

DATE: March 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22533

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Tim Pleasant, Esq.

SYNOPSIS

Applicant has a history of alcohol-related incidents that include both domestic violence offenses and a DuI incident. Both his alcohol abuse and prior involvement with illegal substances (primarily marijuana) are mitigated by passage of time and positive showing of rehabilitation manifested by sustained discontinued use. Applicant's demonstrated pattern of dishonesty that includes prior theft, unauthorized appropriation of items and money from his employer and falsification of his SF-86 (omissions of his drug use) are not mitigated, however, by any credited prompt, good-faith corrections (tolling for alcohol-impairment not available) and raise continuing security concerns about Applicant's judgment and reliability. Clearance is denied.

STATEMENT OF THE CASE

On July 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on August 6, 2003, and requested a hearing. The case was assigned to me on September 17, 2003, and was scheduled for hearing on November 5, 2003. A hearing was convened on November 5, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of 12 exhibits; Applicant relied on four witnesses (including himself) and eight exhibits. The transcript (R.T.) was received on November 24, 2003.

SUMMARY OF PLEADINGS

Under Guideline J, Applicant is alleged to have engaged in multiple incidents of criminal conduct between 1987 and June 1999: He is alleged to have (a) been arrested in June 1999 for third degree assault and harassment, for which he was placed on 24 months probation and ordered to attend Alcoholics Anonymous (AA) and domestic violence counseling, (b) been arrested in April 1996 for DuI and driving under the influence with a blood alcohol content (BAC) of .176 per cent, (c) been arrested in March 1996 for third degree assault, to which he pleaded guilty, (d) been arrested in January 1995 for third degree assault, to which he pleaded guilty, (e) shoplifted between 1991 and 1993 and removed approximately \$500.00 to \$1,000.00 worth of merchandise, and (f) been charged in 1987 or 1988 with contributing to the delinquency of a minor.

Under Guideline G, Applicant is alleged to have (a) been arrested in 1996 for DuI (incorporated), (b) been involved in three alcohol-related domestic violence incidents (incorporated), (c) consumed alcohol to the point of intoxication between February 1999 and June 1999 (between 6 and 12 times), (d) missed work and experienced blackouts as a result of alcohol consumption, (e) been involved in at least five other incidents of fighting with a female (causing her physical injuries), as well as other physical exchanges with the female on at least a weekly basis between 1993 and 1997 while either drunk or feeling the effects of a hangover, (f) attended an alcohol treatment program between August 1998 (*sic*) and January 1999, (g) admitted in a November 1997 alcohol evaluation to consuming from 6 to 12 beers daily from September 1990 to September 1997, and (h) attended AA meetings and considers himself to be an alcoholic.

Under Guideline H, Applicant is alleged to have (a) smoked marijuana on several occasions from about 1985 to 1995, (b) purchased marijuana twice between 1985 and 1995, (c) used and purchased LSD three times between 1986 and 1990, (d) used cocaine five times from 1987 to 1989 and (e) used and purchased mushrooms (psilocybin) twice between 1987 and 1989.

Under Guideline E, Applicant is alleged to have (a) been court-ordered in October 1993 to pay \$5,280.00 in child support arrearage and subjected to court-imposed wage garnishment, (b) illegally taken software from his employer and retained excess vacation time after being terminated from his employer in August 1995, (c) falsified an unemployment certification and accepted unemployment of approximately \$500.00 after by laid off by his employer in August 1995, (d) failed to include approximately \$9,000.00 in income from rental properties in his recent federal and state income tax filings, and (e) falsified his September 1998 security clearance application (SF-86) by denying any use of illegal drugs and his wage garnishment of October 1993 to pay off his child support arrearage.

For his response to the SOR, Applicant admitted most of the allegations. He denied purchasing any illegal drugs between 1990 and 1995, and he denied deliberately falsifying his September 1998 SF-86.

FINDINGS OF FACT

Applicant began abusing alcohol as a freshman in college. He frequently drank on the weekends at dorm parties where kegs of beer were generally available. At these parties, he would typically consume between four and eight beers over the course of an evening, which generally intoxicated him. Applicant continued this pattern of drinking throughout his four years of college attendance. During his college tenure (around 1987 or 1988), Applicant was charged with contributing to the delinquency of a minor. Because this charge was dismissed without probative facts from which to draw inferences, adverse findings regarding this charged incident are necessarily limited. The most that can be inferred is that Applicant was drinking prior to the incident at a college party. This makes the incident an alcohol-related one (R.T., at 71-72). Applicant also admits to having sexual intercourse with a minor (in 1988 or 1989) while in college. At the time, he didn't know she was under age and was never prosecuted for the offense.

After graduating from college in 1990 and finding both a girlfriend and professional employment, Applicant reduced his drinking considerably. This abruptly changed, though, in 1992 when he became unhappy with both his job and his relationship with his girlfriend (A). To cope with his added stress he drank more frequently, and by 1992 was drinking nightly at the rate of 8 to 12 beers in an evening. Using alcohol as an escape mechanism, Applicant began to experience profound changes in his behavior; negative changes included increased impatience, aggressive actions and intolerance. Still, he persisted with his drinking on a daily basis for about five years (to February 1997), or until he and A broke up.

After breaking up with A (in February 1997), Applicant returned to binge drinking for the ensuing six months,

alternating patterns of drinking heavily for two weeks at a time with abstaining for a couple of weeks. Over this six-month time frame, he estimates to have drunk to intoxication on about four occasions. Typically, he consumed 6 to 12 beers a day. This he acknowledged during

an court-ordered alcohol evaluation in connection with a 1996 alcohol-related incident.

During particularly heavy drinking episodes between 1993 and February 1997, Applicant's relationship with A often turned violent. Their weekly physical exchanges were most always preceded by drinking to intoxication levels. On one such occasion (in January 1995), A reported Applicant to police, claiming domestic assault. Following each report police were dispatched to check Applicant. In the first of his three alcohol-related arrests, Applicant was charged with third degree domestic assault, to which he plead guilty and was granted a two-year deferred sentence, conditioned on his attending 36 weeks of domestic violence counseling and paying court costs. Applicant had consumed alcohol prior to the incident and was engaged in an intense argument with A over the issue of disciplining A's children (*see ex. 2; R.T., at 66-67*).

In a second incident involving a physical exchange (in March 1996), Applicant was arrested and charged with third degree assault. He appeared in court on the charge in September 1997. After the third degree assault charge was substituted with harassment and child abuse charges, Applicant pleaded guilty to harassment; the child abuse charge was then dismissed. Applicant, in turn, was placed on probation for 18 months, ordered to pay court costs, and ordered to attend 36 weeks of domestic counseling. Applicant had consumed alcohol prior to the incident giving rise to his arrest, enough to make the incident alcohol-related (*see ex. 2; R.T., at 59, 66*).

Alcohol was also the source of a second arrest of Applicant in 1996. In April 1996 he was arrested and charged with DuI and driving under the influence/Blood Alcohol Content (BAC) of .010 per cent or more (with his BAC measuring 0.176 per cent). Applicant had consumed beer with a friend at a local pool hall. Over a two-hour period he split three pitchers of beer with the friend and was on his way home when he was stopped by the arresting officer for a faulty tail light. The officer administered a breathalyzer to Applicant, which Applicant failed, registering a 0.176 per cent BAC. Appearing in court in September 1997 for both his driving under the influence charges and earlier domestic violence charges, he pled guilty to the DuI charge and was placed on 18 months probation, sentenced to 30 days of imprisonment on work release, and an additional 30 days of imprisonment (suspended), and ordered to pay costs, complete 24 hours of useful public service, attend Level II alcohol education and attend 40 hours of therapy. Applicant had consumed beer with a friend at a local pool hall.

By all accounts Applicant satisfied the terms and conditions of his 1997 plea arrangement. Besides completing his counseling and alcohol therapy (which included AA meetings), Applicant fully complied with the terms of the restraining order placed on him that prohibited any contact with A. Applicant acknowledged being an alcoholic and pledged to his fellow AA members to remain abstinent. His treatment counselor (Ms. D of A Group) made no alcohol diagnosis of Applicant, though, and found Applicant to have used good judgment during his treatment sessions (spanning August 1998 and January 1999) and made appropriate adjustments in his life to enhance his judgment decisions (*see ex. C*)

But after several months of avoiding the abuse of alcohol during his counseling sessions with A Group (between August 1998 and January 1999), Applicant returned to heavy drinking. Between February 1999 and June 1999 Applicant drank weekly and drank to the point of intoxication on 6 to 12 separate occasions, mostly in restaurants or at parties, but occasionally at home as well (*see ex. 3*). Applicant often missed work and experienced blackouts as the result of his abusive drinking.

Between February 1997 and May 2000, Applicant was involved in a stormy personal relationship with B that entailed angry exchanges that sometimes escalated to physical violence. Applicant's continued drinking and low esteem during this relationship impaired his ability to cope with their problems. One of their many exchanges even resulted in a domestic violence arrest of Applicant. Following a June 1999 evening with B in which both consumed alcoholic beverages and became intoxicated, Applicant and B engaged in a particularly heated argument. During the course of the exchange, Applicant hit B in the face with the telephone. B went next door and called the police who responded. Upon their arrival at B's home, the police took her statement and confirmed she had been injured. With this information they

went to Applicant's home to get his account. After determining that Applicant and B assaulted each other, the police arrested and charged Applicant with third degree assault and harassment. When he appeared in court in November 1999 to respond to the charges, he pled guilty to the charges and was placed on 24 months probation and sentenced to 20 days of imprisonment with work release. Additionally, he was ordered to attend weekly AA meetings throughout his probation, attend 16 individual counseling sessions, attend 36 weeks of domestic violence counseling, abstain from alcohol and pay the \$138.00 in court costs (*see ex. 5*).

Applicant voluntarily sought counseling from a certified domestic violence treatment provider (T Services) following his June 1999 domestic violence arrest. In his initial evaluation with T Services he acknowledged consuming 60 to 70 bottles of beer a week (*see ex. 12*). He is credited by the counseling service with making good progress in endeavoring to understand his problems and devise ways to cope with them (*see exs. 12 and D*). His counseling reports covering the period of November 1999 through August 2000 credit his progress in anger control, marked by decreasing slips (*see ex. 12*), and he is credited with successfully completing the domestic violence counseling program. Throughout the period of his counseling, Applicant acknowledged himself to be an alcoholic; albeit he has never been diagnosed as alcohol dependent.

Applicant has maintained his sobriety since June 1999. He still attends domestic violence classes, though not required, regularly attends AA meetings (*see ex. 4; R.T., at 57, 63-64*), and has a sponsor (K) who attests to (i) Applicant's maintained sobriety over the past four years, (ii) his regular AA attendance, (iii) and his participation in chapter assignments. Applicant is currently working on his ninth step (making amends) in his AA program and recognizes a higher power as a necessary part of his continuing recovery from alcoholism. Today he tries to live within himself and no longer relies on alcohol to cover up his problems. Applicant has not consumed alcohol since June 1999 (a period of over four years) and commits to continued abstinence. From his AA chapter he has regularly received chips commemorating his self imposed sobriety: the last chip he received commemorated four years of sobriety (*R.T., at 111*). None of his colleagues at work have seen Applicant consuming alcohol at company functions since 1998.

Besides alcohol, Applicant abused drugs earlier in his life. Most of his admitted drug use occurred while he was a college student. He did continue to use and purchase marijuana for several years after he left college (*i.e., to 1995*) before giving up illegal drugs altogether.

While drinking excessively during the first three years following his college completion, Applicant frequently shoplifted. Between 1991 and 1993 he estimates to have removed approximately \$500.00 to \$1,000.00 worth of merchandise from local retail outlets. In a similar vein, Applicant abused his employer's trust; when near the end of his employment with X company in August 1995, he took software from the company without permission. In addition to taking company software without permission, he also failed to notify his X Company employer of his overpayment of vacation time. Following his layoff from X Company, he falsified his unemployment certification. As a result of his mis-certification, he received unemployment benefits of approximately \$530.00. Applicant was never prosecuted for any of his actions. To date, he has not made restitution for any of the items he misappropriated.

While battling alcohol and domestic relations problems, Applicant receiving notices from the IRS and state taxing about his multiple failures to file tax returns. He had delayed filing both his 1998 and 1999 returns until after he had achieved some stability in his sobriety: in June 2001 (*R.T., at 93-94*). In filing his 1998 and 1999 federal and state tax returns, he failed to list \$9,000.00 in income from his rental properties. Applicant has since entered into installment arrangements with the IRS to repay the back taxes claimed by the IRS to be owing and has repaid owed back taxes (*R.T., at 93*).

Asked to complete his SF-86 in September 1998, Applicant failed to acknowledge the illegal drugs he had used and purchased within the previous seven years (marijuana) when responding to questions 27 and 29. Applicant attributes his omissions to concerns about his job and clearance and figured he could get through by fudging (*R.T., at 94, 97-98*). While Applicant claims to have been alcohol-impaired during this period, his A Group records credit him with considerable progress with his drinking during his treatment sessions (*i.e., August 1998 and January 1999*), and with the exception of recurrent drinking between February and June 1999, sustained abstinence thereafter, enough to nullify any alcohol role in either his omissions or his failure to come forward earlier with his drug and wage garnishment disclosures (*see R.T., at 69-71*). Considering all of the surrounding circumstances of Applicant's marijuana omissions in his 1998 SF-86, inferences warrant they were made knowingly and wilfully.

In the same 1998 SF-86, Applicant omitted the garnishment of his wages to cover ordered child support arrearage (since brought current) in October 1993, which at that time totaled \$5,280.00 (*see ex. 11*). Applicant claims he interpreted the language in the order calling for biweekly child support payments to be made out of his wages to be nothing more than court ordered payments, not enforcement action through wage garnishment (R.T., at 82-83, 104). The language in the court's child support order is less than clear about the means of collection (*ex. 11*). Without more clarity in the order, Applicant's version of his understanding cannot be characterized as implausible. His explanations, as such, are accepted and enable him to avert inferences of deliberate falsification of question 34 re: wage garnishment action as a means of enforcing collection of his child support arrearage.

Applicant was interviewed by a DSS agent in February 1999, and again in January 2001. In neither of these interviews did Applicant volunteer any disclosure of his most recent marijuana activity. He was not asked about drug involvement and provided no acknowledgments of his marijuana use and purchases within the seven years preceding the completion of his SF-86. But Applicant reconsidered his omission after his second interview and called DSS to schedule another interview. As the result of his call, a third DSS interview was scheduled (this one with another DSS agent) in February 2001 (*see ex. 4*). In this third interview Applicant voluntarily disclosed all of his prior illegal drug activity (including his most recent marijuana involvement in 1995) to the agent, as well as his wage garnishment to cover his child support arrearage. Applicant is credited with making his disclosures voluntarily without being first prompted by Agent B. Both when he executed his SF-86 and during the considerable intervening period following his submission of his materially flawed SF-86, Applicant manifested no signs of alcohol impairment, save for a brief period of recurrent abusive drinking between February and June 1999.

Applicant is well regarded by his supervisor and coworkers as an outstanding and trusted engineer who consistently goes out of the way to help his team members. His performance evaluations covering the period of June 1998 through of June 2002 reflect outstanding contributions (*see ex. A*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The revised Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct, regardless of whether the person was formally charged.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 1 The criminal behavior was not recent.

MC 6 There is clear evidence of successful rehabilitation.

Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Disqualifying Conditions:

DC 1 Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

DC 2 Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

MC 2 The problem occurred a number of years ago and there is no indication of a recent problem.

MC 3 Positive changes in behavior supportive of sobriety.

Drug Involvement

The Concern: Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Disqualifying Conditions:

DC 1 Any drug abuse.

DC 2 Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Mitigating Conditions:

MC 3 A demonstrated intent not to abuse any drugs in the future.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, or falsification of relevant and material 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.

DC 5 A pattern of dishonesty or rule violations.

Mitigating conditions:

MC 3 The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

MC 5 The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant has a praiseworthy civilian record, but also a record of domestic violence and other alcohol-related incidents over a number of years, prior drug use, shoplifting, employment breaches, court-ordered wage garnishment to collect child support arrearage, intercourse with a minor, income omissions in filed federal and state tax returns, and falsification of a security application form. These incidents and actions have raised Government concerns over Applicant's judgment, reliability and trustworthiness: requisites for determining his eligibility to access classified information.

Alcohol-related issues

Beginning in college, Applicant drank excessively, often to intoxication, before he gave up alcohol altogether in 1999. His drinking occasionally caused him to miss work and experience blackouts. His drinking also contributed to domestic violence incidents as well as a DuI.

Over a period of five years spanning January 1995 and June 1999 Applicant was involved in four alcohol-related incidents, two of which involved domestic violence visited on Applicant's first girlfriend (A). His last alcohol-related incident (in June 1999) involved Applicant physically shoving child of his second girlfriend (B), albeit not seriously enough to cause any injuries to the child. Applicant's four alcohol-related incidents reflect serious alcohol abuse by Applicant, even without proof of intoxication in all of the incidents, and documented proof of his having a recurring problem with alcohol through June 1999. Never diagnosed as an abusive drinker or alcohol dependent, Applicant, nonetheless, binged regularly (interrupted by brief periods of light to moderate drinking).

Following his April 1996 DuI conviction, Applicant enrolled in A group's alcohol treatment program, whose services were primarily of an educational nature. While he was never diagnosed or evaluated for an alcohol problem (despite his acknowledging consuming 6 to 12 beers daily) he was credited by his group counselors with making good progress in learning more about alcohol abuse. Still in denial about his alcohol problem, however, he returned to abusive drinking after concluding his sessions with A Group. Under these circumstances Applicant's counseling services cannot be characterized as successful.

Having resumed his drinking after each of his first three alcohol-related incidents, Applicant manifested not only denial

of any potential alcohol problems associated with his drinking but also his unwillingness to seek meaningful treatment and aftercare in a controlled setting. On the strength of the evidence presented, three disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work), DC 2 (alcohol-related incidents at work) and DC 5 (habitual or binge drinking).

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified four alcohol-related offenses. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, his recurrent returns to abusive drinking after short periods of abstinence, his most recent favorable evaluations from his domestic violence counselors, and his sustained abstinence over more than four years with the aid of AA.

By his actions and improved understanding (which includes his acknowledged alcoholic condition) Applicant demonstrates he has taken the necessary restorative and corrective measures in his personal affairs to ensure that he does not repeat the same or similar judgment lapses associated with his prior problems with alcohol abuse. His mitigation efforts reflect sustained sobriety and vigorous AA participation over a four year period that is corroborated by not only earned chips commemorating his sobriety, but the praise of his sponsor and others familiar with his work history. His acceptance and recovery efforts have been recognized not only by his sponsor, but his work colleagues as well, who have observed no signs of Applicant drinking around the work environment or in social situations.

Considering the record as a whole, Applicant makes a convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol and criminal conduct. He is manifestly on the right path to maintaining permanent abstinence. Favorable conclusions are warranted with respect to the criminal implications of his alcohol-related incidents (covered by Guidelines G and J).

By contrast, Applicant's shoplifting activities and contributing to the delinquency of a minor offense were not shown to have been alcohol-related and raise independent security concerns. That they were either never prosecuted at all or were dismissed is not dispositive. Our Appeal Board has repeatedly stated that the government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Accordingly, as to these covered actions, two of the disqualifying conditions of the Adjudicative Guidelines for criminal conduct may be invoked: DC 1 (criminal conduct regardless of whether the person was formally charged) and DC 2 (a single serious crime or multiple lesser offenses) may be applied to the facts at hand.

Still, these non-alcohol related actions of Applicant are aged and have not been repeated. Accordingly, both of these covered-allegations are subject to two of the mitigating conditions of the Adjudicative Guidelines for criminal conduct: MC 1 (criminal behavior not recent) and MC 2 (isolated incident) and overall are mitigated.

Drug issues

As a college student, Applicant experimented with various illegal substances: marijuana, LSD, cocaine and mushrooms (psilocybin). Except for the marijuana, he ceased all further involvement with drugs after he graduated from college. However, he continued using and purchasing marijuana recreationally for several more years before quitting altogether in 1995. Two disqualifying conditions apply here: DC 1 (any drug abuse) and DC 2 (purchase and possession).

Applicant has not returned to drug use since 1995 and with his benefit of counseling and a strong AA program, he assures he will not return to drugs in the future. Applicant's assurances are backed by a considerable period of demonstrated abstinence. That he didn't disclose his past involvement when he executed his SF-86 is of some concern when gauging his credibility *vis-a-vis* future drug involvement, but his omissions are more than counterbalanced by his demonstrated avoidance of illegal drugs over a period of many years and strong network support. To his benefit, Applicant take advantage of two mitigating conditions of the Adjudicative Guidelines for drugs: MC 1 (not recent) and MC 3 (demonstrated intent not abuse drugs in the future). Applicant mitigates security concerns associated with his past abuse of illegal drugs, enough to enable safe predictable judgments about his ability to avoid recurrent drug involvement. Favorable conclusions warrant with respect to the allegations covered by Guideline H.

Falsification and judgment issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's omission of his illegal drug use and purchases in his September 1998 SF-86, and in his first two DSS interviews that followed. So much trust is imposed on persons cleared to see classified information that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

By omitting his past marijuana use/purchases, Applicant concealed materially important background information needed for the Government to properly process and evaluate his security clearance application. Applicant's omission is inferentially attributable to his concern about how disclosure of the adverse information would impact on his employment and clearance: understandable certainly, but historically considered by our Appeal Board to be insufficient to avert drawn conclusions of knowing and wilful concealment.

Applicant's omission was knowing, deliberate, and material to a determination about his clearance suitability. It invites application of Disqualifying Condition (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of the first two opportunities afforded him to correct his earlier SF-86 omission in his initial DSS interviews following completion of his 1998 SF-86. Not only has our Appeal Board found the use of Mitigating Condition (MC) 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity. *Compare* ISCR Case No. 02-23365 (March 22, 2004) and ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995).

Applicant's explanations for delaying his disclosure preclude him from taking advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct, and from mitigating Government security concerns associated with his deliberate omissions. Not only is precedent lacking for tolling the promptness prong of MC 3 due to alcohol impairment, there is nothing in the record to document Applicant's being physically impaired when he executed the SF-86 in September 1998, or in the ensuing few months that followed, save for a brief period of recurrent alcohol abuse in 1999. Applicant's tolling claim must, accordingly, be rejected.

Applicant's history of child support arrearage enforcement measures, his unauthorized receipt of software and unemployment payment benefits, his sexual relationship with a minor while a college student, and his income exclusions from his federal and state tax returns reflect serious judgment lapses, too, and cannot be separated from his SF-86 omissions when assessing the security significance of his judgment and trust deficiencies covered by the personal conduct allegations of the SOR. Together they form a pattern of dishonesty, for which DC 5 (pattern of dishonesty or rule violations) of the Adjudicative Guidelines for personal conduct is applicable.

In Applicant's favor, he satisfied his child support arrearage. He is also credited with filing amended tax returns and satisfying any additional taxes owing as the result of his previously unreported rental property income. This conduct is, accordingly, mitigated. So are any judgment lapses associated with his having a sexual affair with a minor while in college mitigated; this conduct is aged, disputed as to Applicant's understanding of the girl's age at the time, and was never, in any event, prosecuted.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant, however, with respect to subparagraphs 4.b, 4.c, and 4.f and 4.g covered by Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT,

CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

GUIDELINE G (ALCOHOL): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

Sub-para. 2.e: FOR APPLICANT

Sub-para. 2.f: FOR APPLICANT

Sub-para. 2.g: FOR APPLICANT

Sub-para. 2.h: FOR APPLICANT

GUIDELINE H (DRUGS): FOR APPLICANT

Sub-para. 3.a: FOR APPLICANT

Sub-para. 3.b: FOR APPLICANT

Sub-para. 3.c: FOR APPLICANT

Sub-para. 3.d: FOR APPLICANT

Sub-para. 3.e: FOR APPLICANT

Sub-para. 3.f: FOR APPLICANT

Sub-para. 3.g: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 4.a: FOR APPLICANT

Sub-para. 4.b: AGAINST APPLICANT

Sub-para. 4.c: AGAINST APPLICANT

Sub-para. 4.d: FOR APPLICANT

Sub-para. 4.e: FOR APPLICANT

Sub-para. 4.f: AGAINST APPLICANT

Sub-para. 4.g: AGAINST APPLICANT

Sub-para. 4.h: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge