



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15110
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2008

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and criminal conduct considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On April 9, 2007, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application (hereinafter SF 86). On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guidelines E (Personal Conduct), H (Drug Involvement), and J (Criminal Conduct), and detailed reasons why DOHA could not make a 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.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 3, 2008. In a sworn, written statement, notarized March 14, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on April 8, 2008, and the case was assigned to me on April 11, 2008. A Notice of Hearing was issued that same date, and I convened the hearing, as scheduled, on May 8, 2008. During the hearing, three Government exhibits and nine Applicant exhibits were received without objection, and Applicant testified. The transcript of the hearing (Tr.) was received on May 16, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.c., 2.a. and 2.b., and 3.a. of the SOR.

Applicant is a 25-year-old employee of a defense contractor, serving as a software engineer 2,¹ and he is seeking to obtain a security clearance. He commenced working for his employer in January 2007. He received a Bachelors Degree in Computer Science in December 2005. He never served in the military and never married.

During the period May 2002-September 2007, Applicant was a poly-substance abuser whose choice of substances was rather broad, and included narcotics, stimulants, hallucinogens, and cannabis.² He attributed his substance abuse to curiosity and, despite learning as a child that drug use could be detrimental to one's life, he was drawn to "experiment" with such substances.³ At one point, he intentionally became "addicted" to cigarettes for 18 months to experience overcoming an addiction while so

¹ Government Exhibit 1 (Electronic Questionnaires for Investigations Processing (e-QIP)/Questionnaire for National Security Positions (SF 86), dated Apr. 9, 2007), at 15; Applicant Exhibit D (Employee Performance Development Process, dated Jan. 7, 2008).

² Answer to SOR, dated Mar. 14, 2008, at 1.

³ Government Exhibit 2 (Applicant's Answer to Interrogatories, dated Oct. 31, 2007), at 6 is the source for the facts in this paragraph and the next two paragraphs unless stated otherwise.

many individuals were unable to do so. He noted that there was only one occasion that he ever “abused any drug, whether legal or not, to fill a void in [his] life.” He stressed that “while all other substances were kept easily under control and used only for a short time period, . . . marijuana may have gotten away from [him].”

Applicant is not ashamed of his drug use. He believes “it played a non-trivial role in [his] development as a person.” He does, however, regret not more seriously considering his future before satisfying his curiosity, and not being able to leave marijuana alone when he graduated from college.

On April 9, 2007, Applicant completed his SF 86, and in response to an inquiry pertaining to his use of illegal drugs and drug activity “since the age of 16 or in the last 7 years, whichever is shorter,”⁴ Applicant responded, in part, that he had used marijuana socially during college (estimated commencement date May 2002 until estimated end date July 2006) on dozens of occasions, usually while attending parties or other social gatherings.⁵ During an interview with a Government investigator in May 2007, Applicant stated he had stopped using illegal drugs in July 2006, and said he had no intention to use any illegal drugs again.⁶ Nevertheless, despite being aware of the illegal or controlled status of the substances and the Government’s interest in his substance abuse in April 2007, he actually continued to use marijuana on an estimated three occasions since graduating from college, including one time during the last week of September 2007.⁷ Applicant contended he did not lie to the investigator because at the time he made the statement, that was his intention.⁸

On October 31, 2007, Applicant stated that graduating from college in December 2005 was his personal signal to cease his substance abuse. Nevertheless, as noted above, he continued using marijuana several more times after graduation. He stated: “I feel guilty about it. It is no longer fun, it keeps me from ‘being all that I can be.’ And more importantly it is illegal & could cost me my job.”⁹ He also contended he decided to stop using marijuana because he was “growing up” and recognized “nothing positive comes from it. . . .”¹⁰ He stated he has no intention to use any of the substances again.¹¹

⁴ Question 24.

⁵ Government Exhibit 1, *supra* note 1, at 31.

⁶ Tr. at 32-34. This appears to be a misstatement by Applicant for he actually graduated in Dec. 2005, not Jul. 2006. See Applicant Exhibit G (University Degree, dated Dec. 12, 2005).

⁷ Government Exhibit 2, *supra* note 3, at 3, 6.

⁸ Tr. at 33-34.

⁹ Government Exhibit 2, *supra* note 3, at 3.

¹⁰ *Id.* at 1.

¹¹ Applicant Exhibit C (Statement of Intent, dated May 8, 2008).

In addition to the marijuana, Applicant also used a number of other substances which are categorized as illegal or controlled substances, or misused prescription drugs, during the period July 2003-October 2005. The following substances were alleged in the SOR and their respective use was admitted by Applicant:¹²

SOR ¶	SUBSTANCE¹³	OCCASIONS	PERIOD OF USE
1.a.(1)	marijuana	50 times	May 2002 – Sep. 2007
1.a.(2)	cocaine	5 times	Aug. 2003 – Oct. 2005
1.a.(3)	mushrooms ¹⁴	3 times	Aug. 2003 – Nov. 2003
1.a.(4)	Lysergic Acid Diethylamide (LSD)	1 time	Mar. 2004
1.a.(5)	MDMA (Ecstasy)	3 times	Nov. 2003 – Jan. 2004
1.a.(6)	opium	1 time	Aug. 2003 – Dec. 2003
1.a.(7)	Dextromethorphan (DXM)	2 times	Jul. 2003 – Aug. 2003
1.a.(8)	Alpha-methyltryptamine (AMT)	1 time	Jul. 2003
1.a.(9)	Percocet	1 time	Jul. 2003
1.a.(10)	Morphine	1 time	Jul. 2003

During the period of his substance abuse, from May 2002 until September 2007, Applicant also engaged in the purchase of several of the illegal substances. The following substance purchases were alleged in the SOR and their respective purchases were admitted by Applicant:¹⁵

SOR ¶	SUBSTANCE	OCCASIONS
1.b.(1)	marijuana	at least 12 times
1.b.(2)	mushrooms	at least 1 time
1.b.(3)	Lysergic Acid Diethylamide (LSD)	at least 1 time
1.b.(4)	MDMA (Ecstasy)	at least 1 time

During the hearing, Applicant modified some of his earlier admissions regarding his purchases of illegal substances. He acknowledged purchasing marijuana on maybe two dozen occasions.¹⁶ He also purchased powder cocaine on one occasion between

¹² Answer to SOR, *supra* note 2, at 1.

¹³ Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. §812(c). Marijuana (cannabis) and Ecstasy (MDMA) are Schedule I controlled substances. See Sch. I (c)(9) and 1(c)(10), respectively. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I). Ecstasy or 3,4 methylenedioxymethamphetamine is a Schedule I Controlled Substance. See *United States v. Crawford*, 449 F.3d 860, 861 (8th Cir. 2006). Cocaine is a Schedule II Controlled Substance; Psilocybin, AMT, and LSD are Schedule I Controlled Substances; Opium is a Schedule II, III, and V Controlled Substance; Morphine is a Schedule II and III Controlled Substance; and DXM is on the watch list.

¹⁴ Applicant admitted the mushrooms he ate were Psilocybin or hallucinogenic mushrooms. Tr. at 43-44.

¹⁵ Answer to SOR, *supra* note 2, at 1.

¹⁶ Tr. at 42.

August and December 2003.¹⁷ While he did not purchase the prescription drug Percocet, he did not have a valid prescription for it and received it for free from his drug supplier, another college student.¹⁸

On one occasion, when he had more marijuana than he needed or wanted, he sold a portion of the marijuana to friends.¹⁹

Applicant's overall work performance rating, as of January 2008, was outstanding.²⁰ He has been cited for his commitment to excellence, leadership, and dedicated efforts.²¹ Several of his colleagues, friends, and a supervisor, have characterized him as professional, knowledgeable, punctual, dependable, extremely trustworthy, well-mannered, very reliable, and as a person of integrity, and support his application for a security clearance.²²

On October 28, 2007, Applicant and his roommate-another illegal substance abuser-agreed to cease sharing an apartment.²³ Nevertheless, two days later, in response to an inquiry as to whether or not he associates with substance abusers, Applicant acknowledged his old roommate and he will "sometimes buy cannabis maybe once or twice a year. He usually will invite [Applicant] over to hang out [sic] and smoke if he has some."²⁴

Applicant has never received any counseling from a recognized drug rehabilitation program nor has he ever attended any drug rehabilitation support group activity for his substance abuse.²⁵

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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.

¹⁷ *Id.* at 42-43.

¹⁸ *Id.* at 45-46.

¹⁹ Tr. at 46.

²⁰ Applicant Exhibit D, *supra* note 1, at 4.

²¹ Applicant Exhibit E (Certificates of Commendation, undated).

²² Applicant Exhibit A (Character Reference Letters, various dates).

²³ Applicant Exhibit B (Move-Out Notice, dated Oct. 28, 2007).

²⁴ Government Exhibit 2, *supra* note 3, at 1.

²⁵ *Id.* at 2-3.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 meaningful decision.

Since 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."²⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the heavy burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.

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 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 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." Accordingly, 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 determination as to Applicant's allegiance, loyalty, or patriotism.

²⁶ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).

Analysis

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) 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), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), "any drug abuse (see above definition)," is potentially disqualifying. Similarly, under AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," may raise security concerns. During the period May 2002-September 2007, Applicant purchased, used, and sold a variety of illegal or controlled substances, or misused prescription drugs. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 25(g), "any illegal drug use after being granted a security clearance" would apply if Applicant had already been granted a security clearance. However, in this instance, Applicant was merely an applicant for a security and it had not been granted prior to his continued substance abuse. Accordingly, the evidence fails to establish AG ¶ 25(g).

In addition, AG ¶ 25(h), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use," may raise security concerns. While there is no expressed intent by Applicant to continue his illegal drug use, in May 2007, he stated to an investigator that he had stopped using illegal drugs in July 2006, and said he had no intention to use any illegal drugs again. Nevertheless, he actually continued to use marijuana on an estimated three occasions since graduating from college, including one time during the last week of September 2007. Thus, his lack

of candor, as recently as May 2007, has raised substantial question as to his commitment to discontinue drug use. AG ¶ 25(h) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition may be mitigated where “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.” While the majority of Applicant’s illegal substance abuse occurred during the period May 2002 until January 2004, he continued his “experimentation” with cocaine until October 2005 and his extensive use of marijuana until September 2007. Taken individually, the “experimentation” of some of the substances might qualify as infrequent use that occurred “so long ago.” However, the entire course of conduct-the behavior-which, despite having been pronounced by Applicant as in the past, continued for nine months after he became an employee of the defense contractor and to within six months of the issuance of the SOR, casting doubt on Applicant’s current reliability, trustworthiness, or good judgment. The evidence fails to establish AG ¶ 26(a).

Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is 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; and
- (3) an appropriate period of abstinence

As noted above, on October 28, 2007, Applicant and his roommate agreed to cease sharing an apartment. That action was the first formal disassociation from his drug-using associate. Also, his claims that his lifestyle and environment have changed, that he has graduated from college, has taken up physical fitness, and is now employed in a professional capacity, when viewed carefully, reveal some rehabilitative steps. Applicant graduated from college in December 2005, took up physical fitness, and entered the professional work place in November 2005 (with a non-defense contractor as a software engineer) and then in January 2007 with a defense contractor. Regardless of the changes in environment and lifestyle, Applicant continued his substance abuse. His purported abstinence, commencing in September 2007, after nearly five and one-half years of intensive substance abuse with a wide variety of substances, has, if he is to be believed, been in place less than nine months, hardly a sufficient period of abstinence, considering his history of substance abuse and the absence of any drug awareness or treatment programs. The evidence fails to fully establish AG ¶ 26(b).

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), "a single serious crime or multiple lesser offenses," is potentially disqualifying. Similarly, under AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted," may raise security concerns. During the period May 2002-September 2007, Applicant purchased, possessed, and sold a variety of illegal or controlled substances, or unauthorized prescription drugs. Those activities constitute criminal conduct because such conduct violates state and/or federal criminal laws. AG ¶¶ 31(a) and 31(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where "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." Also, AG ¶ 32(d) may apply where "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." Applicant's nearly five and one-half years of criminal conduct-intensive substance abuse with a wide variety of substances-continued until at least September 2007, or until about nine months ago. Those nine months of purported abstinence, as well as some expressed remorse, and a good employment record, constitute some evidence of rehabilitation. However, the length of the criminal conduct, the absence of being truly and sincerely remorseful-he said he was not ashamed-about his drug abuse, the fact that the criminal conduct continued after he became employed by a defense contractor, and it continued after he misrepresented facts to an investigator, all minimize the significance of the possible mitigating conditions and cast doubt on Applicant's reliability, trustworthiness, or good judgment. The evidence fails to establish AG ¶¶ 32(a) and 32(d).

Guideline E, 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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 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,” is potentially disqualifying. Similarly, under AG ¶ 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,” may raise security concerns.

In April 2007, Applicant completed his SF 86, and indicated he had used a variety of illegal or controlled substances, or misused prescription drugs usually while attending parties or other social gatherings. During an interview with a Government investigator in May 2007, Applicant stated he had stopped using illegal drugs in July 2006, and said he had no intention to use any illegal drugs again. Nevertheless, despite being aware of the illegal or controlled status of the substances, he actually continued to use marijuana on an estimated three more occasions after graduating from college, including one time during the last week of September 2007. Applicant contended he did not lie to the investigator because at the time he made the statement, his intention was not to use illegal substances in the future. While there is evidence that substance abuse continued until September 2007, the record is bereft that the substance abuse continued between July 2006 and May 2007. With Applicant’s denial, and the absence of Government evidence to the contrary, there is no evidence Applicant deliberately omitted, concealed, or falsified information in the SF 86 or during the interview. The evidence fails to establish AG ¶ 16(a) or AG ¶ 16(b).

In addition, AG ¶ 16(c), “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,” may raise security concerns. In this instance, Applicant’s drug involvement and criminal conduct were

clearly sufficient for an adverse determination, and the two minor allegations under Guideline E offered no meaningful evidence not otherwise considered. Drug use while holding a security clearance is specifically dealt with under AG ¶ 25(g), and drug use while a clearance is pending may be considered under the whole person concept. The evidence fails to establish AG ¶ 16(c).

In addition, AG ¶ 16(g), “association with persons involved in criminal activity,” may raise security concerns. Applicant, his roommate, and his drug supplier, as well as the friends and associates at college who used illegal substances with him during social gatherings and thereafter, were all involved in criminal activity. It appears Applicant’s relationships with everyone other than his roommate ceased upon graduation. He and his roommate continued to reside together until October 2007. Because of that continuing relationship, AG ¶ 16(g) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(e), the disqualifying condition may be mitigated where “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” and under AG ¶ 17(g), it may be mitigated when an “association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.” Applicant terminated his relationship with his roommate in October 2007, and has taken positive steps to reduce vulnerability by becoming more forthright regarding his history of illegal substance abuse and criminal conduct. AG ¶¶ 17(e) and 17(g) apply.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When Applicant’s problems first

began, he was a university student. Curiosity got the best of him and, knowing what he was about to do was illegal, he intentionally began to experiment with a number of illegal or controlled substances, or misused prescription drugs. (See AG ¶ 2(a)(1), AG ¶ 2(a)(2), AG ¶ 2(a)(4), AG ¶ 2(a)(5), and AG ¶ 2(a)(7).) His drug abuse reached its highest level in 2003 when he abused nine different substances. Thereafter, while it may have tapered off, he continued to abuse cocaine as recently as October 2005, and marijuana as recently as September 2007. (See AG ¶ 2(a)(3). He intended to abstain in July 2006, and intended to alter his lifestyle and environment, but, notwithstanding his graduation from college, his interest in physical fitness, and his employment by a defense contractor, his substance abuse continued. After nearly five and one-half years of intensive substance abuse, followed by only nine months of abstinence, his behavioral changes and rehabilitation efforts are too recent to fully assess, and there is insufficient evidence of change to conclude there is no likelihood of recurrence. (See AG ¶ 2(a)(6) and AG ¶ 2(a)(9).)

Overall, the record evidence leaves me with substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his drug involvement and criminal conduct considerations. His personal conduct concerns are better covered under the other two issue areas which specifically are directed towards his criminal conduct and drug involvement, and are considered redundant to them.

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:	AGAINST APPLICANT
Subparagraph 1.a.(1):	Against Applicant
Subparagraph 1.a.(2):	Against Applicant
Subparagraph 1.a.(3):	Against Applicant
Subparagraph 1.a.(4):	Against Applicant
Subparagraph 1.a.(5):	Against Applicant
Subparagraph 1.a.(6):	Against Applicant
Subparagraph 1.a.(7):	Against Applicant
Subparagraph 1.a.(8):	Against Applicant
Subparagraph 1.a.(9):	Against Applicant
Subparagraph 1.a.(10):	Against Applicant
Subparagraph 1.b.(1):	Against Applicant
Subparagraph 1.b.(2):	Against Applicant
Subparagraph 1.b.(3):	Against Applicant
Subparagraph 1.b.(4):	Against Applicant
Subparagraph 1.c:	Against Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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.

ROBERT ROBINSON GALES
Chief Administrative Judge