



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



In the matter of:)
)
) ISCR Case No. 14-01663
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie G. Hess, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

06/28/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to meet his burden of showing there is little likelihood that his relationship with his wife and her relatives, who are living in Kyrgyzstan, could create a risk for foreign influence or exploitation. His falsification of his 2013 security clearance application (SCA) is recent and serious. The personal conduct security concerns are not mitigated. He mitigated the drug involvement security concerns. His eligibility for access to classified information is denied.

History of the Case

Applicant submitted his most recent SCA on November 5, 2013. After reviewing it and the information gathered during a background investigation the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a security clearance. On July 9, 2014, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence), Guideline H (drug involvement), and Guideline E (personal conduct).¹ Applicant answered the SOR on August 9, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

¹ 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

The case was assigned to me on October 2, 2015. The DOHA issued notices of hearing on December 4 and 9, 2015, and on February 2, 2016. The hearing was scheduled for February 9, 2016. During the hearing, Department Counsel offered four exhibits (Government Exhibit (GE) 1 through 4), and Applicant offered one exhibit (Applicant Exhibit (AE) 1 (with Tabs A through O)). All exhibits were admitted into evidence without objection. GE 3 (Request for Administrative Notice of facts concerning the government of the Kyrgyz Republic, and GE 4 (Discovery Letter)) were made part of the record but they are not evidence. DOHA received the transcript of the hearing on February 11, 2016.

Procedural Issues

Applicant waived his right to 15-days advance notice of the date, time, and location of his hearing. (Tr. 9 - 10)

Findings of Fact

In Applicant's response, he admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 2.a, 2.b, and 2.c (partially). He denied SOR ¶¶ 2.c (partially), 3.a, and 3.b. Applicant's SOR and hearing admissions are incorporated into the findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 32-year-old information technology systems administrator employed by a federal contractor. He graduated from high school in 2003, and attended college during a semester in 2010, but did not earn a degree. He married his wife in 2012.

After graduating from high school, Applicant enlisted in the Army National Guard. He attended Army basic training between January and April 2005. He served on active duty overseas between June 2006 and December 2007, and between May 2011 and December 2011. He then served on inactive drilling status until September 2012, when he completed his service obligation and was honorably discharged. (Tr. 85) Applicant started working for federal contractors in May 2012. He has worked for his current employer since October 2013.

Applicant illegally used marijuana with varying frequency from about 2001 (age 17 – in high school) to at least August 2010 (age 26). In his answer to the SOR, and at his hearing, Applicant initially stated that he used marijuana only six times total between 2003 and 2010 – once between 2003 and 2006, and five times between 2006 and 2010. He illegally used marijuana while possessing a secret clearance.

Applicant claimed he did not recall telling a government investigator during a 2006 interview that he used marijuana about once a week between 2004 and 2010. He believed he would not have said it because he was subject to random drug testing while in the National Guard. He admitted telling the investigator that he smoked one

marijuana cigarette about once a week on the weekends with his friends beginning in 2003. (Tr. 80-81)

At hearing, Applicant disclosed that he smoked marijuana during high school. He also disclosed that in 2005, he was charged with possession of marijuana (the charge was later dismissed). He explained that the marijuana belonged to some underage kids to whom he was giving a ride, but he was the one charged.

In about July 2010, Applicant smoked marijuana and consumed alcoholic beverages with his underage girlfriend while on duty as a motel desk manager. He was arrested and charged with possession of marijuana and for purchasing alcohol for a person under 21 years of age. He was terminated from his employment because of his criminal conduct. Applicant received a deferred prosecution for the above charges. After six months of compliance with his unsupervised probation and other court mandated terms, the charges were dismissed. (AE 1H, Tr. 49)

Applicant submitted his first SCA in April 2006, required for his military service. Section 27 of the 2006 SCA asked Applicant to disclose whether in the last seven years he had used any illegal drugs, including marijuana. Applicant answered "no" and failed to disclose his use of marijuana while in high school and between 2003 and 2006. Shortly thereafter, he was granted a secret clearance, which has been continued to present. He continued his illegal marijuana use until at least July 2010. He used marijuana after he was granted a secret clearance in 2006.

Applicant submitted his most recent SCA in November 2013. Section 13C of the 2013 SCA asked Applicant to disclose whether: he had been fired from a job; quit a job after he had been told he would be fired; or left a job by mutual agreement following charges or allegations of misconduct, or notice of unsatisfactory performance. Applicant answered "no" to all the above questions and failed to disclose that he was terminated from his job after he was found smoking marijuana and consuming alcoholic beverages with his underage girlfriend while he was on duty as the front desk receptionist at a motel.

I note that Applicant disclosed he was terminated from his employment at the motel in response to questions in Section 13A (Employment Activities). He qualified his termination by stating that he "Quit job after being told you would be fired." As to the reason for quitting, he stated: "Disagreement with store manager." He failed to disclose that he was fired for smoking marijuana and consuming alcoholic beverages with his underage girlfriend while he was on duty at the motel, and that he was charged with illegally using drugs and providing alcohol to a minor.

Section 22 of the 2013 SCA asked Applicant to disclose whether in the last seven years he had been: (1) issued a summons, citation, or ticket to appear in a criminal proceeding against him; (2) arrested; (3) charged, convicted, or sentenced in any court; (4) on probation or parole; and (5) charged with an offense involving drugs or alcohol. Applicant was required to report the above information whether the record had been sealed, expunged, stricken from the court record, or the charge was dismissed.

Applicant answered “no” to all the above questions and failed to disclose that he was arrested and charged with possession of marijuana and with purchasing alcohol for a person under 21 years of age in about July 2010. He also failed to disclose that he was placed on unsupervised probation by the court.

Applicant stated that he made a serious mistake when he did not disclose the required information, and took full responsibility for “his error.” He believed he did not have to disclose the arrest and charges because he anticipated the charges would be dismissed as a result of the deferred prosecution and he would not have a police record. Applicant discussed the charges with a government investigator when he was asked about the discrepancy on his SCA. He claimed he made an innocent mistake and that he did not have the intent to mislead the Government or to falsify his 2013 SCA.

Applicant expressed remorse for his illegal marijuana use. He believes that he was young, immature, and irresponsible in his decision-making process. He realized the seriousness of his criminal behavior and how much he had to lose when he almost lost his ability to deploy overseas with his National Guard unit when he was arrested and charged with possession of marijuana in July 2010. Applicant did not disclose to his National Guard chain of command or security officer that he was arrested and charged with possession of marijuana and buying alcohol for a minor in July 2010.

Applicant averred that he has not used any illegal drugs since July 2010. He claimed that while deployed, he changed his lifestyle and turned his life and his career around, and that he no longer associates with anyone involved with illegal drugs. Since then, he completed several IT certifications, married his wife, purchased a home, and they plan to have a family in the near future. Applicant promised to never use any illegal drugs ever again. To reinforce his commitment, Applicant signed a statement of intent with automatic revocation of clearance for any violation. (AE 1-O) I have given this statement less weight, and reviewed Applicant’s evidence cautiously, in light of his illegal marijuana use after he submitted his 2006 SCA and after he was granted a security clearance.

Applicant’s wife entered the United States via a student visa in 2006-2007. He met and married her in 2012. (Tr. 84) She was born, raised, and educated in Kyrgyzstan. Her parents and two brothers are citizens and residents of Kyrgyzstan. Applicant claimed he has minimal interaction with his in-laws because they do not speak a common language and he cannot communicate with them. Applicant’s wife has weekly contact with her relatives. Applicant and his wife send between \$300 and \$600 every six months to her relatives in Kyrgyzstan. He explained that his in-laws live in austere conditions and his wife wants to assist them financially. His mother-in-law is a cashier at a gas station. His father-in-law is a security guard for a petroleum company. Her siblings work as construction workers – one resides with his family at her parents’ home, and the second brother lives with his own family.

Applicant has never travelled to Kyrgyzstan. None of his wife’s relatives has travelled to the United States. Applicant’s wife travelled to Kyrgyzstan only once since she immigrated to the United States in September 2012. She currently has a U.S.

temporary resident alien card. She is in the process of applying for permanent resident alien status and intends to become a U.S. citizen at the earliest opportunity. She intends to renounce her Kyrgyzstan citizenship when she becomes a U.S. citizen.

Applicant's wife is currently a student in a U.S. university. She is an outstanding student and has made the university's Dean's list. (AE 1-C) Applicant and his wife purchased a \$335,000 home in the United States in June 2015. The home is currently rented out because he is working and living in another state. (AE 1-D)

Applicant presented reference statements written on his behalf, and the testimony of witnesses. Applicant is considered to be a hardworking and productive IT professional. He was lauded for his technical knowledge and professional certifications, a testament to his hard work, initiative, and dedication. His references attest to his loyalty to the United States and his patriotism. They also lauded his trustworthiness, honesty, and his ability to follow rules and regulations and the proper handling of classified information. Applicant's performance evaluations also extoll his excellent performance and problem solving abilities. His references recommended the continuation of his clearance. In 2013, the administrator for another federal agency commended Applicant for his devotion to duty, contributions, technical skills, and positive attitude under difficult circumstances. (AE F)

I take administrative notice of the following facts concerning the Kyrgyz Republic. The United States established diplomatic relations with Kyrgyzstan in 1991 following its independence from the Soviet Union. The two countries have a strong partnership. The United States supports Kyrgyzstan in its development of a democracy based upon the rule of law and respect for human rights.

Kyrgyzstan and the United States belong to a number of the same international organizations, including the United Nations, Euro-Atlantic Partnership Council, Organization for Security and Cooperation in Europe, International Monetary Fund, World Bank, and World Trade Organization. Kyrgyzstan also is a participant in the North Atlantic Treaty Organization's (NATO) Partnership for Peace program.

The country's most important human rights problems included abuses related to continued ethnic tensions in the South; denial of due process and lack of accountability in judicial and law enforcement proceedings; as well as law enforcement officials' use of arbitrary arrest; and various forms of domestic violence, mistreatment, torture, and extortion against all demographic groups. Additionally, the following human rights problems existed: poor prison conditions; lack of judicial impartiality; harassment of nongovernmental organizations (NGOs), activists, and journalists; pressure on independent media; restrictions on religious freedom; authorities' failure to protect refugees adequately; pervasive corruption; discrimination and violence against women, persons with disabilities, ethnic and religious minorities, and persons based on their sexual orientation or gender identity; child abuse; trafficking in persons; and child labor.

Underscoring the country's human rights problems was an atmosphere of impunity for officials in the security services and elsewhere in the government

committing abuses and engaged in corrupt practices. This situation reflected the central government's inability to hold human rights violators accountable, allowing security forces to act arbitrarily, emboldening law enforcement officials to prey on vulnerable citizens, and allowing mobs to disrupt trials by attacking defendants, attorneys, witnesses, and judges.

Kyrgyzstan remains vulnerable especially in the south where conflicts on the border with Tajikistan and Uzbekistan and lack of central government control of the mountainous border are an issue. The government of Kyrgyzstan is also concerned about the potential influx of terrorist elements into its territory following the withdrawal of ISAF troops from Afghanistan in 2014.

Kyrgyzstan is a security partner with China and Russia. Kyrgyzstan's military officers receive military training in Russia. Russia is Kyrgyzstan's primary trading partner. Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia is one of the most capable and persistent intelligence threats and is an aggressive practitioner of economic espionage against the United States. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Policies

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does,

the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

In 2012, Applicant married a citizen of Kyrgyzstan. Applicant's spouse's parents and siblings are residents and citizens of Kyrgyzstan. She has frequent contact with her immediate relatives living in Kyrgyzstan, and Applicant provided her parents with financial support. Applicant's relationship with his wife (a citizen of Kyrgyzstan) creates a security concern about his "obligation to protect sensitive information or technology" and his desire to help his wife or her immediate family members who are citizens and residents of Kyrgyzstan. For example, if intelligence agents or government officials in Kyrgyzstan wanted to expose Applicant to coercion, they could exert pressure on his wife's relatives. Applicant would then be subject to coercion through his wife and classified information could potentially be compromised.

AG ¶ 7(d) applies because Applicant has ties of affection and obligation to his wife. As a matter of common sense and human experience, there is a rebuttable presumption that he has ties of affection for, or obligation to, the immediate family members of his wife. ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009)

An applicant's possession of close ties with someone living in a foreign country are not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one person, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant (or his friends or family members) are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or a foreign connection is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States.

The United States and Kyrgyzstan have a strong partnership, and the United States supports Kyrgyzstan in its development of a democracy based upon the rule of law and respect for human rights. Both nations belong to a number of important international organizations. Notwithstanding, concerns remain about Kyrgyzstan's human rights problems and the government's denial of due process and lack of accountability in judicial and law enforcement proceedings; as well as law enforcement officials' use of arbitrary arrest; and various forms of domestic violence, mistreatment, torture, and extortion against all demographic groups. Moreover, Kyrgyzstan is a security partner with China and Russia. Kyrgyzstan's military officers receive military training in Russia. Russia is Kyrgyzstan's primary trading partner. Russia is one of the most aggressive countries conducting espionage against the United States, attempts to

collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his wife or her family living in Kyrgyzstan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant, his wife, or her family; nevertheless, it is not possible to rule out such a possibility in the future. Applicant's relationship with his wife and her relationships with her family members living in Kyrgyzstan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist his wife by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's and his wife's contacts or relationships, and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) are established and further inquiry is necessary to establish the potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The 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 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant, though his wife, has frequent contacts with her relatives living in Kyrgyzstan, and he provided financial support to her parents and siblings.

His relationship with his wife negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationship with his wife and her relatives, who are living in Kyrgyzstan] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his wife and her relatives living in Kyrgyzstan.

Applicant has significant connections to the United States and to his wife. Applicant was born, raised, and educated in the United States. His spouse is in the process of applying for U.S. citizenship. He supports the U.S. Government as an employee of a contractor. He served in the military overseas in dangerous areas. He has manifested his patriotism, loyalty, and fidelity to the United States.

In sum, Applicant's connections to his wife are significant. Applicant's wife frequently communicates with her immediate relatives who are citizens and residents of Kyrgyzstan. He provided financial support to his wife's relatives. Applicant's relationship to his wife and her relatives, who are vulnerable to potential coercion, outweighs his connections to the United States in the security analysis. Foreign influence security concerns under Guideline B are not mitigated.

Guideline H, Drug Involvement

AG ¶ 24 articulates the security concern for 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.

Applicant illegally used marijuana with varying frequency between 2003 and 2010. He used marijuana at least five times between 2006 and 2010, after he was granted a security clearance in 2006. He was charged with possession of marijuana in 2005 and 2010.

AG ¶ 25 describes three conditions related to drug involvement that could raise a security concern and are disqualifying in this case:

- (a) any drug abuse;
- (c) illegal drug possession ; and
- (g) any illegal drug use after being granted a security clearance.

AG ¶ 26 provides two potentially applicable drug involvement mitigating conditions:

- (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) 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;
 - (4) a signed statement of intent with automatic revocation of clearance for any violation.

Both Guideline H mitigating conditions are raised by the facts and circumstances in this case and mitigate the drug involvement security concerns. Applicant disclosed his illegal use of marijuana in his 2013 SCA, during a subsequent interview with a government investigator in 2013, and he admitted it in his answer to the SOR.

It has been close to six years since Applicant's most recent use of marijuana. There is no evidence of any further drug abuse after 2010. Applicant promised to never use any illegal drugs ever again. To reinforce his commitment, Applicant signed a statement of intent with automatic revocation of clearance for any violation. I conclude drug involvement security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant falsified his 2013 SCA when he failed to disclose in his answers to Section 22 that in 2010 he was charged with possession of marijuana and issued summons (or a ticket or citation) to appear in a criminal proceeding; that he was charged with two offenses related to alcohol and drugs; and that he received a deferred disposition. (SOR ¶ 3.a) Applicant claimed that he made an honest mistake. He mistakenly believed that he did not have to disclose the required information because the charges were pending a deferred disposition, he believed they would be dismissed, and there would be no record that he was charged.

Applicant also falsified his 2013 SCA when he answered "no" to questions in Section 13C and failed to disclose that he was fired from his job at a motel after he was found smoking marijuana and drinking alcohol with a minor while on duty in July 2010. (SOR ¶ 3.b) Applicant claimed that he did not intend to falsify his 2013 SCA and points to his answers to Section 13A (Employment Activities), wherein he disclosed he was terminated. Although Applicant disclosed he was terminated, I find that he minimized the circumstance of his termination when he stated that he "quit job after being told you would be fired." And, as for the reason for quitting he stated: "Disagreement with store manager." Applicant's answers show his intent to mislead the Government about the true reasons for his termination.

I note that Applicant was 29 years old and had served in the National Guard when he submitted his 2013 SCA. He had been working for federal contractors since 2012. In light of his age, service, and work experience, he knew or should have known that he was required to be truthful, honest, and forthcoming when completing his SCA. Applicant failed to submit sufficient credible evidence to mitigate or explain his omissions. In light of the available evidence, I find his omissions were deliberate and with the intent to conceal the information or to mislead the Government.

Applicant's falsification of his 2014 SCA triggers the applicability the following disqualifying condition 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 17 lists six conditions that could potentially mitigate the 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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused 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.

The above mitigating conditions are not sufficiently raised by the facts and circumstances of this case and are not applicable. Applicant's falsifications are recent and serious. Personal conduct concerns are not mitigated.

I note that Applicant failed to disclose his illegal marijuana use during high school and between 2003 and 2006 in his 2006 SCA. He also failed to disclose that in 2005 he was charged with possession of marijuana, albeit the charge was later dismissed. He also failed to disclose to his National Guard chain of command that he was arrested and

charged with possession of marijuana and purchasing alcohol for a minor in July 2010, just before he deployed overseas.²

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines B, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 32-year-old employee of a defense contractor. He received credit for his years of service, working for federal contractors, and deployments in support of U.S. interests. Applicant's references commended his work performance, technical knowledge, professional certifications, and endorsed the continuation of his security clearance. His references lauded Applicant's trustworthiness, honesty, ability to follow rules and regulations, and the proper handling of classified information.

The factors weighing against continuation of his security clearance are more substantial than the mitigating circumstances. Applicant's evidence failed to mitigate the foreign influence security concerns. He failed to fully meet his burden of showing there is "little likelihood that [his relationship with his wife and her relatives, who are living in Kyrgyzstan] could create a risk for foreign influence or exploitation."

Applicant's deliberate falsification of his 2013 SCA is recent and serious. The personal conduct security concerns are not mitigated. He mitigated the drug involvement 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:

² Applicant's SOR does not allege that he illegally used marijuana in high school, his failure to disclose the 2005 possession of marijuana charge, and that he failed to disclose his 2010 charges to his National Guard chain of command. 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)). Applicant's non-SOR conduct will not be considered for disqualification purposes, and consideration will be limited to the five circumstances outlined by the Appeal Board.

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

Conclusion

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

JUAN J. RIVERA
Administrative Judge