KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant's history of recurrent marijuana use over a 28-year period is mitigated by the absence of any probative use in over five years and his assurances he will not return to marijuana in the foreseeable future with the team support at work and new found AA network support he has surrounded himself with. However, his exhibited pattern of covering up his drug use from company drug test administrators and reasons for his termination from a previous employment is not mitigated under any of the pertinent mitigation guidelines and raise continuing security concerns about Applicant's judgment and reliability. Clearance is denied.

CASENO: 03-21185.h1

DATE: 01/26/2005

DATE: January 26, 2005

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-21185

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant's history of recurrent marijuana use over a 28-year period is mitigated by the absence of any probative use in over five years and his assurances he will not return to marijuana in the foreseeable future with the team support at work and new found AA network support he has surrounded himself with. However, his exhibited pattern of covering up his drug use from company drug test administrators and reasons for his termination from a previous employment is not mitigated under any of the pertinent mitigation guidelines and raise continuing security concerns about Applicant's judgment and reliability. Clearance is denied.

STATEMENT OF THE CASE

On March 25, 2004, 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 April 19, 2004, and requested a hearing. The case was assigned to me on July 15, 2004, and was scheduled for hearing on September 23, 2004. A hearing was convened on September 23, 2004, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny,s3 or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on four witnesses (including himself) and six admitted exhibits. The transcript (R.T.) was received on October 14, 2004.

PROCEDURAL ISSUES

Before the closing of the hearing, agreement was reached between counsel and the court to provide closing briefs in lieu of oral arguments. Both parties filed their closing briefs after receiving copies of the transcript. Department Counsel, in turn, filed a reply brief, which was received and considered along with the other closing submissions.

Before the closing of the hearing, the parties were also afforded the opportunity to brief Government hearsay objections on Applicant's exhibits D through K as they relate to these fact issues: (1) whether Applicant informed his employer about his marijuana use and the reasons for his termination from his prior employer, (2) which of his employers were informed, and (3) when they were informed. Since Department Counsel did not object to the character reference portions of the offered exhibits, exhibits D through K were admitted at hearing for those purposes without further consideration. Upon further consideration following the hearing, the portions of Applicant exhibits D through K that addressed the objected to fact issues were stricken from the otherwise admitted exhibits by letter order of October 15, 2004.

SUMMARY OF PLEADINGS

Under Guideline H, Applicant is alleged to have (1) used marijuana, at times daily, from 1971 to September 1999, (2) been arrested for possession of marijuana and minor in possession of alcohol in May 1972, and found guilty of both charges and fined, (3) been arrested for possession of marijuana in June 1974, (4) been treated for drug abuse in 1989 at a treatment center, and (5) been involuntarily terminated from Company # 1 in September 1999 because of a positive drug test on a randomly administered test and violation of company policy by altering a drug test and then refusing to take a follow-up test.

Under Guideline E, Applicant is alleged to have (a) altered a urine sample to mask the presence of marijuana in his urine sample container prior to providing it to a clinic for an employment random drug test in 1999, and then after being of the results showing his urine sample had been altered or adulterated, refusing to provide a urine sample in the presence of the clinical director, (b) been involuntarily terminated from his defense employer in September 1989 because of a positive drug test on a randomly administered test and violation of company policy by altering a drug test and then refusing to take a follow-up test, and ©) falsified his employment application with his current employer by listing he had left his previous employer for personal reasons instead of the true reasons for his involuntary separation, which he has still not disclosed to his employer.

For his answer to the SOR, Applicant admitted some of the allegations. He admitted his 1972 and 1974 arrests for marijuana possession and ensuing convictions, denying only that he was found guilty instead of pleading guilty to both offenses (his claims), and his receiving voluntary treatment at a treatment center in 1989. He admitted, too, to being involuntarily terminated from Company # 1 in 1999 for altering a drug test and then refusing to take a follow-up drug test after introducing a substance to mask the presence of marijuana in his urine sample container prior to providing it to the testing clinic. Applicant denied, however, his falsifying his employment application with Company # 3 by listing his separation from Company # 1 for personal reasons: He claimed to rely on the professional advice of an occupational career counselor in completing his job application with Company # 3. In clarification of his prior answers in a signed, sworn DSS statement, he admitted that not disclosing his termination from Company # 1 in his initial interview with Company # 3 was wrong and a valid reason to question his honesty and integrity.

FINDINGS OF FACT

Applicant is a 50-year-old systems analyst for a defense contractor who seeks a security clearance with Company # 3. The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's drug abuse history

Applicant was introduced to marijuana in high school. Between 1971 and 1989, he used marijuana regularly. He often used it daily, sometimes even multiple times over the course of a day, and at times before reporting to work. While he was still a minor, he was involved in two-drug related arrests for marijuana possession. In both instances (the first in 1972 and the second in 1974) he pled guilty to marijuana possession and was fined.

Applicant voluntarily entered a treatment program with a recognized treatment facility in 1989. While the facility had a physician in charge of the program, staff administered to his daily counseling and treatment needs (R.T., at 89). Every day he attended meetings with his counselors re: his 30-day outpatient regimen and is credited with successfully completing the program. He kept his participation in the program a secret from both his wife and his Company # 1 supervisors and coworkers. He considers himself a recovering addict and believes he was diagnosed drug dependent; although, he is not certain of his diagnosis (R.T., at 89-90). After completing his treatment program, he claims to have abstained from illegal drug use for about ten years with the help of Narcotics Anonymous (NA) and his 10-step program. He provides no documentation for these claims, however, and no witnesses familiar with his social behavior during this time frame. Absent any proof from the Government that he used drugs during this ten-year period, though, Applicant's abstinence claims must be respected and are accepted.

In July 1999, Applicant slipped and returned to marijuana use following a series of stressful experiences at work and

dropped out of his recovery program (R.T., at 27-31, 87-88). He used marijuana frequently over a five-week period spanning July-August 1999 (about 25 times altogether) before quitting altogether. He often used it before reporting to work and purchased enough to meet his personal needs (R.T., at 87-88). Since his 1999 relapse, he has been able to avoid marijuana and all other illegal drugs and assures he has no intention of ever resuming his use of illegal drugs. While he has not returned to NA and its ten-step program, he has recently began attending Alcoholics Anonymous (AA) meetings, which he finds beneficial in aiding his drug-free commitment. He claims a five-year chip commemorating his five years of abstinence from drug use (awarded on trust) since his last use in August 1999 (R.T., at 122).

As an employee of his previous employer (Company # 1), Applicant became aware of his company's anti-drug policy, which he believes was instituted sometime after he came to work for the company in 1984. As an employee of Company # 1, he was subject to the company's instituted random drug testing. In anticipation of being tested, he purchased a masking agent over the Internet that he hoped would prevent detection of marijuana in his system and permit him to continue his use, instead of simply quitting altogether (R.T., at 30-31, 86-88). After having used marijuana for about a month or so, he was scheduled (in September 1999) for random drug testing (R.T., at 30-31). When given a specimen container by the testing official, he altered and adulterated his urine sample with the masking agent he had purchased over the Internet. Although he knew at the time his altering of his urine sample to avoid detection was wrong, he didn't want to get caught with a positive drug test, knowing illegal drug use was against company policy.

Several days after he submitted his urine sample to Company # 1's testing official, Applicant was called to a company meeting, unsuspecting he had been caught altering his urine sample. At this time, he was given a paper indicating he had adulterated his urine sample and was told to take another test, without any inquiry as to whether he used drugs. Applicant declined to take a new test and was promptly suspended for two weeks by his employer (R.T., at 32). When he returned to work two weeks later, he was terminated for cause for altering a drug test to mask his use of marijuana and refusing to take another test in the presence of a medical doctor (R.T., at 97). Before the termination he was not asked whether or not he masked his urine sample or used drugs before his test (R.T., at 39-41). Once he was terminated, he told his Company # 1 supervisor about his previous drug use and his efforts to conceal it with his altering of his urine sample (R.T., at 41-42).

Because Applicant was confronted over altering a Company # 1 administered random drug test, it is not entirely clear whether he would have continued using marijuana but for his being confronted over a drug test. There is no probative evidence that he ever used marijuana or any illegal drug after his suspension and ensuing termination from Company # 1, and no inferences are warranted that he did resume using marijuana after August 1999.

Applicant's job consultations and applications

Following his termination from Company # 1, Applicant enrolled in a local college. As a student of the college he came to know the school's director of career placement (Ms. A). Her area of responsibility included helping students secure jobs, which encompassed employment applications and the interview process (R.T., at 139). Shortly after enrolling in the college, Applicant (concerned that citing the reasons for his termination from Company # 1 might foreclose his chances of surviving initial screeners to explain his termination) went to see Ms. A for suggestions on how to find a job

and guidance on completing employment applications.

In his meeting with Ms. A, Applicant disclosed up-front his past use of marijuana as well as the circumstances of his termination from Company # 1 (R.T., at 44, 142-43). Based on her considerable knowledge and experience she told Applicant it was standard practice in his state for job applicants to avoid disclosing prior terminations for drug use in their applications and simply assign "personal reasons" as the reason for leaving an employer under such circumstances (R.T., at 144-45). The responsibility, according to Ms. A, then fell to the employer to make further inquiry about the reasons for termination. Because applications typically pass through the hands of several hiring officials who do not have a reason to know all of the personal details, she reasoned, Applicant should expect to be ready to discuss his reasons when asked about them in the ensuing interview (R.T., at 45). While Applicant didn't ask Ms. A if she believed citing personal reasons was the honest thing to do, he impressed her that he was seeking the best direction for approaching an employment application (R.T., at 147). However, Ms. A didn't express any familiarity with accepted disclosure practices for applicants seeking employment with companies who require their employees to hold security clearances.

Shortly after consulting with Ms. A, Applicant applied for work with Company # 2. In filling out the employment application, Applicant followed Ms. A's advice and listed personal reasons as the basis of his Company # 1 separation in his application after reportedly telling the supervisor who hired him the whole story about the circumstances of his Company # 1 termination (R.T., at 95-96). Applicant never corrected his Company # 2 application in any way that is discernible from the developed exhibits and testimony, and it is unclear as to who besides the supervisor who hired him was informed of his separation reasons.

After working several months for Company # 2, Applicant applied to Company # 3 (in August 2000) for work. Before filling out an employment application with the company, he was invited for an interview. His interview with Ms. B (his former supervisor) lasted about an hour and didn't include any questions about his separation from Company # 1. Because his past Company # 1 employment never arose in the interview, Applicant felt no obligation to raise it and didn't; even though he anticipated its being raised. All he indicated to her at the time was that he had some bad things happen to him (R.T., at 104, 200). Ms. B, in turn, didn't raise Applicant's employment experiences with Company # 1 in the interview because she didn't think the subject was relevant at the time (R.T., at 200).

After completing his interview with Ms. B in September 2000, Applicant was given an employment application to complete. In the application he cited personal reasons for his termination from Company # 1, and nothing more. He attributed his personal reasons explanation of his termination from Company # 1 to the advice he received from Ms. A and his desire to keep others in the company's management chain from knowing the circumstances of his Company # 1 termination. Both in his hearing testimony and ensuing DSS interview he insisted he did not consider his answers to be dishonest at the time. Although, he did acknowledge that the words personal reasons carry a much less negative connotation to a potential employer than the words "terminated" and increased his chances of getting an initial interview (R.T., at 129). Upon further reflection, he admitted in his April 2004 answer he should have brought up his Company # 1 termination reasons in his evaluation interview with Company # 3, if he was conducting himself with honesty and integrity, which he acknowledges he wasn't. Whether this represents a pleading admission of knowing and willing falsification of his employment application with Company # 3 was not pursued by either party, but requires addressing before drawing any factual inferences.

Pleading admissions in DOHA proceedings are treated not dis-similar to the way they are handled in the courts. While not evidence, pleading admissions have the effect of withdrawing a fact from issue and totally dispensing with the need for proof of a fact. Such admissions have been held to be conclusive in a case, unless allowed to be withdrawn on good cause shown. *See* DISCR OSD Case No. 90-0401 (January 24, 1994); *see McCormick on Evidence,* Sec. 262 (Edward W. Cleary et al. eds., 3d ed. 1984). Only when the admission has been withdrawn or amended by permission does the admission lose its status as a judicial or official admission. Applicant in this case made unequivocal admissions in his response to being dishonest in not bringing up his separation from Company # 1 in his initial employment interview (implicitly the one with Ms. B in August 2000). He says nothing, however, about his answers in his ensuing employment application. Because pleading admissions are construed narrowly, they cannot be expanded to include materials not specifically admitted to or referenced. Applicant's answer does not specifically cite dishonesty in his employment application and can not be inferred within the context of a pleading admission. His acknowledgments may be considered, though, along with the statements made by himself and others in the record to determine his state of mind when completing his employment application with Company # 3.

Based on his interview and application answers, Applicant was hired by Company # 3 shortly after completing his employment application, sans any Applicant requests for additional interviews or company questioning about the personal reasons he cited for his leaving Company # 1. A. Taking account of the seriousness of the circumstances surrounding Applicant's termination from Company # 1, his future job concerns and understandings reflected in his consultations with Ms. A, his failure to volunteer any information about his Company # 1 termination in either his initial interview with Ms. B, or thereafter, before he was hired by Company # 3, and Ms. B's own impressions of whether citing personal reasons to a termination question was either honest or appropriate (she believed not, while at the same time indicating she believed Applicant did), inferences cannot be averted that his citing of personal reasons for his separation from Company # 1 in his employment application with Company # 3 was knowingly and wilfully false.

Applicant's disclosures in his SF-86 and ensuing interviews

In September 2000, less than a month after his hire by Company # 3, Applicant was asked to complete an SF-86. His answers included a full explanation of his termination from Company # 1 and his use of marijuana in 1999; even though the question inquiring about his past drug use only referenced the previous seven years (*see* ex. 2). Shortly after completing his SF-86, Applicant was interviewed for the first time by a DSS agent who inquired about his recurrent marijuana use and failure to disclose the actual reasons of his termination from Company # 1 when completing his 2000 employment application with that company (R.T., at 105). This interview was very confrontational and consumed the better part of two days (*see* answer; R.T., at 50). After reflecting on this first DSS interview with this first agent (Agent A), Applicant showed his SF-86 to Ms. B and others in his chain of command (R.T., at 202). Whether the pertinent information in his SF-86 was furnished his facility security officer (Ms. E) is not clear.

Some six months later (in April 2001), he was interviewed by another DSS agent (Agent B). Under questioning from Agent B, Applicant admitted his use of illegal drugs just before his random drug test in September 1999. He acknowledged, too, his answers regarding his separation from Company # 1 were not accurate but were based on the counseling advice he received from Ms. A. Agent B, in turn, pressed him to admit his answers about his Company # 1

separation were not honest, despite the counseling he received from Ms. A. While Applicant declined to do so, he did tell other members of his technician team about his prior marijuana involvement

Applicant's character references

Applicant is highly regarded by his supervisor and team technician leads, past and present, who interface with Applicant daily and uniformly find him technically superior, reliable and trustworthy (*see* exs. L and M). Over the past two years of employment with Company # 3 he has received excellent performance appraisals and regular promotions.

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 revised 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 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.

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 use.

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

Mitigating Conditions:

MC 1 The drug involvement was not recent.

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

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, 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, falsification or misrepresentation 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, including violation of any written or recorded agreement made between the individual and the agency.

Mitigating conditions:

MC 2 The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

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

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.

CONCLUSIONS

Applicant brings a praiseworthy civilian work record to these proceedings, in addition to a history of recurrent marijuana use and acts of deceit and dishonesty manifest in an altered drug test and concealment of a prior drug-related termination in an employment application. Applicant's recurrent involvement with marijuana over a 28-year period and acts of deceit and dishonesty in work-related actions raise security significant issues about his judgment, reliability and trustworthiness required for eligibility to access classified information.

Illegal drug issues

Applicant's marijuana use was abusive by all evidentiary accounts and considered addictive by Applicant himself. While recurrent, it has not been repeated, though, since August 1999 (a period of over five years) and was interceded by a sustained ten-year period of abstinence.

Applicant's recurrent abusive use of marijuana was sustained at regular levels for almost 20 years spanning 1971 and 1989, was marked by two drug possession arrests and convictions in his early years, and was resorted to again in 1999 preceding his altered drug test. His history of marijuana involvement is sufficient to invoke two of the disqualifying conditions of the Adjudicative Guidelines for drugs, *i.e.,* DC 1 (any drug abuse) and DC 2 (illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution). Applicant's avoidance of marijuana over the past five years is not based on any received impressions of friends and colleagues, substance abuse counselors, negative drug screens (his company has no random drug screening program), or fellow church members or AA participants who he has interfaced with. His accepted claims are based entirely on his own testimony and the absence of any probative proof to the contrary from the Government.

Misconduct predictions, generally, may not be based on supposition or suspicion. *See* ISCR Case No. 01-26893 (October 2002); ISCR Case No. 97-0356 (April1998). The Appeal Board

has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used marijuana since his last recorded use, or based on his past use is likely to resume usage in the future. *See* ISCR Case No. 02-08032 (May 2004). Based on his own accepted testimony and the testimonials of his character references, Applicant may invoke MC 1 (non recency of the drug involvement) and MC 3 (demonstrated intent not to abuse any drugs in the future). While Applicant's recurrent marijuana use over 28 plus years raises some questions over the strength of his avoidance assurances, it is not enough to prevent Applicant's successful mitigation of the issue. Applicant's recurrent use of marijuana between 1971 and 1999 has been interrupted by long periods of non use and has not been probatively repeated in over five years.

Applicant's assurances that his marijuana involvement is a thing of the past are entitled to acceptance based on his limited drug relapse in 1999, the absence of any drug activity attributed to him over the past five plus years, and his very strong character references from his former supervisor and team leads, who have worked closely with him. Considering all of the developed evidence of record, Applicant mitigates security concerns associated with his recurrent use and possession of marijuana. Favorable conclusions warrant with respect to sub-paragraphs 1.a through 1.e of Guideline H.

Falsification 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 (a) masking of his urine sample and ensuing termination from Company # 1 for altering a drug test and refusing to take another test and (b) his falsifying an employment application with his employer by concealing the circumstances of his separation from Company # 1. So much trust is imposed on persons cleared to see classified information that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

By altering his drug test and refusing to take another test (which resulted in his involuntary termination) and later misstating the real reason for his separation from Company # 1 (citing personal reasons), Applicant concealed materially important background information needed for his company to evaluate his employment eligibility. Even though his former supervisor (Ms. B) didn't think his separation reasons from Company # 1 were important enough to inquire into during his initial employment interview, she acknowledged later that she wouldn't have cited personal reasons to skirt acknowledgment of his drug-related termination from Company # 1. Not to doubt Ms. A's knowledge and experience in dealing with employee applicants and companies in her region who accept personal reasons as a way around disclosing prior drug involvement, but the norms of expected candor and honesty from persons who seek employment that requires a security clearance are likely higher. Holding a personal security clearance draws upon the highest fiducial burdens imposed on persons accessed to see classified information and enables the Government to rightfully claim punctilious adherence to governing trust responsibilities that justifiably inhere in the trust relationship extant between Applicant and DoD. *See Snepp v. United States,* 444 U.S. 507, 511n.6 (1980). Conventions that might hold in a local business sector for using personal reasons to avoid disclosing a drug-related termination in an employment application do not by themselves justify the relaxing of federal standards of candor and honesty for persons seeking employment that requires a security clearance. Ms. B appeared to understand this distinction in her own hearing testimony.

Applicant's altering of his drug test, misstatements of his reasons for separation from Company # 1 in his application, and his corresponding failure to alert his employer of his termination circumstances before he was hired renders his application misstatements not only material but indicative of intent and motive to secure his position with Company # 3 before electing to come forward with the true facts about his Company # 1 termination. His actions are also incompatible with established norms of expected behavior for persons seeking access to the nation's secrets. Taken together, Applicant's actions invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire) and DC 5 (pattern dishonesty or rule violations).

Mitigation is difficult to credit Applicant with. Applicant's acts of dishonesty are each material and represent serious breaches of norms of company policy and fidelity. His disclosure of his separation reasons, while made promptly to Ms. B following completion of his SF-86, cannot be considered to have been made in total good-faith: one of the two prongs of MC 3 of the Guidelines for personal conduct. In Applicant's case, his misstatements represent not isolated but repeated acts of dishonesty, first by altering his drug test, and second by repeating his personal reasons explanation for his separation in his employment applications with both Companies # 2 (never probatively correcting his misstatement in the ensuing application itself with this company) and # 3.

Where (as here) there has been a shown history of repeated falsifications over a period of time, the Appeal Board has considered such belated disclosures (even voluntary ones) to be insufficient to mitigate demonstrated poor judgment, unreliability and untrustworthiness. *See* ISCR No. 03-00763 (January 2005). Applicant's repeated falsifications by themselves preclude Applicant's successful mitigation by his belated disclosures. But this is not all: Applicant is inferred to have anticipated the need for a security clearance when he applied for his Company # 3 job and came forward with his disclosures only after he was hired and interviewed by a DSS agent several weeks later.

Not only has the 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 and not recent (when they are not), but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has repeated his falsifications and failed to take advantage of an earlier prospective employer opportunity to be fully truthful about his misstatements. *Compare* ISCR No. 03-00763, *supra,* and ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). It is not just the calendar time for making correction of material misstatements that is security significant to making an overall assessment of candor and honesty in an applicant, but the crucial events where disclosure could be reasonably expected of the applicant, but was disregarded. Applicant, accordingly, may not take advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

There can be no doubt but that Applicant has inspired confidence and trust among his defense contractor supervisor and team leaders and has compiled an impressive list of performance accomplishments with his employer. But in the face of his repeated acts of dishonesty with several distinct employers, his favorable character evidence alone is not enough to overcome security concerns extant with the Government over his lapses of candor and honesty.

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 with respect to subparagraphs. 2.a and 2.b of 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 H (DRUGS): 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

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST 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