

KEYWORD: Alcohol; Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant has a history of alcohol abuse from about 1993 to at least October 2005, and of illegal drug abuse from 1994 to August 2002. Drug involvement concerns are mitigated by his change to a drug-free lifestyle. Alcohol consumption concerns persist where he continues to drink up to eight beers in a sitting after being diagnosed with polysubstance (alcohol and marijuana) dependence. Personal conduct and criminal conduct concerns exist where he was not candid about his mental health treatment and his drug abuse on his security clearance application, and falsified an August 2003 sworn statement by denying any marijuana use since April 2001. Clearance is denied.

CASENO: 04-04352.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04352

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol abuse from about 1993 to at least October 2005, and of illegal drug abuse from 1994 to August 2002. Drug involvement concerns are mitigated by his change to a drug-free lifestyle. Alcohol consumption concerns persist where he continues to drink up to eight beers in a sitting after being diagnosed with polysubstance (alcohol and marijuana) dependence. Personal conduct and criminal conduct concerns exist where he was not candid about his mental health treatment and his drug abuse on his security clearance application, and falsified an August 2003 sworn statement by denying any marijuana use since April 2001. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked. The SOR was based on alcohol consumption (Guideline G), drug involvement (Guideline H), personal conduct (Guideline E), and criminal conduct (Guideline J).

On May 25, 2005, Applicant responded to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on September 6, 2005. On September 19, 2005, I scheduled a hearing for October 28, 2005. At the hearing, after eight government exhibits had been identified for the record and three admitted, Applicant was granted a continuance without any objection by the government so that he could obtain the assistance of a union representative. A transcript of the October 28, 2005, proceeding was received on November 11, 2005.

Pursuant to notice dated November 10, 2005, I reconvened the hearing on December 6, 2005. Applicant represented himself with the assistance of a union official. Five additional government exhibits were admitted, Exhibit 5 over Applicant's objection. Eight Applicant exhibits (Ex. A through Ex. H) were admitted. Applicant and the union official testified on his behalf. A transcript of the December 6, 2005 hearing was received on December 19, 2005. At Applicant's request, the record was held open for two weeks for him to consult with his relatives and potentially submit documentation from a rehabilitation facility that he had overlooked. No documents were received by the December 20, 2005, due date.

FINDINGS OF FACT

Applicant was alleged under Guideline G to have consumed alcohol to excess from about 1992 to at least September 2003; been arrested and sentenced to fines and/or suspended jail terms for minor in possession of alcohol in 1995, 1997, June 1998, April 2000, December 2000, for disorderly conduct in April 1999, for violation of probation in February 2001, and for operating under the influence in June 2003; and been treated for diagnosed polysubstance dependence (alcohol and marijuana) from March 15, 2001 to at least June 4, 2002, with an inpatient stay in December 2001. Applicant was alleged under Guideline H to have used marijuana from 1992 to at least 2002, notwithstanding his treatment for polysubstance dependence, cocaine from 1998 to at least 2001, and LSD, hallucinogenic mushrooms, and ecstasy in at least 1996/97. Applicant was alleged under Guideline E to have deliberately falsified a September 2002 security clearance application (SF 86) by failing to disclose his outpatient treatment for depression from 1998 to 2001, and as an inpatient in January 2002; by listing only his 2001 minor in possession of malt beverage in response to the alcohol/drug offenses inquiry; and by denying any illegal drug involvement and any alcohol-related treatment or counseling in the last seven years. Applicant was also alleged to have falsified material facts in an August 2003 sworn statement by claiming he had abstained from marijuana since 2001 and denying he had used any illegal drug other than marijuana, hashish, and cocaine. Applicant's arrest record and alleged falsifications were cross-alleged under Guideline J.

In his answer, Applicant described a history of alcohol and marijuana use as a youth, but denied that he drank alcohol or used marijuana daily. He admitted he had been arrested and sentenced as alleged, had used marijuana to April 2002, tried the other illegal drugs alleged, and received treatment for depression. He denied that he had been treated for polysubstance dependence, or that he had deliberately falsified his security clearance application or sworn statement, and explained his difficulty in recalling information after his car accident. Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the evidence of record, I make the following additional findings:

Applicant, 25 years of age, has been employed by a defense contractor as a carpenter since October 2002. He seeks a secret-level clearance for his duties.

Applicant has a history of depressive illness and of alcohol abuse starting at age 12 or 13. He began to use marijuana as

well in 1994. By 1995, he was smoking it regularly (five to 10 times weekly), and purchasing it for his own use. Applicant also used hashish about once a year, when the drug was offered to him at parties. In 1996/97, Applicant used hallucinogenic mushrooms and LSD about 20 times each when with friends camping or otherwise socializing, and ecstasy three times at parties. Applicant's underage drinking--six to 12 beers three or four times weekly--led to the first of several arrests for minor in possession of alcohol. Sometime in the summer of 1995, Applicant and a friend shoplifted a few beers from a local convenience store. Applicant was arrested for minor in possession and shoplifting. He pleaded guilty to the alcohol offense, spent a weekend in juvenile detention, and performed 40 hours of court-ordered community service. (2) Two summers later, he was arrested at a party along with all the other underage attendees, and fined \$500 for minor in possession of alcohol.

Applicant dropped out of school in the 10th grade, and at age 17 moved out of his parents' home to get away from his physically abusive father. He supported himself by working odd jobs. In 1998, he began drinking alcohol to intoxication on an almost daily basis, up to 12 beers in an evening while socializing with friends. Applicant also snorted cocaine two or three times in 1998. While attending a party with a former classmate in June 1998, he was arrested for minor in possession of alcohol. He was sentenced to 20 days in jail (suspended) with probation and a \$400 fine plus costs.

In 1999, then on Zoloft and Lithium for his depression, Applicant stopped drinking and using illegal drugs while his cohabitant girlfriend was pregnant and she had a son. In April 1999, he was arrested for disorderly conduct following a dispute with his girlfriend. He failed to appear in court, and was arrested on a warrant in June 1999. Applicant pleaded guilty to disorderly conduct and failure to appear, and he was sentenced to 20 days in jail, suspended, placed on probation, and fined \$417.50 plus costs.

On December 31, 1999, he relapsed into daily drinking, usually to intoxication, and five to 10 times weekly marijuana use. In April 2000, he was again arrested at a party and charged with minor in possession of alcohol. He pleaded guilty and was sentenced to 30 days, suspended, and probation.

Applicant's relationship with his girlfriend continued to deteriorate, and they eventually broke up in about October 2000. In December 2000, Applicant was a passenger in a vehicle pulled over for speeding. He was arrested for possession of marijuana after the police found a marijuana pipe on his person, and for minor in possession of a malt beverage. He was found guilty of the alcohol charge and sentenced to 20 days in jail, suspended, to probation, and a \$500 fine plus costs.

In February 2001, he was convicted of violation of probation, and sentenced to five days in jail. Incarceration was deferred in favor of 40 hours on a work crew.

Applicant resolved in about February 2001 to stop drinking and using marijuana, but relapsed into marijuana use several times over the next month. He also consumed alcohol on March 14, 2001. The following day, he underwent a psychiatric evaluation at the referral of his primary physician. Applicant reported that with the exception of sobriety in 1999, and the month preceding the evaluation, he had used marijuana and alcohol on an almost daily basis since age 12 or 13. He reported spending up to \$400 to \$500 a month on marijuana, with his use so frequent that it no longer had any

(3)

effect on him. The psychiatrist (Dr. X) rendered a diagnosis of polysubstance dependence (alcohol and marijuana), mood disorder (not otherwise specified), and anxiety disorder (not otherwise specified). He referred Applicant for substance abuse treatment and psycho-pharmacologic treatment (medication and counseling) for his mood disorder.

In late April 2001, Applicant suffered a traumatic brain injury in an automobile accident in which he was a passenger. He spent two months in the hospital before being transferred to a rehabilitation facility. Applicant remained abstinent from alcohol and illegal drugs because he did not want to complicate his recovery. In mid-October 2001, Applicant resumed drinking. Two days during the work week, he consumed two or three beers. On Fridays or Saturdays, he drank 10 to 12 beers and one or two shots of liquor at a local tavern.

In November 2001, Applicant went back to work, taking a part-time job as a lift attendant at a local ski resort. On December 24, 2001, Applicant learned from his former girlfriend that the child he thought he had fathered, and who he had cared for as his son for the past two years, was not his. Angry and threatening violence against his former girlfriend, he received inpatient treatment for six days in early January 2002 for diagnosed major depression.

On May 7, 2002, Applicant presented to Dr. X seeking benzodiazepine medication for anxiety. Applicant admitted to the psychiatrist that he was continuing to use marijuana on a regular basis. He denied any recent alcohol use, but either could not or would not tell the psychiatrist when he had his last alcoholic drink. In a follow-up session of June 4, 2002, with Dr. X, Applicant admitted he was drinking and using marijuana on a daily basis.⁽⁴⁾ The psychiatrist raised the option of substance abuse treatment with Applicant, who did not think it would be helpful to him. The psychiatrist observed no signs of alcohol or marijuana abuse, but assessed Applicant's primary issue as "ongoing substance abuse," with definite drug seeking behavior as to benzodiazepines. Applicant continued to abuse marijuana through August 2002.

Wanting to change his lifestyle, Applicant left his home state in September 2002 and moved in with his uncle, who works for the defense contractor. In conjunction with his employment at the company, Applicant executed a security clearance application on September 30, 2002. In response to alcohol-related offenses, Applicant listed one possession of malt beverage offense, which he mistakenly recalled as occurring in September 2001 (vice December 2000). He responded "NO" to any consultation with a mental health professional within the last 7 years (question 19), and to any use of illegal drugs since age 16 or in the last 7 years (question 27), because he did not want to jeopardize his employment or ability to obtain a security clearance. Applicant also answered "NO" to any alcohol-related treatment or counseling within the last 7 years (question 30), as he understood his treatment to have been for his depression.

Applicant lived with his uncle until March 2003. Not wanting to be a negative influence on his young cousins, Applicant "didn't drink too terribly much." After he moved out on his own, Applicant drank two or three beers twice weekly at happy hours and 10 to 12 beers with one or two shots of liquor on Friday or Saturday nights.

In late June 2003, Applicant was stopped for running a red light. He had consumed at least five beers earlier in the evening and the police detected a strong odor of alcohol on his breath. Applicant failed field sobriety tests, and was arrested for operating under the influence (OUI), with a blood alcohol level of .122%, and failure to obey traffic control signal. He successfully completed a court-ordered 15-week impaired driver intervention course on or before February 11, 2004. After his OUI, Applicant attended Alcoholics Anonymous (AA) meetings twice a week for about two months and then once weekly thereafter, stopping completely by June 2005.

On August 22, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Applicant discussed his alcohol offenses and alcohol use, describing his typical consumption since October 2001 as two or three beers twice weekly at happy hours, and on either a Friday or Saturday evening, 10 to 12 beers and one or two shots of liquor over the course of four or five hours of socializing at a tavern. He indicated it was "not unusual" for him to become intoxicated after drinking in that quantity. Applicant expressed his intent to gradually taper the frequency of his weekend alcohol use to once a month and the quantity to where he no longer becomes intoxicated. Applicant denied ever having been physically or psychologically dependent on alcohol. As for his illegal drug use, Applicant admitted he had used marijuana five to 10 times a week and hashish on average once yearly from 1995 to 2001, and cocaine two or three times between about 1998 and 2001. Applicant denied any use of other illegal drugs and of any marijuana since his accident in April 2001 ("I have continued to completely abstain from the use of drugs/marijuana thereafter because I have lost interest in marijuana use." Ex. 2). He disclosed past treatment: "alcohol-related care" for two weeks in approximately December 2001, (5) outpatient counseling for manic depressive illness with Dr. X approximately monthly for three years ending in Spring 2001, and two weeks of outpatient counseling at another facility sometime before his accident. He attributed any omissions from his security clearance application to "oversight and haste" in completing his SF 86 and to his traumatic brain injury sustained in April 2001.

On January 9, 2004, Applicant was reinterviewed by the DSS agent about his drug use and SF 86 omissions. Applicant admitted he had used LSD and hallucinogenic mushrooms about 20 times each and ecstasy three times in 1996/97. As for his last use of marijuana, Applicant stated:

I apparently was mistaken concerning the point in time when I stopped using marijuana in the sense that I apparently stopped using marijuana in approximately Aug 02 (vice 2001). I also forgot that I stopped using marijuana for one year in approx. 1999.

He admitted he had not mentioned his use of hallucinogens during his previous interview "because [he] did not want to convey the mistaken impression that [he] had somehow been a drug addict," and he did not consider his use when he was 16 or 17 to be significant.

In 2004, Applicant consumed beer about twice weekly on weekends. On occasion, he drank a couple of beers at a bar with friends after work during the work week. As of December 2005, he was drinking alcohol "a couple times a week," in quantities varying from just a couple to as many as eight beers in a sitting. He last drank to intoxication on his birthday in mid-October 2005. He celebrated by inviting several friends from work to his home where he drank eight to ten beers. When he drinks a six-pack or more, it is usually at home. His girlfriend or another friend drives him home if

he has too much to drink at a bar. He consumes no more than one or two if he has to drive. Applicant does not intend to resume an affiliation with AA and does not feel he presently has a problem with alcohol. He does not knowingly associate with any individuals who use illegal drugs.

Applicant has been a dependable and responsible worker for the defense contractor. He reports to work on time, can be counted on to be there when scheduled, and works well with others.

Applicant volunteered for a temporary duty assignment in November 2004 when other coworkers were not willing to commit to the assignment.

As of October 2005, Applicant and his girlfriend had shared an apartment for six months. She had known him for over two years and had seen no behavior that would lead her to think he was abusing illegal drugs or was alcohol dependent. Applicant was financially solvent. He had paid off his automobile loan, was contributing to a retirement account at work, and had mutual fund and money market assets in excess of \$40,000 that were being managed by his uncle. Applicant invests \$700 of the \$1,000 a month he receives in settlement monies from the April 2001 automobile accident. The contract value of this account was \$21,836.55 as of mid-November 2005.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After considering the evidence of record, the following adjudicative guidelines are pertinent to an evaluation of Applicant's security suitability:

Alcohol Consumption. 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. (¶ E2.A7.1.1)

Drug Involvement. 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. (¶ E2.A8.1.1.)

Personal Conduct. 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. (¶ E2.A5.1.1.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the government established its case with respect to Guideline G, alcohol consumption, Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline E, personal conduct.

Applicant has a history of alcohol abuse since age 12 or 13. Arrested and convicted several times for minor in possession of alcohol, Applicant drank alcohol to intoxication almost daily in 1998. While on Zoloft and Lithium, and in a cohabitant relationship with his girlfriend who was expecting a child, he was sober for about a year in 1999 only to relapse into previous patterns of alcohol (and marijuana) abuse with adverse legal involvement as his relationship with his girlfriend deteriorated. In mid-March 2001, a psychiatrist diagnosed Applicant as suffering, in part, from polysubstance dependence (alcohol and marijuana), based on Applicant's report of almost daily use of both substances.

Applicant was abstinent for about six months while recovering from his brain injury, but resumed drinking, at times as many as 12 beers plus two shots on a weekend night as of 2003. Although there was no apparent effect on the quality of his work or his attendance, his drinking led to an OUI in June 2003. Under Guideline G, DCs ¶ E2.A7.1.2.1. *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*, ¶ E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence*, and ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*, are pertinent to an evaluation of his security suitability.

The government's case for application of ¶ E2.A7.1.2.6., *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*, is not persuasive. Applicant admits he still drinks alcohol, but contends the treatments alleged in SOR ¶¶ 1.i. and 1.j. were for his depression rather than alcohol and drug abuse. The records of his counseling sessions with Dr. X (Ex. 7, Ex. 8) and of his inpatient stay in early 2002 (Ex. 6) reflect a treatment focus on pharmacological medications and therapy for mental health issues. The fact that Dr. X referred Applicant for substance abuse treatment suggests his counseling was not focused on Applicant's substance dependency. More recently, Applicant completed an impaired driver intervention program court-mandated for his OUI, but there is insufficient information about the intervention program to conclude that it qualifies as an alcohol rehabilitation program within ¶ E2.A7.1.2.6.

The Directive provides for mitigation of alcohol consumption concerns where there are positive changes in behavior supportive of sobriety (*see* ¶ E2.A7.1.3.3.). He is credited with successfully completing the driver intervention program in or before February 2004 and with attending AA meetings to sometime in 2005. He is involved in a stable personal relationship with his cohabitant girlfriend, who has not seen any evidence of alcohol dependence or of illegal drug abuse. He reports to work on time, and has been financially responsible. Yet, since he has been diagnosed as alcohol dependent, consideration of ¶ E2.A7.1.3.4. *Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*, is appropriate. He fulfills none of the conditions. Even if the driver impaired intervention qualified as outpatient rehabilitation, he continues to drink twice a week, up to eight beers at a sitting on occasion. He has not been involved in AA for the past six months, sees no need to resume his affiliation, and lacks the favorable prognosis. He described himself as "in check" in that he no longer wakes up with a hangover from drinking (Tr. 72), but his current drinking pattern poses an unacceptable security risk given his history. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., and 1.k. are resolved against him. SOR ¶ 1.e., 1.i., and 1.j. are found for him, as the government did not prove that Applicant was under the influence on the occasion of the domestic incident in 1999, or that he received alcohol and drug as opposed to mental health treatment.

Concerning Guideline H, Applicant began to use marijuana in 1994. From 1995 to 1998, he smoked the drug five to 10 times weekly. After about a year drug-free, he relapsed into previous patterns in 2000. By 2001, he had developed a dependency on the drug, which was costing him \$400 to \$500 a month. He also abused hallucinogens (LSD and hallucinogenic mushrooms) and ecstasy in 1996/97, and cocaine about three times between 1998 and 2001. After his accident in April 2001, he abstained from all illegal drugs as he did not want to complicate his recovery, but relapsed into marijuana use in 2002. His illegal drug involvement falls within Guideline H disqualifying conditions (DC) ¶ E2.A8.1.2.1. *Any drug abuse*, ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, and E2.A8.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*.

Applicant's use of hallucinogens (LSD and psychedelic mushrooms) went beyond experimentation. At the same time, his abuse of hallucinogens and ecstasy was confined to 1996/97 when he was about 16. (See E2.A8.1.3.1. *The drug involvement was not recent.*) Immaturity and peer pressure were clearly factors that have to be considered. (6) Albeit more recent, his abuses of hashish and cocaine were spontaneous, at parties when the drugs were offered, and limited to only a few times each. In contrast, the regularity of his use (almost daily for several years), his relapse in 2000, his inability in early 2001 to abide by his resolve to remain drug free, and his resumption of marijuana use in 2002 after he had recovered from his brain injury, show the extent to which marijuana was part of his lifestyle. Applicant admitted to Dr. X in March 2001 that he had abused it so heavily that it no longer had an effect.

Yet, his extensive involvement with marijuana to about August 2002 is mitigated by his demonstrated change to a drug-free lifestyle with no intent to resume illegal drug use. Notwithstanding the negative inferences for Applicant's credibility because of his failure to be fully candid with the government about the extent of his illegal drug use (see Personal Conduct, *infra*), there is no evidence of recent behavior on his part that would support an inference of ongoing drug use or that he continues to place himself in situations where he risks relapse. In September 2002, he intentionally moved away from the environment and those friendships that had been conducive to his illicit drug use. Applicant's dependability and productivity at work and his favorable finances reflect a stability he did not enjoy before he moved to his present locale and began working for the defense contractor. His live-in girlfriend, who has known him for about two years, knows of no drug use on his part. His three years of abstention are by far his longest drug-free since he started using marijuana at age 14, and he is not likely to jeopardize his hard-earned stability by resuming illegal drug use. Mitigating condition ¶ E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future*, applies. Favorable findings are returned as to ¶¶ 2.a., 2.b., 2.c., 2.d., 2.e., and 2.f.

Applicant's lack of candor about his illegal drug involvement and mental health treatment raises independent personal conduct concerns. An inference of intentional falsification may reasonably be drawn in this case from his false denials to questions 27 (illegal drug use within the last 7 years) and 19 (any mental health consultation in the last 7 years). As noted in my conclusions as to Guideline G, *supra*, the medical records in evidence substantiate treatment for his mood disorder, and his history of illegal drug involvement is documented in his sworn statements (Ex.2, Ex. 3). Applicant presented no medical or scientific evidence from which I could reasonably infer that his clearly false responses to questions 19 and 27 were due to lack of memory caused by his traumatic brain injury. Assuming Applicant was unable to remember the name of the treating mental health professionals or the facilities where he obtained counseling, he knew he had been treated for depression within the seven years preceding his SF 86. He provided detailed accounts of his drug involvement when interviewed by the DSS agent. Although he apparently had to make some telephone calls to obtain addresses and employment data (Tr. 55), it is unlikely others would have known the details of his involvement with illegal substances. His claim of inadequate recall is especially suspect with respect to those events that occurred after his recovery from the traumatic injury. As recently as June 2002, he had a session with Dr. X seeking benzodiazepine medication, and he told Dr. X at that time that he was using marijuana daily. Guideline E DC ¶ E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material fact 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*, applies.

Provided the opportunity to correct the record when questioned by the DSS agent on August 22, 2003, Applicant falsely

denied use of marijuana since his accident in April 2001. He also did not disclose his involvement as a teen with hallucinogens and ecstasy. When reinterviewed about the omissions on January 9, 2004, Applicant admitted he had not previously disclosed his involvement with hallucinogens and ecstasy because he had not wanted to give the impression that he had been a drug addict. He claimed that he had been candid "to the best of [his] ability" when he told the DSS agent in August that he had last used marijuana in 2001. That is simply not credible, given he had used marijuana daily as of June 2002. DC ¶ E2.A5.1.2.3. *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*, must also be considered.

Criminal conduct concerns are implicated as well (*see* ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged* and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*), as a deliberate false statement to the U.S. government violates 18 U.S.C. § 1001.⁽⁷⁾ Reform of the personal conduct and criminal conduct concerns is not demonstrated where he continues to deny the knowing and intentional nature of his misconduct. While Applicant's motivation was likely to protect his job and the stability of his lifestyle that he has worked hard to secure over the past three years, the government must be assured that those persons granted access can be counted on to place their obligation to the government first.

Applicant has not yet shown that his representations can be relied on. In his Answer to the SOR, Applicant claimed he last used marijuana on "4/20/02," when he had admitted to Dr. X in June 2002 that he was using marijuana daily and he told a DSS agent in January 2004 that he "apparently stopped using marijuana in approximately Aug 02." None of the corresponding mitigating conditions under Guidelines E and J apply to mitigate his knowing misrepresentations. SOR ¶¶ 3.a., 3.c., 3.e., and 4.a. are resolved against him.

Concerning Applicant's alleged falsification of SF 86 questions 24 (alcohol and drug offenses, ¶ 3.b.) and 30 (alcohol treatment, ¶3.d.), Applicant placed the government on notice of his minor in possession offenses by listing his latest offense, even mistakenly dating it as more recent than it was. While he was obligated to list his prior alcohol offenses, the evidence fails to persuade me that he intentionally concealed them. There is insufficient proof of any alcohol treatment or counseling before his court-mandated participation in the impaired driver intervention program. Favorable findings are returned as to ¶¶ 3.b. and 3.d.

The government alleged additional Guideline J, criminal conduct, concerns because of his minor in possession of alcohol convictions, his disorderly conduct offense, his violation of probation, his OUI, and his illegal drug involvement. DC ¶ E2.A10.1.2.1. and ¶ E2.A10.1.2.2. apply to this misconduct. While there is little risk of future illegal drug abuse because of his change to a drug-free lifestyle, his repeated knowing disregard of the laws prohibiting illegal drug involvement raises doubts about whether he can be counted on to abide by rules and regulations. Since Applicant is now of legal age to drink, there can be no recurrence of the minor in possession of alcohol. Yet, his underage drinking shows a similar lack of regard for the law. Furthermore, his criminal drug and alcohol offenses cannot be viewed in isolation from his knowing and wilful false statements. His evidence in reform is not enough to overcome his pattern of criminal conduct. Guideline J allegations ¶¶ 4.b. and 4.c. are also resolved against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: Against the Applicant

Paragraph 2. Guideline H: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: For the Applicant

Subparagraph 3.e.: Against the Applicant

Paragraph 4. Guideline J: AGAINST THE APPLICANT

Subparagraph 4.a.: Against the Applicant

Subparagraph 4.b.: Against the Applicant

Subparagraph 4.c.: Against the 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 a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Applicant told a psychiatrist [Dr. X] in March 2001 that he had a five-day-stay at a treatment facility at age 15 for court and mandated drug and alcohol treatment. (Ex. 5) Applicant denies he was treated for substance abuse, and the government presented no records from the facility. Subsequent treatment at the facility in January 2002 was for major depression. (Ex. 6)

3. This psychiatrist is apparently affiliated with the mental health services center alleged in ¶ 1.i.

4. Applicant testified that to his recollection, he drank less heavily after his accident, a couple of drinks with dinner six or seven times a month. (Tr. 46) He also claimed to have used marijuana "maybe a handful of times" in 2002, with a last use that April. (Tr. 52) His contemporaneous account to the psychiatrist is considered more credible.

5. The only record of treatment around this time is a discharge summary of his inpatient admission following threats of violence against his ex-girlfriend. He was diagnosed with, and treated for, major depression. (Ex. 6)

6. In assessing his security suitability within the context of the whole person, his age and maturity at the time of the conduct must be taken into account (see ¶ E2.2.1.4.).

7. 18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.