



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-11409
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

August 26, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement), E (Personal Conduct), and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application on August 3, 2005. On February 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines H, E, and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 13, 2008; answered it in part on February 28, 2008; completed his answer on April 22, 2008; and requested a hearing before an administrative judge. DOHA received the completed answer and request for a hearing on April 24, 2008. Department Counsel was ready to proceed on May 12, 2008, and the case was assigned to me on May 14, 2008. DOHA issued a notice of hearing on May 29, 2008, scheduling the hearing for June 16, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 12 were admitted in evidence without objection. Applicant testified on his own behalf and submitted Applicant's Exhibit (AX) A, which was admitted without objection. The record closed on June 16, 2008. DOHA received the transcript (Tr.) on June 27, 2008.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations of drug abuse in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.g. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old technical support engineer employed by a federal contractor. He has worked for his current employer since October 2005. He is married and has a son. He received an interim clearance in October 2003, and he has held a final clearance since December 2004 (Tr. 16).

Applicant used marijuana about 10 times from 1996 or 1997 through 2000, used ecstasy once in 2001, and used illegal anabolic and androgenic steroids from March 2002 to May 2006. Applicant and his friends usually purchased steroids in sufficient quantities to share them, and they would routinely exchange drugs when one of them ran out of a particular drug (GX 5 at 2).

In June 2002, Applicant and two friends purchased steroids from a pharmacy in Mexico where they could be sold legally without a prescription. Applicant carried some of the steroids into the U.S. in his luggage (GX 5 at 2; Tr. 67). He purchased steroids over the internet about six times, and he had them sent to a post office box instead of his home to avoid detection (Tr. 66-67).

Applicant began using steroids to improve his overall health, but he continued to use them against the advice of his personal physician, knowing his steroid use was illegal (GX 5 at 1). He consulted with his physician in 2006 about chronic fatigue and was advised that his fatigue may have been caused by his prior steroid use (Tr. 65). He injected himself with steroids one time in May 2006, found that it did not ameliorate his fatigue, and has not used them again because of concerns about his health (Tr. 66). He no longer has any contact with his fellow steroid users (Tr. 55-56).

In October 2003, Applicant executed a security clearance application (SF 86) (GX 3). He answered "no" to question 27, asking if he had used any controlled substance since the age of 16 or during the last seven years. He did not disclose his use of marijuana, illegal steroids, or ecstasy.

Applicant executed an Electronic Questionnaire for Security Clearance Processing (e-QIP) in August 2005 seeking eligibility for access to Sensitive Compartmented Information (SCI). In response to question 24 about using controlled substances during the last seven years, he disclosed using of illegal steroids about 10 times, but he did not disclose any use of marijuana or ecstasy.

A security investigator interviewed Applicant in September 2005. During this interview, Applicant admitted using marijuana about ten times between 1996 or 1997 and 2000, and using steroids from 2002 to mid-2004. He described the cyclic pattern of his steroid use, ingesting increasing quantities over a period of four to six weeks, followed by decreasing use and then abstinence for one or two months. He admitted purchasing steroids over the internet on about six occasions. He told the investigator he had stopped using steroids but still possessed some of them because he was fearful of placing them in his personal trash (GX 9 at 1-2; GX 11).

Another security investigator interviewed Applicant in February 2006. During this interview he admitted using marijuana about ten times between the ages of 17 and 20. He also purchasing steroids over the internet and using steroids about ten times during a two-year period. He told the investigator he stopped using steroids in August 2004 (GX 6; Tr. 31-32).

An investigator interviewed Applicant in June 2006. During this interview Applicant admitted using marijuana about ten times between 1996/1997 and 2000 and using steroids between 2002 and November 2004. He told the investigator he threw his remaining steroids into the trash in March 2005. He denied purchasing drugs over the internet. He denied using steroids after November 2004. He also denied ever using ecstasy (GX 5; Tr. 39-43).

Applicant was interviewed again by an investigator in September 2006. The investigator's summary of this interview reflects that he told the investigator he still possessed a quantity of steroids, that he sold \$160 worth of steroids to a friend, and that he used steroids once in May 2006, and he consumed one-half of an ecstasy pill in 2001 (GX 9 at 2-3; GX 12).

Applicant was denied eligibility for access to SCI in October 2006 (GX 9). The decision recited findings that he used marijuana between 1996/1997 and 2000, used ecstasy on one occasion in 2001, used steroids from 2002 to July 2004 and again in May 2006, and sold steroids to a friend for \$160 in August 2006. He appealed, but the decision to deny eligibility was upheld in January 2007 (GX 8).

During an interview with a security investigator in June 2007, Applicant disclosed his marijuana use and his use of steroids. He told the investigator he obtained the steroids from his friends, who purchased them over the internet. He denied purchasing steroids directly over the internet, and he denied ever selling them. He admitted giving steroids worth about \$160 to a friend (GX 5 at 1-2). He stated he threw his remaining

steroids into a dumpster in March 2005 (GX 2). He denied using ecstasy at any time (GX 5 at 3).

In his answer to the SOR, Applicant stated he did not remember denying direct purchases of steroids over the internet. He denied selling steroids, denied possessing and using steroids in 2006, and admitted using ecstasy on one occasion in 2001.

At the hearing, Applicant admitted his marijuana and steroid use. He admitted using steroids once in May 2006 (Tr. 56). He testified he failed to disclose this use of steroids in his June 2007 security interview because he had forgotten about it (Tr. 60, 62). He admitted purchasing steroids over the internet, and he also admitted one over-the-counter purchase of steroids in Mexico (Tr. 54). He denied selling steroids, but admitted giving steroids worth \$160 to a friend (Tr. 54). He recanted his earlier admissions to using ecstasy, stating that on one occasion he pretended to consume part of an ecstasy pill given to him by a friend but “tossed it aside” instead of consuming it (Tr. 57, 75).

Applicant denied falsifying his various security clearance applications or intentionally misleading security investigators (Tr. 51-54, 59-63), but he admitted he did not tell the “full truth” when he told an investigator he disposed of all his steroids in March 2005 (Tr. 68). He testified he disclosed ten instances of steroid use on his e-QIP in August 2003 because that was his best estimate of his instances of steroid use; but he admitted he went through about four cycles of use, with each cycle running four to six weeks, during which he used steroids at least once a week (Tr. 72-73).

Applicant submitted a written statement of intent to refrain from further illegal drug use, offered to undergo a polygraph to verify his testimony at the hearing, and agreed to automatic revocation of his clearance for any further violations (AX A at 5). Applicant informed his supervisor of his history of drug use before the hearing (Tr. 73).

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 have 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), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common

sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline H, Drug Involvement

The SOR alleges Applicant used marijuana from 1996/1997 through 2000 (¶ 1.a), used ecstasy in “at least” 2001 (¶ 1.b), used illegal anabolic and androgenic steroids from “at least” March 2002 to late 2004 and in 2006 (¶ 1.d), purchased illegal anabolic and androgenic steroids (¶ 1.d), sold an illegal anabolic steroid to a friend in August 2006 for about \$160 (¶ 1.e), gave an illegal anabolic steroid to a friend in about

2002 (¶ 1.f), and used illegal anabolic and androgenic steroids while holding an interim security clearance (¶ 1.g).

The security concern relating to Guideline H is set out in AG ¶ 24 as follows: “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.” Substances encompassed by this guideline include “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).” AG ¶ 24(a)(1). Drug abuse is “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” AG ¶ 24(b).

Disqualifying conditions under this guideline include “any drug abuse,” and “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” AG ¶¶ 25(a) and (c). Applicant's use of marijuana, ecstasy, and steroids raises these two disqualifying conditions.

Since the government produced substantial evidence to raise these disqualifying conditions, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns raised by drug involvement may be mitigated by showing that “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.” AG ¶ 26(a). The first clause of AG ¶ 26(a) (“happened so long ago”) focuses on the recency of drug involvement. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the totality of the evidence. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” *Id.*

Applicant's marijuana use ended eight years ago, and his one-time use of ecstasy was about seven years ago. His regular use of steroids ended in November 2004, with one additional use in March 2006, and he stopped using steroids because of concerns about his health. His previous drug use is not likely to recur. I conclude AG ¶ 26(a) is established.

Security concerns arising from drug involvement also may be mitigated by evidence of “a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the

environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶ 26(b)(1)-(4). Applicant no longer associates with his friends with whom he used steroids. He has abstained from steroid use for a significant period of time, and he submitted a signed statement of intent. I conclude AG ¶ 26(b) is established.

Security concerns also may be mitigated by “satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.” AG ¶ 26(d). This mitigating condition is not established because Applicant has not received any drug treatment. He has, however, received advice against further steroid use from his personal physician and apparently has heeded it.

Guideline E, Personal Conduct

The SOR alleges Applicant falsified his SF 86 in October 2003 by deliberately failing to disclose his use of marijuana, ecstasy, and steroids (¶ 2.a); falsified his e-QIP in August 2005 by deliberately failing to disclose his use of marijuana and ecstasy (¶ 2.b), and deliberately failing to fully disclose the extent of his steroid use (¶ 2.c). It also alleges he falsified material facts during a security investigation in June 2007 by failing to disclose his purchases of steroids through the internet (¶ 2.d), and failing to disclose his sale of steroids to a friend in August 2006 (¶ 2.e). It further alleges he falsely stated he threw his remaining illegal steroids in the garbage in March 2005 (¶ 2.g), and falsely denied using ecstasy in 2002 (¶ 2.f). Finally, it alleges he used illegal steroids while holding a security clearance (¶ 2,g).

The concern under this guideline is set out in AG ¶ 15 as follows:

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

A disqualifying condition under this guideline can be raised by “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” AG ¶ 16(a). A disqualifying condition also can be raised by “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.” AG ¶ 16(b).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission or misstatement, standing alone, does not prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time of the omission or misstatement. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant testified his failure to disclose his use of marijuana, ecstasy, and steroids on his SF 86 in October 2003 and his failure to disclose his use of marijuana and ecstasy on his e-QIP in August 2005 were not intentional omissions, but he gave no plausible explanation for the omissions. He is well-educated, intelligent, and articulate, and he gave no indication he misunderstood the questions. I conclude the government has presented substantial evidence to support the allegations in SOR ¶¶ 2.a and 2.b.

Applicant testified his disclosure in his e-QIP of using steroids ten times was an estimate. He admitted going through about four cycles of steroid use, each cycle lasting four to six weeks, and he admitted taking steroids at least once a week during each cycle. Based on his own testimony, he probably used steroids at least 16 times. I conclude his disclosure on his e-QIP was another instance in his pattern of understating his drug involvement. I conclude the government has presented substantial evidence to support the allegation in SOR ¶ 2.c. Based on the evidence supporting SOR ¶¶ 2.a, 2.b, and 2.c, I conclude the disqualifying condition in AG ¶ 16(a) is raised.

The allegations of falsification in SOR ¶¶ 2.d through 2.h all arise from Applicant's interview by a security investigator in June 2007. In that interview, he denied purchasing steroids over the internet (¶ 2.d), selling steroids (¶ 2.e), and using ecstasy (¶ 2.h). He stated he last used steroids in November 2004 and threw the remaining steroids in the trash in March 2005; and he failed to disclose his possession and use of steroids in May 2006 (¶¶ 2.f and 2.g).

The investigator's summary of an interview of Applicant in September 2005 (GX 11) reflects that Applicant admitted purchasing steroids over the internet and still having some in his possession. This interview summary does not mention selling steroids or using ecstasy. An investigator's summary of another interview in September 2006 (GX 12) reflects that Applicant admitted selling steroids, and consuming one-half of an ecstasy pill. In his answer to the SOR, Applicant stated he did not recall denying that he purchased steroids directly on the internet. He denied selling steroids, denied using and possessing steroids in 2006, and admitted using ecstasy in 2001. At the hearing, he admitted purchasing steroids directly on the internet, possessing steroids in 2006, and using them. He denied selling steroids. He testified he only pretended to consume one-half of an ecstasy pill, an explanation he had not previously tendered.

Based on all the evidence, including my observations of Applicant's demeanor during the hearing, I conclude that in his June 2007 interview he intentionally and falsely denied purchasing steroids over the internet, falsely denied using ecstasy, and falsely stated he last used steroids in November 2004 and threw away his remaining steroids in March 2005.

I also conclude that the investigator's summary of the September 2006 interview, reflecting an admission of selling steroids is probably inaccurate. It is inconsistent with Applicant's pattern of use, in which he and his friends shared their drugs, and is inconsistent with all the other evidence in the record.

I conclude there is substantial evidence to support all the allegations in under Guideline E except SOR ¶ 2.e. I further conclude the evidence is sufficient to raise the disqualifying condition in AG ¶ 16(b).

SOR ¶ 2.i cross-alleges Applicant's use of illegal steroids while holding a clearance, also alleged in SOR ¶ 1.g under Guideline H. A disqualifying condition under Guideline E can be raised by "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information." AG ¶ 16(c).

A disqualifying condition also may arise from "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information." AG ¶ 16(d). This disqualifying condition encompasses "untrustworthy or unreliable behavior" and "a pattern of dishonesty or rule violations." AG ¶¶ 16(d)(1) and (3).

On its face, AG ¶ 16(d) appears to cover only information "that is not explicitly covered under any other guideline." The Appeal Board, however, has construed AG ¶ 16(d) more broadly, holding: "(1) it continues the longstanding tenet that specific behavior can have security significance under more than one guideline and (2) by focusing on the concepts of questionable judgment and irresponsibility, it contemplates that behavior will have independent security significance under Guideline E in a broad range of cases." ISCR Case No. 06-20964 (App. Bd. Apr. 10, 2008), 2008 WL 2002589 at *4.

A disqualifying condition also may be raised by “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal professional, or community standing, or (2) while in another country, engaging in activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.” AG ¶ 16(e). Finally, a disqualifying condition may be raised by “association with persons involved in criminal activity.” AG ¶ 16(g).

Applicant’s use of illegal steroids while holding a clearance, while his application for SCI eligibility was pending, and after being interviewed by his illegal drug use by a security investigator in September 2005 demonstrates questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. It also made him vulnerable to exploitation, manipulation, or duress to protect his professional standing. His transportation of illegal steroids into the U.S. made him vulnerable to exploitation or pressure. His conduct raises AG ¶ 16(c), (d), and (e). His association with two friends who purchased and used illegal steroids raises AG ¶ 16(g). Thus, the burden is on Applicant to refute, explain, extenuate, or mitigate the facts.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). Applicant had an opportunity to correct the omissions from his October 2003 application when he submitted another security clearance application in August 2005, but he did not do so. He did not fully disclose his drug abuse when interviewed by security investigators in September 2005, February 2006, and June 2006. I conclude AG ¶ 17(a) is not established.

Security concerns raised by personal conduct can be mitigated by showing that “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant’s falsifications were felonies, as discussed below under Guideline J. His misconduct was not infrequent, nor did it occur under unique circumstances. His latest falsifications were recent, occurring during a security interview in June 2007. I conclude AG ¶ 17(c) is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(d). Applicant acknowledged his drug abuse at the hearing, but he acknowledged only some of his falsifications, and he maintained he did not deliberately falsify his security clearance applications. He apparently has stopped

using illegal steroids because of health concerns, but continues to have problems with candor. I conclude AG ¶ 17(d) is not established.

Security concerns also can be mitigated by showing that “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). Applicant has stopped using illegal drugs, and his employer is now aware that his SCI application was denied because of his drug use. I conclude this mitigating condition is established.

Finally, security concerns under this guideline can be mitigated by showing that “association with persons involved in criminal activity has ceased.” AG ¶ 17(g). Applicant has stopped associating with the two friends involved in illegal purchases and use of steroids. I conclude this mitigating condition is established.

Guideline J, Criminal Conduct

The SOR alleges Applicant’s falsifications alleged under SOR ¶¶ 2.a through 2.h were felonies in violation of 18 U.S.C. § 1001. The concern raised by criminal conduct is that it “creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses” and “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” AG ¶¶ 31(a) and (c).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. Deliberately false answers on a security clearance application and false answers to a security investigator are serious crimes within the meaning of Guideline J. Applicant’s false answers on his SF 86 and e-QIP, and his false statements to a security investigator concerning material facts raise the disqualifying conditions in AG ¶¶ 31(a) and (c), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns arising from criminal conduct can be mitigated by showing that “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 32(a). This mitigating condition is not established because Applicant’s most recent falsifications occurred in June 2007, in connection with his current application for a clearance. They did not occur under unusual conditions, and they raise doubts about his reliability and trustworthiness.

Security concerns under this guideline also can be mitigated by “evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” AG ¶ 32(d). This mitigating condition is not established because the falsifications occurred as recently as June 2007, and Applicant persisted in his lack of candor at the hearing by recanting his multiple admissions to using ecstasy.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Much of Applicant’s drug use occurred when he was young and immature. He stopped using marijuana in 2000, and he used ecstasy only once in 2001. He used illegal steroids to improve his physical fitness, and he eventually stopped when he realized that they endangered his health. I conclude he has mitigated the security concerns under Guideline H. However, he has not mitigated the security concerns based on personal conduct and criminal conduct. He used illegal steroids while holding a clearance, and he repeatedly and deliberately omitted material facts on his two security clearance applications and in multiple interviews by security investigators. His breach of trust by using illegal drugs while holding a clearance, and his lack of candor during the current security clearance process raise grave doubts about his reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines H, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on drug involvement, personal conduct, and criminal conduct. Accordingly, I conclude he has not carried his burden of

showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraphs 2.f-2.i:	Against Applicant
Paragraph 3, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge