in 2013, and he decided not to continue his use of it. It has been almost two years since his last use of alcohol. He has mitigated the security concerns raised about his alcohol consumption in the past under AG ¶¶ 23(a) and 23(b).

## Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, 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, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government alleges three incidents of falsification by Applicant when he completed his 2013 e-QIP (SOR ¶¶ 4.b-4.d) and, one incident of falsification when he met with the security clearance investigator in January 2014 (SOR ¶ 4.e). For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2013 security clearance application when he answered "no" to questions asking about his illegal drug use, purchase and possession of illegal drugs, and his DUI arrests. During his 2014 personal subject interview, he also denied that he had been arrested for DUI in 1977 and 1976. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying his answers on his e-QIP and providing false information in his 2014 personal subject interview in his response.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>21</sup>

Applicant is a well-educated man, who fully understood that marijuana was an illegal drug. He knew at the time he completed his e-QIP that he had used marijuana recreationally and as medical treatment for post-surgical pain. Having held a security clearance many times over the last 40 years, he understood that he had an obligation to provide accurate information about his marijuana use to the Government. He did not. His statements that because he was not a regular user of marijuana, he did not think he had to provide this information or that he had a medical marijuana license are inconsistent. He had a duty to be forthright and candid in his e-QIP answers about his marijuana use, and he was not. AG ¶ 16(a) applies to SOR allegations 4.b and 4.c.

SOR allegation 4.d, as amended, asserts that Applicant intentionally falsified his answer to the question asking if he had ever been charged with an offense related to alcohol or drugs when he failed to list his 1976 and 1977 DUI arrests. SOR allegation 4.e relates to Applicant's nearly 40-year-old arrest for DUI in 1977. Applicant has little memory of being arrested for a DUI in the 1970s. He strongly denied any arrests in 1976, and upon further consideration and reflection, he believes he may have been arrested for a DUI in 1977, which was reduced to a reckless driving charge. Given the length of time between 1977 and December 2013, when he completed his e-QIP, and January 2014, when he met with the OPM investigator, Applicant could easily have forgotten about a long ago incident. When presented with the information, he still had no memory and denied that he was arrested in 1976 or 1977. Since I have concluded that he was arrested only once in the 1970s for DUI, his denial of an arrest in 1976 is reasonable. His failure to remember any arrest in 1977 is not evidence of intentional conduct. SOR allegations 4.d and 4.e are found in favor of Applicant.

Applicant's marijuana use, his alcohol consumption, and his DUI arrests create a vulnerability to exploitation, manipulation, or duress. A security concern is established under AG ¶ 16(e).

The personal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

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

---

<sup>21</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

After reviewing his SOR response, his personal subject interview statements, and his testimony, I find that Applicant has provided confusing and conflicting information about his past marijuana use and the reasons for his failure to clearly acknowledge the extent of his use during the security clearance process. He has not mitigated the security concerns about his intentional falsification of his e-QIP.

Likewise, since he continues to use marijuana, he has not mitigated any security concerns about his vulnerability to coercion or pressure. He is credited with changing his alcohol consumption habits and acknowledging his problems with alcohol. AG ¶¶ 17(d) and (e) have some applicability.

### **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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is

established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked for the federal government or as a contractor to the federal government for many years without any evidence of compromise of classified information. During this time, he used marijuana sporadically, including medical marijuana. He also consumed alcohol, at times to excess. His excessive use of alcohol has ceased, but he continues to use marijuana to manage his post-surgical pain. Applicant provided inconsistent information about his marijuana use over the years, and he acknowledged that his answers on his e-QIP were wrong. His failure to provide clear and consistent information about his many years of use of marijuana during this process raises questions about his reliability and trustworthiness as does his stated intent to continue to use marijuana, an illegal drug under federal law. He has changed his alcohol use, but not his marijuana use. His attitude towards marijuana has not changed, nor does he intend to change this behavior, which raises concerns about his trustworthiness and reliability.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol consumption and criminal conduct under Guidelines G and J, but he has not mitigate the security concerns arising from his drug involvement and personal conduct under Guidelines H and E.

### **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 J:	FOR APPLICANT
Subparagraph 1.a:	Withdrawn
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant



Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	Against Applicant
Subparagraph 4.c:	Against Applicant
Subparagraph 4.d:	For Applicant
Subparagraph 4.e:	For Applicant

### **Conclusion**

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

---

MARY E. HENRY  
Administrative Judge