

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05180

ECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Bruce R. Heurlin, Esquire, Michael A. Fleischman, Esquire

SYNOPSIS

Applicant illegally abused cocaine in December 1982, when he was about 22 years old, for initially unspecified reasons other than associating with the "wrong crowd," and continued using it on an occasional basis, perhaps six times per year, until 1996, or possibly 1999. He has abstained since 1996, or possibly 1999. Notwithstanding his certifications, oaths, and affirmations that his responses and statements were true and accurate, Applicant, on seven separate occasions over a period of eight years, willfully falsified, omitted, or concealed material facts pertaining to his history of substance abuse. Applicant's actions, especially after he had been granted a security clearance in 1982-83, reflect a high degree of questionable judgment and irresponsibility. Clearance is denied.

STATEMENT OF THE CASE

On July 7, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).⁽¹⁾ On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline H (drugs) and Guideline E (personal conduct) 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 a clearance should be granted, continued, denied, or revoked.

In two sworn written statements, dated respectively April 16, 2005,⁽²⁾ and November 16, 2005,⁽³⁾ Applicant responded to the SOR allegations and requested a hearing. Attached to Applicant's supplemental answer were 38 attachment-exhibits. Department Counsel indicated the government was ready to proceed on November 21, 2005. The case was initially assigned to another Administrative Judge on December 6, 2005, and then to a different Administrative Judge on December 8, 2005. It was reassigned to me on March 7, 2006. A notice of hearing was issued that same date, scheduling

the hearing for March 29, 2006. It was held as scheduled. During the hearing, four Joint exhibits, seven Government exhibits, four Applicant exhibits, and the testimony of two Applicant witnesses (including Applicant) were received. The transcript (Tr.) was received on April 10, 2006.

RULINGS ON PROCEDURE

Department Counsel requested Official Notice be taken of the contents of Title 21, United States Code (Controlled Substances Act), § 802, *Definitions* and § 812, *Schedules of Controlled Substances*. There being no objection by Applicant, pursuant to Rule 201, *Federal Rules of Evidence* (F.R.E.), I took Official Notice as requested.

The parties also offered four stipulations, all signed by both Applicant's counsel and a Department Counsel, agreeing to the admission of a variety of documents, including character letters, awards, psychological reports, and a curriculum vitae of a proposed "expert" witness. After concluding the stipulations were properly acknowledged and agreed upon, the stipulations were accepted and the documents, admitted. In addition, Department Counsel agreed to the expertise and qualifications of the board certified psychologist-witness tendered as an "expert."

FINDINGS OF FACT

Applicant admitted most of the factual allegations pertaining to drug involvement under Guideline H (subparagraph 1.b., and a portion of 1.a.). He also admitted all of the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. through 2.f.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. He is seeking to retain the Top SECRET security clearance which was granted to him in March 1998.⁽⁴⁾ He was previously granted security clearances at different levels since 1982-83.⁽⁵⁾ Applicant has been employed by the same government contractor, or successor company, since June 1982, and currently serves as a senior engineering scientist. His immediate supervisor, a vice president of the company, a person who has worked with Applicant since 1982, supports his application. He had "the utmost confidence in [Applicant's] character and loyalty." A good friend, whom Applicant has known since 1978 in college, contends that Applicant has "always demonstrated integrity and sincerity." Applicant is an outstanding employee who has received his share of awards and accolades, and his annual performance appraisals routinely characterize him as an exceptional performer who always demonstrates extraordinarily high performance or who far exceeds requirements.

He received a B.S. degree in Electrical Engineering in 1982, an M.S. degree on an employer fellowship in Electrical Engineering in 1985, and an MBA degree in 1998. He was married to his first wife in 1990, separated in 1999 due to a tumultuous and "horrific" relationship, and divorced in December 2001. He married his current wife in October 2003.

Applicant was a substance abuser whose choice of substances was cocaine, although he used marijuana on one occasion in approximately 1979.⁽⁶⁾ He started using cocaine in December 1982, when he was about 22 years old, for initially unspecified reasons other than associating with the "wrong crowd."⁽⁷⁾ He continued using it on an occasional basis--perhaps six times per year--at times for social reasons with friends and/or co-workers or before going to nightclubs, sometimes together with his first wife, and at times because of marital discord, until 1999.⁽⁸⁾ He usually "snorted a couple lines of powdered cocaine."⁽⁹⁾ He initially contended he last used marijuana at a party he and his first wife threw on March 17, 1996--St. Patrick's Day--when he inhaled about two lines of cocaine, and that he had abstained since that time. However, he subsequently admitted that while he could not recall specific events after 1996, it was possible he used cocaine on "isolated instances" between 1996 and 1999.⁽¹⁰⁾ He was certain he had not used it at least since 1999.⁽¹¹⁾ There is no evidence to rebut his contention.

During the period of his substance abuse, Applicant purchased cocaine from several sources, and periodically received it via Federal Express or some other carrier. Typically, he purchased two to three grams of cocaine at a time for about \$100.00, and that amount would generally last up to two weeks. He also contributed about \$20.00 to \$50.00 for his share of cocaine each time he used it during various parties.⁽¹²⁾ He declined to identify his dealer(s).⁽¹³⁾

Applicant is also a chronic liar whose regard for the truth between at least October 1990 and September 2003 has been non-existent. Although he has repeatedly certified or sworn that certain statements made by him during interviews or entries made by him on security clearance applications or national security questionnaires were correct, accurate, true, or complete, to the best of his knowledge and belief, at least as it pertains to his lengthy history of drug use, he, nevertheless, knowingly and willfully concealed or omitted the truth, and falsified his responses.

On October 23, 1990, Applicant completed his Security Clearance Application (SF 86), a copy of which is not in evidence, and in response to an inquiry pertaining to ever having used or possessed a variety of illegal substances, including marijuana and cocaine, even one-time or on an experimental basis, Applicant responded "no." [\(14\)](#) He certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of marijuana and cocaine, as described above. Applicant subsequently admitted he had deliberately omitted and concealed the truth, and falsified the response. [\(15\)](#) His justification for his lie was that he was afraid a truthful response would jeopardize his career and potentially impact his ability to remain in his residence in a very expensive and difficult housing market. [\(16\)](#)

On August 10, 1995, Applicant completed his National Security Questionnaire (DD Form 398-2), [\(17\)](#) and in response to an inquiry pertaining to ever having used a variety of illegal substances,

including marijuana and cocaine, [\(18\)](#) Applicant responded "no." [\(19\)](#) He certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of both illegal substances, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. His justification for his lie was that he was embarrassed by his substance abuse and concerned truthful answers could cause his security clearance to be denied, as well as have a negative impact on his job. [\(20\)](#)

In that same DD Form 398-2, in response to an inquiry pertaining to ever being involved in the illegal purchase, manufacture, trafficking, production, or sale of those illegal substances, [\(21\)](#) Applicant responded "no." [\(22\)](#) He again certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his purchases of cocaine, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response.

On November 6, 1997, Applicant completed his Questionnaire for National Security Positions (SF 86), [\(23\)](#) and in response to an inquiry pertaining to ever ("since the age of 16 or in the last 7 years, whichever is shorter") having used a variety of illegal substances, including marijuana and cocaine, [\(24\)](#) Applicant responded "no." [\(25\)](#) He certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of both illegal substances, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. His justification for his lie was that he was afraid that both his career and schooling would be in jeopardy if he had told the truth. [\(26\)](#)

In that same SF 86, in response to an inquiry pertaining to being involved, in the last 7 years, in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of those illegal substances, [\(27\)](#) Applicant responded "no." [\(28\)](#) He again certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his purchases of cocaine, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response.

In that same SF 86, in response to an inquiry pertaining to ever illegally using a controlled substance while possessing a security clearance, [\(29\)](#) Applicant responded "no." [\(30\)](#) He again certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of cocaine, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response.

On September 19, 2002, Applicant completed his Security Clearance Application (SF 86), [\(31\)](#) and in response to an inquiry pertaining to ever ("since the age of 16 or in the last 7 years, whichever is shorter") having used a variety of

[\(32\)](#)

[\(33\)](#)

illegal substances, including marijuana and cocaine, Applicant responded "no." He certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of cocaine, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. His justification for his lie was that he was embarrassed by his substance abuse and concerned truthful answers could cause his security clearance to be denied, as well as have a negative impact on his job. (34)

In that same SF 86, in response to an inquiry pertaining to ever illegally using a controlled substance while possessing a security clearance, (35) Applicant responded "no." (36) He again certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of cocaine, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response.

In December 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS). (37) During the interview, Applicant was questioned about illegal drug use and an extra-marital relationship. He initially denied ever having an extra-marital affair or using illegal drugs. In fact, Applicant did have an extra-marital affair with the wife of a co-worker, but did not admit to it at the time because he was not proud of the incident and had put it behind him. (38) As for the substance abuse allegation, Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. His justification for his lie was that he was concerned truthful answers could cause his security clearance to be denied, as well as have an adverse affect on his job. (39)

On February 27, 2003, Applicant was again interviewed by a special agent of DSS. During the interview, Applicant was questioned about several topics including illegal drug use. He denied ever using illegal drugs, and attributed those allegations to lies propagated by his "very vindictive" ex-wife. (40)

Again, I have not ever used any type of illegal drugs during the period that I held a security clearance, which would be from 1987 to present. I have never used cocaine or marijuana during this period. . . .I have never been involved in the purchasing of illegal drugs to include having cocaine delivered to my hotels when I would vacation . . .or at home. . . .I do not know why anyone would say I used cocaine and if they did make such allegations they were lying. (41)

Applicant subsequently admitted that he had deliberately concealed the truth and falsified the response. His justification for his lie was that he was concerned truthful answers could cause his security clearance to be denied, as well as have an adverse affect on his job. (42)

On September 16, 2003, prior to being administered a polygraph examination, Applicant was again interviewed by a DSS special agent regarding his past substance abuse. For the very first time, he acknowledged having used cocaine, but minimized the number of times by stating he had only used it on two occasions in 1994 and 1996. (43) He also stated he had only purchased cocaine on two occasions. (44) After completing the testing phase of the polygraph examination, Applicant finally opened up and related a more extensive history of cocaine abuse involving both purchase and use. He admitted he deliberately lied to the investigator because he was scared truthful answers could cause his security clearance to be denied, as well as have an adverse affect on his job. (45) He was initially hopeful his lies would go unnoticed and he could pass the polygraph examination. (46)

On September 24, 2003, Applicant declared:

I have too much to risk, both professionally and personally to ever contemplate doing drugs again. . . .I do not condone the behavior I describedI will never do drugs again." (47)

A board certified psychologist, (48) with expertise in the areas of domestic violence, sexual abuse, and issues related to children, along with experience in forensic psychology, conducted a clinical interview of Applicant and administered him a complete Minnesota Multiphasic Personality Inventory-2™ (MMPI-2) in February 2006. The MMPI-2™ is an objective personality test, consisting of 567 true/false questions, designed for use in adults. (49) "It is an objective measure that has been empirically validated and possesses high reliability." (50) The value of the inventory is that it is

predictive of behavior based on character traits, (51) and is helpful in pre-employment decisions. (52) The MMPI-2™ responses were entered into newly created Nuclear Power Facility Adjustment Rating Report (NPFARR) (53) and Nuclear Power Facility Interpretive Report (NPFIR) (54) formats to generate those two reports.

Based on her interpretation of the MMPI-2™ responses, along with the two derivative reports, the psychologist rendered an opinion, "to a reasonable degree of psychological probability," which stated:

[Applicant] is basically of honest character. He appears to have been rehabilitated in that he now truly understands the mistakes he made on the previous polygraph. He understands the importance of being honest and open when questioned. . . . He genuinely appears to feel remorseful about not being forthright on the Security Clearance Questions. (55)

In addition, she opined there is nothing to indicate Applicant has a propensity to lie. (56)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," (57) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that both standards are one and the same. In reaching this Decision, I draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive

include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Drug Involvement Analysis:

Guideline H states that "[i]mproper 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." (58) Applicant's relationship with cocaine, especially while holding a security clearance, has raised, according to the government, several issues regarding his security clearance eligibility and suitability. The government is apparently no longer concerned about his use of marijuana.

Commencing in approximately 1979, Applicant ventured into illegal substance abuse when he experimented with marijuana. That one-time experimentation was initially followed by about three years of abstinence, but in December 1982, when he was about 22 years old, he started abusing cocaine on an occasional basis. Regardless of his motivation, the illegality of his actions, or his possession of a security clearance, he continued his cocaine abuse at least until March 1996, and possibly as recently as 1999. That substance abuse, including purchase and use of cocaine, and to a much lesser extent, his experimentation with marijuana, is of concern, especially in light of his desire to have continuing access to the nation's secrets. Cocaine and marijuana use was, and remains, against the law, DoD policy, and his corporate policy.

The Directive clearly expresses the government's concern regarding drug involvement in provision E2.A8.1.1.1., quoted above. Provision E2.A8.1.1.2.1. generally identifies and defines drugs, as follows (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*), and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). Likewise, DI DC E2.A8.1.2.5. (*failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*) might also apply, but for the issue of recency, discussed further below.

The only marijuana involvement, occurring in approximately 1979--over 27 years ago--and the more extensive cocaine abuse, which continued at least until arch 1996, and possibly as recently as 1999--between 7 and 10 years ago--were not recent, a condition recognized under Drug Involvement Mitigating Condition (DI MC) E2. A8.1.3.1. (*the drug involvement was not recent*). The cocaine abuse removes his actions from the application of DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*).

Although he participated in some psychotherapy at the urging of his first wife, Applicant has not undergone an evaluation or diagnosis related to substance abuse, and has never participated in any therapeutic or rehabilitative

substance abuse program. Thus, these circumstances negate the application of DI MC E2.A8.1.3.4. (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*).

Applicant asserts he has abstained from using illegal substances since March 1996, or possibly since 1999. That period of abstinence is substantial. And, as noted, he declared he would never do drugs again. While the period of abstinence and his relatively recent vow are positive factors, in light of his lengthy history of substance abuse and his history of falsifications and deceptions, they cannot be construed to raise to the level envisioned in DI MC E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*).

Personal Conduct Analysis:

Guideline E states that "[c]onduct 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."

Examination of Applicant's actions reveals a pattern of conduct involving questionable judgment, untrustworthiness, and unreliability, despite the professional opinion that he is "basically of honest character." There is little dispute surrounding Applicant's pattern of deceptive actions, for after numerous opportunities, he eventually admitted the essential elements of the allegations. Notwithstanding his certifications, oaths, and affirmations that his responses and statements were true and accurate, Applicant, on seven separate occasions over a period of eight years, willfully falsified, omitted, or concealed material facts pertaining to his history of substance abuse. In October 1990, he lied once about his drug abuse history while completing his SF 86. In August 1995, he lied twice while completing his DD Form 398-2. He did so again three times in November 1997, in his SF 86. In September 2002, he did so again in his SF 86. In December 2002, in a sworn statement following a DSS agent interview, he lied about two issues related to an extra-marital affair and drug abuse. In February 2003, he again lied about his drug abuse during an interview and in a sworn statement. In September 2003, he again lied during a DSS agent interview. Finally, having learned nothing about honesty and candor, after being confronted by the polygraph machine, some semblance of the truth regarding his substance abuse began to filter out.

Applicant's actions fall within Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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*), PC 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*), PC DC E2.A5.1.2.4. (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC E2.A5.1.2.5. (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*).

Applicant's ensuing forthrightness regarding his history of substance abuse, only after being confronted with a DSS polygraph examination, does not lessen or minimize, much less erase or nullify, the impact of his initial and recurring falsifications, omissions, and deceptions. His eventual admissions are insufficient to activate Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*).

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is

accountability. In this instance, Applicant is now held accountable for those past actions and activities.

Whole Person Analysis:

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have been able to resolve a number of issues presented. Based on Applicant's actions and statements, it is clear that he initially cast blame for what he described as unsubstantiated and unfounded allegations on his ex-wife because she was bitter and vindictive and raised questions as to his integrity. Later, when his integrity was successfully challenged and he finally started to admit illegal substance abuse, Applicant minimized its significance. Applicant's substance abuse commenced when he was a teenager, and continued until he was well over 36 years old, and possibly until he was nearly 40 years old. Substance abuse was illegal and against government policy, facts known to Applicant during a part of the time he was abusing cocaine, but that was of no concern to him. Neither was the fact that he had been granted a security clearance in 1982-83. Cocaine use was more important to him than his fiduciary responsibilities. And to protect his security clearance, schooling, job, and residence, he chose to repeatedly lie, falsify, and deceive, even while under oath.

Applicant is a valued employee to his company. While an abstract interpretation of his self responses on the MMPI-2™ may show that he has no character trait which shows a propensity to lie, the facts support the conclusion that he is, or least was, until September 2003, a chronic liar. Under those circumstances, it is apparent that Applicant's overall substance abuse is a thing of the past that will not recur, especially given his period of unchallenged abstinence. I do not have the same degree of confidence in Applicant's ability or intention to be candid and forthright regarding matters which he believes may have a negative impact on those things which he holds dear.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors and conditions under the Adjudicative Process, I believe Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under drug involvement. However, he has failed to mitigate or overcome the government's case as it pertains to personal conduct. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded in favor of Applicant, but allegations 2.a. through 2.f. of the SOR are concluded against Applicant. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25. of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline H: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: 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. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application (SF 86), dated July 7, 2004).
2. Response to SOR, dated April 16, 2005.
3. Supplemental Answer, dated November 16, 2005.
4. Government Exhibit 1, *supra* note 1, at 8.
5. Tr. at 47; Government Exhibit 5 (Questionnaire for National Security Positions (SF 86), dated November 6, 1997) at 8.
6. Government Exhibit 3 (Statement, dated September 16, 2003) at 2-4.
7. *Id.*
8. *Id.* at 3-4.
9. *Id.* at 3.
10. *Id.* at 4.
11. *Id.*
12. *Id.* at 3-4.
13. *Id.* at 2.
14. Response to SOR, *supra* note 2, at 5-6; Supplemental Answer, *supra* note 3, at 2.
15. *Id.* Response to SOR.
16. *Id.* at 5-6.
17. Government Exhibit 7 (National Security Questionnaire (DD Form 398-2), dated August 10, 1995).
18. *Id.* Question 10.a. at 5.
19. *Id.*

20. Government Exhibit 3, *supra* note 6, at 5.
21. *Id.* Question 10.b.
22. *Id.*
23. Government Exhibit 5, *supra* note 5.
24. *Id.* Question 24.a. at 8.
25. *Id.*
26. Response to SOR, *supra* note 2, at 6.
27. Government Exhibit 5, *supra* note 5, Question 24.c., at 8.
28. *Id.*
29. *Id.* Question 24.b. at 8.
30. *Id.*
31. Government Exhibit 6 (Security Clearance Application (SF 86), dated September 19, 2002).
32. *Id.* Question 27 at 7.
33. *Id.*
34. Government Exhibit 3, *supra* note 6, at 5.
35. Government Exhibit 6, *supra* note 31, Question 28 at 7.
36. *Id.*
37. Government Exhibit 2 (Statement, dated February 27, 2003).
38. *Id.* at 1-2.
39. Government Exhibit 3, *supra* note 6, at 5.
40. *Id.* at 6.
41. *Id.* at 3.
42. *Id.* at 6.
43. *Id.* at 1.
44. *Id.*
45. *Id.* at 6.
46. *Id.*
47. Government Exhibit 4 (Statement, dated September 24, 2003) at 2.
48. It should be noted that the witness may have some interest in the outcome of the case as she is married to one of the

principal partners of the firm representing Applicant.

49. Applicant Exhibit C (Letter from Psychologist to Attorney, undated) at 2.

50. *Id.*

51. Tr. at 142.

52. *Id.* at 125.

53. Applicant Exhibit B (MMPI-2TM NPFARR, assessed February 3, 2006).

54. Applicant Exhibit D (MMPI-2TM NPFIR, assessed February 3, 2006).

55. Applicant Exhibit C, *supra* note 49, at 3.

56. Tr. at 142.

57. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

58. The Directive, Enclosure 2, Atch 8, Sec. E2.A8.1.1.1.