



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



In the matter of:)	
)	
)	ISCR Case No. 07-13029
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

December 11, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 27, 2006. On June 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct, and Guideline J, Criminal Conduct, for Applicant. 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.

On July 7, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was ready to proceed on August 22, 2008. The case was assigned to me on September 2, 2008. DOHA issued a notice of hearing on October 20, 2008, and I convened the hearing as scheduled on November 5, 2008. The government offered Exhibits (Gov) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and offered two documents which were marked as Applicant Exhibits (AE) A – B and admitted without objection. The record

was held open until November 19, 2008, to allow Applicant to submit some additional documents. He timely submitted an eleven-page document which was admitted as AE C without objection. DOHA received the transcript of the hearing (Tr) on November 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated July 7, 2008, Applicant admits to all of the SOR allegations.

Applicant is a 29-year-old driver employed by a Department of Defense contractor seeking a security clearance. He has worked for his current employer since 2004. He has held a security clearance since 1998. On August 25, 1998, he was briefed for Top Secret/Sensitive Compartmented Information (TS/SCI) access on August 25, 1998. He served on active duty in the United States Air Force from January 1998 to September 2002. He separated as a Senior Airman (E-4) with an Honorable discharge. He has an associates degree. He is married and has two sons, ages 3 ½ and 1 ½. His wife is pregnant and is expected to deliver in March 2009. (Tr at 5-6, 31, 33, 46; Gov 1; Gov 5 at AE A.)

On February 24, 1998, Applicant completed a security clearance application, SF 86, shortly after enlisting in the United States Air Force. He answered, "No" in response to question "27. Your Use of Illegal Drugs and Drug Activity – Illegal Use of Drugs. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" He did not disclose his prior marijuana use beginning in 1995, crank in 1995, prescription medications that were not prescribed to him from 1995 to 1997 and nitrous oxide in 1994/1995, and 1997. He admits that he deliberately withheld information about his past drug usage on the security clearance application completed in February 1998 because he was afraid of what would happen to him if he told the Air Force about his prior drug use. (Tr at 37-38.)

Applicant continued to occasionally use illegal drugs during the years he served on active duty in the Air Force and after being granted a TS/SCI security clearance. He used marijuana with his childhood friends while on leave in his hometown. He used ecstasy in 1999. He used prescription medications that were not prescribed to him. On one occasion, he and another airman used nitrous oxide. Nitrous oxide is not a controlled substance. It is a legal substance which can be purchased over the counter but can be abused if not used for its intended purpose. (Tr at 26, 34-35; Gov 2, section 23(a); Gov 3; Gov 5.)

On November 9, 2001, Applicant was punished under Article 15, UCMJ, for violating Article 134 of the UCMJ, Adultery. His punishment consisted of a reduction to the grade of E-3, suspended until May 2002. After that time the punishment was to be

remitted without further action unless sooner vacated. (Gov 4.) He was romantically involved with another airman who was married to another military member. She became pregnant. Applicant believed the child was his. They eventually lived together, married and divorced. At some point, Applicant discovered that he was not the father of the child. (Tr at 44.)

After separating from active duty in September 2002, Applicant was hired by a defense contractor. He worked for the contractor until December 2002 when he accepted a job with another defense contractor. (Gov 5.) On December 17, 2002, he submitted a questionnaire for national security position. In "Section 23. Your Police Record," he listed a June 1997 arrest for possession of alcohol by a minor and his November 2001 Article 15 for adultery. He answered, "Yes," in response to "Section 23(a) Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogen, or cannabis for your own intended profit or that of another?" He listed that he used marijuana from June 1996 to December 2000 approximately 30 times, he used ecstasy in July 1999; he used crank on one occasion in November 1995; from 1995-1996, he used various prescription medications such as valium, Percocet, and yellow jackets that were not prescribed to him on five occasions between 1995 to 1996. (Gov 2.)

The SOR alleges, Applicant falsified his December 17, 2002, security clearance questionnaire by failing to disclose the use of prescription medications not prescribed to him in 1997, 1999, 2000, and 2001; and not disclosing his use of nitrous oxide in 1997, 1998, 1999, and 2001.

Applicant summarized his history of illegal drug use during subsequent interviews with investigators conducting his background investigation in August 2002 and January 2003. From 1994-1995, he used crank on one occasion, nitrous oxide on one occasion, and prescription muscle relaxants or anti-depressants on two to three occasions. He used marijuana on approximately 20 occasions from 1995 to 1996. He used marijuana on five to seven occasions from 1997 to September/October 2000. He used valium and Clonipen on approximately six occasions in 1996-1997. He used nitrous oxide on five occasions during 1997. He used ecstasy once in 1999. He used one Darvocet pill in 1999. He used crank on occasion in 1994. (Gov 5.)

In 2000, his mother provided him ten Percocet tablets that were prescribed to her when he complained of back pain. In December 2000, he and a friend each ingested one Percocet pill with alcohol on three occasions. He took another Percocet pill for back pain and lost the remaining Percocet pills. He gave a friend four of the Percocet pills. He ingested five Bentyl pills that were prescribed to his mother. In the January 2003 interview, he indicated he began inhaling nitrous oxide in 1995, using it on 20 occasions in 1997 and once in 1998, 1999 and 2001. (Gov 5.)

On March 13, 2003, Applicant was found ineligible for access to NS/CSS SCI. The basis for the denial was his drug involvement while possessing a security clearance and his violation of the established NSA/CSS drug policies wherein "improper use of drugs is strictly prohibited." (Gov 5 at 6.)

On July 27, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). His current job requires him to have a SECRET clearance. He answered, "No," in response to Section 23(e) which asks, "In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (include non-judicial, Captain's mast, etc.)" He did not list the Article 15 nonjudicial punishment he received in November 2001. Applicant states that he was told that he was issued a conditional Article 15 that would be removed from his record after six months. He received a suspended reduction in grade that could be vacated over a six month period if he committed further misconduct. He listed the Article 15 nonjudicial punishment on his previous security clearance application dated December 17, 2002. (Tr at 28-29, 45-46; Gov 1; Gov 2; Gov 4.)

Applicant answered "No" in response to Section 26(b) on the July 27, 2006 e-QIP application. The question asks, "To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? (An administrative downgrade or termination of a security clearance is not a revocation.)" He did not list that his access to SCI was denied on March 13, 2003. (Gov 1; Gov 5.)

Applicant answered "Yes" in response to Section 24(a) on the July 27, 2006 e-QIP application. The question asks, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" He listed his use of marijuana once in July 2000. He did not list his marijuana use from 1999 to 2000, or his use of prescription medication without a prescription in 1999, 2000, and 2001. (Gov 1.)

On February 17, 2007, Applicant was interviewed by an investigator pertaining to his security clearance background investigation. The purpose of the interview was his failure to list his denial of SCI access in March 2003. He indicated that he did not intentionally falsify any documentation. He stated he did not list the denial of SCI access in March 2003 because he was not aware that his access was denied. He said that when he was hired by his current employer in 2004, he was told that his clearance was still active. He admitted using marijuana 4 - 5 times from 1998 to July 2000. He has not used marijuana since July 2000. He also used prescription pain killers that were not prescribed to him on 3 - 4 occasions over that same period. (Gov 3.)

During the hearing, Applicant testified that he did not list that he was denied access to SCI on July 27, 2006, security clearance questionnaire because he was trying to hide from it. He thought that since his clearance was still active over the past four

years that his denial of his SCI access “somehow maybe it got swept under the table. Maybe it was never really adjudicated, but just basically, I was dishonest and did not admit to it. You know, I have a family, and I was scared to death. I didn’t know – you know, I just wasn’t forthright and honest about it.” (Tr. at 39-41.) He admits that he knew his SCI access was denied and that he should have listed it on the security clearance questionnaire. He admits that he initially tried to “dodge” the issue of his denial of SCI access during the February 2007 interview with the investigator conducting his background investigation by claiming that he was not aware that he was technically denied the security clearance. (Tr at 42-43.)

Regarding his failure to fully disclose the extent of his drug use on his security clearance applications dated December 17, 2002, and July 27, 2006, Applicant admits that he did not provide the full extent of his drug use. He thought that he was to cover drug use that occurred within the past seven years or just did not remember the full extent of his illegal drug use. His failure to disclose the full extent of his drug use was not intentional. (Tr at 22 - 23, 36-39; Gov 3; Answer to SOR.)

If Applicant completes future security clearance applications, he intends to answer every question in its entirety and to be as truthful as possible. He no longer associates with his former friends who used illegal drugs. He married in 2004. He is a family man who works full-time and takes college courses. His father-in-law is a pastor. He and his wife are active in the church. (Tr at 31-33, 46.)

The Chief Information Officer of Applicant’s employer wrote a letter on his behalf. He states that “the very nature of [Applicant’s] position requires a commitment of integrity and much responsibility due to the investment of training and multitude of requirements that is required for this position.” He notes that Applicant has “maintained reliability, flexibility with scheduling, dependability, and a solid commitment in his position.” He has worked for the company for over four years without a single infraction. His work and work ethic has been exemplary. He has been rewarded with bonus acknowledgments and numerous raises because of his contributions. (AE C at 2-3.)

Applicant’s father-in-law, who is also the pastor of his church, wrote that Applicant has been a member of the church for four years. He is an active participant. He is involved in weekly bible study, the choir, and works in the children’s ministry. He also serves as an usher and is on the committee for campus maintenance and building improvements. He has known Applicant for over 20 years. He knows he was an excellent student and athlete. He is married to his oldest daughter. He describes Applicant as “conscientious and a hard worker” and “responsible and dependable.” He is studying to complete a bachelor of science degree. (AE C at 4.)

Applicant’s wife states that she and Applicant have been married for four years. He is a wonderful father who is very devoted to his children. He is trying to improve his life by completing his education. He has about a year and half left to complete his bachelor’s degree. They are active in their church. She requests that her husband not be evaluated by the poor choices he made as a young teenager/adult but by the man he

is today. (AE C at 7.) Two other members of Applicant's church wrote letters stating favorable attributes. (AE C at 5-10.) During his military service, he received numerous letters of appreciation for his service. (AE A; AE B.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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.

Section 7 of Executive Order 10865 provides that 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.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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.

The Personal Conduct guideline lists several specific disqualifying conditions. Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (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) potentially applies with respect to Applicant’s failure to disclose the full extent of his illegal drug use on his security clearance questionnaires dated February 24, 1998, December 17, 2002, and July 27, 2006.

Applicant’s omission of illegal drug use on his February 24, 1998, security clearance questionnaire was deliberate. He admits that he deliberately withheld all information about his prior drug use because he was concerned about what action the Air Force would take if he disclosed it. He was on active duty at the time and apparently aware of the Air Force policy against illegal drug use.

Although Applicant did not disclose the full extent of his illegal drug use on his December 17, 2002 and July 27, 2006, security clearance applications, his omissions were not material. On both applications, Applicant disclosed that he used illegal drugs. On the December 2002 security clearance application, he listed marijuana use from 1996 to December 2000, ecstasy in 1999, crank in 1995 and prescription medications without a prescription from 1995 -1996. Subsequent interviews revealed that Applicant used prescription medications on various occasions from 1997-2001 and nitrous oxide from 1997 to 2001. His omission of the prescription drug use from 1997 – 2001 appears to be the result of a faulty memory as opposed to a deliberate intent to deceive. Nitrous oxide is not a controlled substance. Applicant was not required to list this in response to the drug use question on either application because the question asks about controlled substances. Applicant only disclosed a one-time marijuana use on his July 27, 2006 security clearance questionnaire. He thought he had to disclose illegal drug use in the

past 7 years. While his math may have been questionable calculating the seven year period (the seven year period would go back to 1999), his omission was not material considering his prior disclosures of his drug abuse history. I find SOR ¶¶ 1.b, and 1.e for Applicant.

PC DC ¶ 16(a) potentially applies pertaining to Applicant's failure to disclose his November 2001 Article 15 nonjudicial punishment in response to section 23(e) on his July 27, 2006 security clearance questionnaire. I find Applicant's omission was not intentional or material. Applicant thought that he did not have to list the Article 15 because he was told that it was a conditional Article 15 that would be removed from his records after six months. While this is not accurate, it is plausible to assume that Applicant misunderstood the advice given pertaining to his Article 15 since he is not well versed in military justice issues. (His punishment was remitted after six months not the Article 15.) Regardless, Applicant listed the Article 15 on his previous security clearance questionnaire in December 2002. I do not find the omission to be material because he previously put the government on notice in his previous security clearance questionnaire. SOR ¶ 1.d is found for Applicant.

PC DC ¶ 16(a) applies pertaining to Applicant's failure to disclose that his SCI access was suspended in March 2003 in response to section 26(b) on his July 27, 2006, security clearance application. He admits that he intentionally answered "No" to this question. He also admits to telling the investigator during his February 12, 2007, background investigation interview that he was never informed that his SCI access was denied. He admitted at hearing that he was aware that his SCI access was denied and that he should have listed it on his security clearance questionnaire. He deliberately omitted this information in hopes that it had been "swept under the table."

PC DC ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative) potentially applies with respect to SOR ¶ 1.a which alleges Applicant falsified material facts during a February 12, 2007 background investigation interview by not disclosing the full history of his drug use. Applicant thought that they were discussing illegal drug use that occurred within the past seven years. The record contains no information as to what the investigator specifically asked Applicant during the interview. I find Applicant's failure to disclose the full extent of his history of illegal drug use was not with the intent to deceive. He previously disclosed his illegal drug use in previous interviews and security clearance questionnaires. I find for Applicant with respect to SOR ¶ 1.a.

PC DC 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient 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) applies with respect to Applicant's illegal drug use while on active duty and while possessing a TS/SCI security clearance. While Applicant

has not used illegal drugs in over seven years, his conduct raises questions about his judgment, trustworthiness, and willingness to comply with rules and regulations.

PC DC 16(e) (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) applies to Applicant's case. Applicant lied about his illegal drug use on his 1998 security clearance application because he was concerned what action the Air Force would take if they were aware of his drug use. Despite these concerns, he continued to use illegal drugs while on active duty and while having a valid security clearance and access to SCI. His past conduct led to the denial of his SCI access which he lied about on his most recent security clearance questionnaire. His lies and his past illegal drug use made him vulnerable to exploitation or manipulation.

I find for Applicant with respect to SOR ¶ 1.g which alleges that he was denied SCI access by another governmental agency in March 2003. This allegation essentially pleads a fact. The underlying conduct which is the basis for the denial of SCI access is sufficiently addressed in other SOR allegations.

The government established a prima facie case for SOR ¶¶ 1.c, 1.f, and 1.h. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15.) The Directive lists several mitigating conditions under personal conduct. The following Personal Conduct Mitigating Conditions (PC MC) potentially apply:

PC MC ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply because Applicant did not promptly disclose the omission of his prior drug use on his 1998 security clearance questionnaire until after he separated from active duty. His subsequent disclosure was not prompt. He also did not promptly disclose his deliberate omission of his March 2003 denial of SCI access on his July 27, 2006, security clearance questionnaire in response to section 26(b). He admits to dodging the issue further during his February 12, 2007, interview with the investigator conducting his background investigation.

PC MC ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is 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) does not apply. While Applicant is given credit for admitting to his deliberate falsifications during the hearing, questions remain about his trustworthiness and judgment due to his history of violating the trust placed in him when given a security clearance and SCI access. He lied about his drug use on his 1998 security clearance application, knowing that the Air Force could potentially take action against him if they were aware of the illegal drug use. He continued to use illegal drugs while on active duty in the military and while possessing a TS/SCI security clearance. To his credit, Applicant fully disclosed his illegal drug use on his 2002 security clearance

questionnaire which resulted in the denial of his SCI access in March 2003. But he lied about the denial of his SCI access on his most recent security clearance questionnaire and during a February 12, 2007 background investigation interview. While Applicant appeared to be straight forward during the hearing, he has a pattern of deception that goes back more than ten years. Questions remain about his trustworthiness and good judgment.

PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies. At hearing, Applicant admitted to his deliberate omission of his drug use on his 1998 security clearance questionnaire and his deliberate omission that he was denied SCI access on his July 27, 2006, security clearance application. He provided full disclosure about his past illegal drug use. He has taken positive steps to reduce vulnerability to exploitation, manipulation or duress. However, Applicant's full disclosure during the hearing does not outweigh his history of deception pertaining to his illegal drug use and his deliberate falsifications on his 1998 and 2006 security clearance questionnaires.

None of the other PC MCs are relevant to the facts of Applicant's case. He has not mitigated the concerns raised under personal conduct.

Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

Criminal activity 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.

There are two Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant's case. CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted) apply with respect to Applicant's deliberate omissions on his February 24, 1998, security clearance questionnaire (SOR ¶ 1.f) and his deliberate omission on his July 27, 2006 security clearance questionnaire (SOR ¶ 1.c.) His falsification of his security clearance application violates Title 18, United States Code, § 1001, a felony.

The following Criminal Conduct Mitigating Conditions (CC MC) potentially apply to Applicant's case:

CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) does not apply with respect to Applicant's deliberate falsifications due to his history of providing false information on his security clearance applications. The government expects

Applicant's to be truthful at all times when completing their security clearance applications. Applicant intentionally provided false information on his first security clearance application on February 24, 1998. He intentionally provided false information on his most recent security clearance questionnaire on July 27, 2006. While he acknowledged his behavior at hearing, not enough time has elapsed to mitigate the concerns raised due to his lack of truthfulness on his security clearance questionnaires.

CC MC ¶ 33(d) (there is 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) applies. Applicant expressed remorse about his past falsifications during the hearing. He is married, has two children with another child on the way. He attends college and volunteers with his church.

Applicant's acceptance of responsibility at hearing is the first step towards rehabilitation. The criminal conduct concerns are mitigated.

Whole Person Concept

Under the whole person concept, the 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. The 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's favorable documents received while on active duty in the Air Force. I considered his honorable discharge from the Air Force, however, had the Air Force discovered his illegal drug use while he was on active duty, it is not very likely his service characterization would be honorable. I considered the favorable comments by his superior at work as well as his wife, father-in-law and fellow church members. While he should be given credit for accepting responsibility at hearing for his past deliberate falsifications, he initially misled the government by omitting his denial of SCI access on his most recent security clearance questionnaire and during a background investigation in February 2007. While Applicant appears to have matured, his recent admissions are not sufficient to overcome the concerns raised by his deliberate falsifications during his most recent background investigation and considering his past history of untrustworthy behavior.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under personal conduct.

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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge