DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-15783
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: Pro Se

September 10, 2008

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Decision

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HARVEY, Mark W., Administrative Judge:

Applicant mitigated security concerns arising under Guideline H (drug involvement) but not under Guideline E (personal conduct). Clearance is denied.

Statement of the Case

On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant,[1] pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.[2] The SOR alleges security concerns under

[1]Government Exhibit (GE) 7 (Statement of Reasons (SOR), dated April 30, 2008). GE 7 is the source for the facts in the remainder of this paragraph unless stated otherwise.

[2]On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made

Guidelines H (Drug Involvement) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue her security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations on May 21, 2008, and elected to have her case decided without a hearing. Department Counsel requested a hearing (Transcript (Tr.) 14). At the hearing held on August 26, 2008, Department Counsel offered five exhibits (Government Exhibits (GEs) 1-5) (Tr. 18), and Applicant offered three exhibits (Applicant's Exhibits (AE) A-C) (Tr. 20-21). There were no objections, and I admitted GE 1-5 and AE A-C (Tr. 18, 20-21). I received the transcript on September 9, 2008.

Findings of Fact[3]

Applicant admitted in her response to the SOR all of the SOR's allegations. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 26 years old.[4] She graduated from high school and attended cosmetology school but did not graduate (Tr. 5). She does not currently hold a security clearance (Tr. 6). Her son is seven years old (Tr. 49). She is her son's sole provider (Tr. 49). She has worked for a contractor for about two years, and she loves her job (Tr. 49). She does not associate with people involved with drugs from her past (Tr. 49). Her close friends, family members, and current boyfriend know about her drug problem, and her rehabilitation (Tr. 50).

Drug Involvement

Applicant used marijuana from approximately 1997 to October 2004 (SOR ¶ 1.a). She used cocaine at least once in high school around 1998 (SOR ¶ 1.b), and she used crack cocaine from about November 2002 to October 2004 (SOR ¶ 1.c). On July 7, 2004, she was arrested and charged with possession of drug paraphernalia because of a drug pipe found in her car (SOR ¶ 1.d; Tr. 56). This charge was placed on the "STET" docket. Applicant believed that a STET disposition "is on your record for a year and if

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under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

[3]Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. GEs 4 (Responses to Interrogatories) and 8 (Response to SOR) are the sources for the facts in this section unless stated otherwise.

[4]GE 1 (Electronic Questionnaire for Investigations Processing (e-QIP), dated Sept. 20, 2006, will be referred to as a security clearance application in this decision). GE 1 is the source for the facts in this paragraph, and the next paragraph unless otherwise stated.

[she] were to have another charge come up, they could bring that back up" (Tr. 47). From October 28, 2004, to November 25, 2004, she received in-patient drug treatment in Maryland (SOR ¶ 1.e). She received a diagnosis of cocaine dependence continuous and a good prognosis.

At her hearing, Applicant disclosed she first used marijuana when she was 12 years old (Tr. 51). She used crack cocaine, cocaine, marijuana, mushrooms (hallucinogenic mushrooms are also known as psilocybin or psilocin) and acid (lysergic acid diethylamide) (Tr. 51).[5] She regularly used marijuana when she was 16 or 17 years old (Tr. 51). When she was 19 or 20 years old, she used cocaine for the first time in the powder form (Tr. 53). Later she smoked crack cocaine (Tr. 53-54). The frequency of her crack cocaine consumption gradually increased until her use was daily (Tr. 54).

Applicant recognized she was addicted to drugs (Tr. 45). She referred herself into a 28-day, in-patient drug rehabilitation program in Maryland (Tr. 45, 48, 68). She received a diagnosis from a medical doctor of "Cocaine dependence continuous, Prognosis: Good" (GE 5). She completed the program and decided to move into a halfway house (Tr. 48). She left Maryland and went to Florida to get away from the drug environment and other drug users (Tr. 45-48, 69). She was determined to overcome her drug problem, and left her son with her parents for 18 months so that she could focus on beating her drug problem (Tr. 48). The last time she used any illegal drugs was in October 2004 (Tr. 52, 54, 57).

Falsification of Security Clearance Applications

Applicant signed her security clearance application on September 20, 2006 (GE 1), and incorrectly responded, "No" to questions pertaining to previous criminal offenses and drug use.[6] Section 23 of her security clearance application (GE 1) asked:

> **Section 23: Your Police Record** For this item, report information regardless of whether the record in your case has been 'sealed' or

[5]Applicant said she used mushrooms on one occasion in June or July of 2000 (Tr. 55). Applicant said she used LSD on one occasion in 1998 (Tr. 55). She did not mention her LSD or mushroom use to the OPM investigator because she was focused on the marijuana and cocaine use and did not think of it (Tr. 72-73). Mushrooms are the street name for psilocybin or psilocin, which is a Schedule (Sch.) I Controlled Substance. *See United States v. Hussein*, 351 F.3d 9, 16 (1st Cir. 2003) (mushrooms are a plant which may contain the Schedule I(c)(15) and I(c)(16) controlled substance psilocybin or psilocyn). Lysergic acid diethylamide is a Sch. I controlled substance. *See* Schedule I(c)(9). *See also* 21 U.S.C. § 812.

[6]Applicant also denied in response to Section 23f of her security clearance application that she had been arrested or charged with any other criminal offenses (excluding traffic offenses involving fines of less than $150). At her hearing, she disclosed that she was arrested and charged in 2004 with second degree assault (Tr. 47). She contended the incident was self-defense in that she struck a man she was dating after her struck her (Tr. 47). He chipped her tooth, and she broke his nose (Tr. 47). The police arrested both of them. However, he passed away before trial, and the charge was dropped (Tr. 48). The SOR did not allege that she failed to disclose this arrest and charge on her security clearance application. At the hearing, the issue of her failure to disclose this information was not fully developed. I presume that she did not disclose the assault arrest because the charge was subsequently dropped or dismissed.

> otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Answer the following questions. . . . d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?
>
> **Section 24. Your Use of Illegal Drugs and Drug Activity** The following questions pertain to the illegal use of drugs or drug activity. You are required to answer the questions fully and truthfully, and your failure to do so could be grounds for an adverse employment decision or action against you, but neither your truthful responses nor information derived from your responses will be used as evidence against you in any subsequent criminal proceeding. Answer the following questions. 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 (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

During a June 20, 2007, interview with an investigator for the Office of Personnel Management (OPM) Applicant disclosed her drug use as well as her arrest and charge of possession of drug paraphernalia (GE 4). Her description to the OPM investigator was generally consistent with her statement at her hearing. She told the OPM investigator (GE 4) that she did not disclose her drug use for the following reasons:

> Because a [co-worker] informed her that everyone has smoked marijuana; he did not list it and he got his clearance. Subject also spoke with her parents about this and they advised her it was her personal choice to not list any information regarding the arrest and drug involvement. Subject was not afraid that she would not have gotten her clearance if she listed the drug offense and involvement. Subject is not susceptible to blackmail or coercion, but admitted that she does not openly tell people about this part of her past. . . . She admitted that she did not list her drug involvement because she was scared and did not want anyone to find out about it. Subject was afraid that she would not get her security clearance if she listed this information because she knew that this was major, significant information.

At her hearing, Applicant said she was aware her answers were wrong on her security clearance application (Tr. 58-60). Applicant did not disclose her drug paraphernalia arrest and charge because she thought her record was clean and she did not believe she was charged (Tr. 60-62). She said she did not believe she was ever charged with possession of drug paraphernalia; but she subsequently learned from the

OPM investigator that she was charged (Tr. 62).[7] Additionally, she did not disclose her drug problems on her security clearance application because she "was thinking that it was no one else's business. . . I wasn't ordered to go to this rehab so I figured I didn't need to put it. It was behind me. I had moved on. I do realize it was wrong" (Tr. 46). She consulted with her parents,[8] but did not consult with security personnel about completion of her security clearance application (Tr. 59). She did not consult security because, "[She] was scared for them to know that [she] had been a drug addict[. So she] chose to put no because it was from [her] past and [she] felt that [she] willingly went to rehab and [she] didn't think that this was something that would be brought up." (Tr. 59). Applicant recognized she was wrong for not disclosing her drug problems on her security clearance application (Tr. 46). She has changed from the time of her drug abuse, and her environment has changed too (Tr. 73).

Recommendations

In August 2006, a contractor hired Applicant as a senior office aide and as receptionist on the ground floor (Tr. 23-24). Applicant is the "first line of defense" for the security program (Tr. 24, AE B). She registers visitors, and tracks foreign nationals who enter the facility (AE A). She reports to the facility security officer (FSO) (Tr. 23). Applicant does not have a clearance, nor does she need a clearance to continue in her present role (Tr. 31). The contractor wanted to expand her duties to encompass more sensitive security matters and for Applicant's career development (Tr. 31). Applicant will not be fired if she fails to receive a clearance (Tr. 32).

Ms. D is the contractor's regional operations manager, and the person who hired Applicant (Tr. 23, 27, AE A). Ms. D supervised Applicant from August 2006 to January 2007 (Tr. 23, 27, AE A). Ms. D described Applicant as diligent in the protection of sensitive information (Tr. 23, 27). After January 2007, Ms. D had indirect supervisory authority over Applicant (Tr. 27), and has direct supervisory authority over the FSO (Tr. 30). Ms. D opined that Applicant complies with all security protocols, and ensures that other employees likewise do so. She is always on time, and demonstrates a strong work ethic (Tr. 24, AE A). Applicant's performance shows she is conscientious and responsible in all areas of her duties (Tr. 23). Applicant loves her son and takes good care of him (Tr. 25). Applicant is now fully aware of the necessity of full disclosure on her security clearance-related documents (Tr. 26). Ms. D recommends approval of Applicant's clearance (AE A).

Ms. B, the contractor's FSO for the last four years, and Applicant's current supervisor corroborated Ms. A's description of Applicant's duties and performance (Tr. 34-44, AE B). She has daily, professional contact with Applicant (Tr. 39). Applicant has

[7]Applicant was taken to the police station and "booked" (Tr. 62). She was not simply given a ticket or citation to appear in court (Tr. 62-63).

[8]Her parents advised her not to disclose her drug rehabilitation program because it was a self-referral (Tr. 64). During her OPM interview, Applicant took a break and called her mother (Tr. 64). Her mother told her to be honest with the investigator (Tr. 65). After receiving this advice, she disclosed the information she had been withholding from the investigator (Tr. 65-66).

excellent judgment, and shows initiative (Tr. 35-37). When a problem arises she seeks assistance from Ms. B (Tr. 35-36). Applicant is open about her drug problem and what she did to overcome and rehabilitate herself (Tr. 36). Applicant supports her community, her son and her fellow workers (Tr. 37, AE B). She far exceeded expectations and is an excellent employee (Tr. 37). Applicant did not disclose her drug charge on her security clearance application because the court indicated the offense was "stet" and she thought that meant cleared (Tr. 39-40). She did not disclose her drug use on her security clearance application because she believed her drug use is a private matter (Tr. 40). The company provides guidance to employees that if they have questions about completion of their security clearance application, they should send them to the security coordinator or Ms. B (Tr. 41). Applicant did not ask Ms. B any questions about her security clearance application (Tr. 42). Ms. B believes Applicant's "diligence in promptly reporting concerns and adhering to required security policies and procedures will ensure the integrity of national security" (AE B).

Mr. O, Facilities Manger, has supervised Applicant since April 1, 2007 (AE C). Applicant is a reliable, dependable professional (AE C). She sets a fine example and often received compliments (AE C). She demonstrates attention to detail and is conscientious and highly organized (AE C). She is a very valuable member of the team (AE C).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"[9] demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).[10]

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guidelines H (drug involvement) and E (personal conduct) with respect to the allegations set forth in the SOR.

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[9] *See* Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

[10] "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met [his or her] burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Drug Involvement (Guideline H)

AG ¶ 24 articulates the security concern concerning drug involvement:

> [u]se 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.

AG ¶ 25 describes eight drug[11] involvement-related conditions that could raise a security concern and may be disqualifying:

> (a) any drug abuse;[12]
>
> (b) testing positive for illegal drug use;
>
> (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
>
> (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
>
> (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
>
> (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
>
> (g) any illegal drug use after being granted a security clearance; and

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[11]AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

> (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.

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 is a Schedule I controlled substances. *See* Sch. I (c)(9). *See also Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I). Mushrooms are the street name for psilocybin or psilocin, which is a Schedule (Sch.) I Controlled Substance. *See United States v. Hussein*, 351 F.3d 9, 16 (1st Cir. 2003) (mushrooms are a plant which may contain the Schedule I(c)(15) and I(c)(16) controlled substance psilocybin or psilocyn). Opium and cocaine are Schedule II Controlled Substances. *See* Sch. II(a)(3) (opium); and Sch. II(a)(4) (cocaine).

[12]AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Three drug involvement disqualifying conditions could raise a security concern and may be disqualifying in this case: "any drug abuse," "illegal drug possession," "possession of drug paraphernalia" and diagnosis by a physician of drug dependence. AG ¶¶ 25(a), 25(c) and 25(d). The other disqualifying conditions listed in AG ¶ 25 are not applicable. These disqualifying conditions apply because Applicant used marijuana, cocaine, and crack cocaine. She possessed these drugs before she used them. She also possessed drug paraphernalia. On November 25, 2005, a physician diagnosed her with continuous cocaine dependence (GE 5).

The Government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

(a) 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;

(b) 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; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) 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.

Security concerns can be mitigated based on AG ¶ 26(a) by showing that the drug offenses happened so long ago, were so infrequent, or happened under such circumstances that they are unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. 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 record within the parameters set by the directive." ISCR

Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. 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."[13]

Applicant's last drug use was almost four years ago. AG ¶ 26(a) fully applies despite Applicant's last illegal drug use being relatively recent. Her overall illegal drug use lasted approximately seven years (1997 to 2004), and involved numerous uses of marijuana, and crack cocaine.[14] AG ¶ 26(a) applies because her drug use does not cast doubt on her **current** reliability, trustworthiness, or good judgment. Because of her in-patient treatment and her time in a half way house, and her abstention from drug use for almost four years, there is reasonable certitude that she will continue to abstain from drug use. I am confident her illegal drug possession and use will not recur. Because she will not use illegal drugs in the future, confidence in her current reliability, trustworthiness and good judgment is restored.

AG ¶ 26(b) lists four ways Applicant can demonstrate her intent not to abuse illegal drugs in the future. She has disassociated from her drug-using associates and contacts. She moved hundreds of miles from the location where she routinely abused

[13] ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

> *Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the Administrative Judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The Administrative Judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an Administrative Judge stating:

> The Administrative Judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

[14] In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the Administrative Judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

illegal drugs, changing or avoiding the environment where drugs were used. After thoroughly breaking her pattern of addiction, she returned to Maryland. However, she did not renew her association with the drug abusing friends from her past. She has abstained from drug abuse for almost four years. However, she did not provide "a signed statement of intent with automatic revocation of clearance for any violation." AG ¶ 26(b) partially applies.

AG ¶ 26(c) is not applicable because her drug abuse did not follow an illness. The cocaine and marijuana were never prescribed for her.

AG ¶ 26(d) is fully applicable. She satisfactorily completed a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by medical doctor. See GE 5.

In conclusion, Applicant ended her drug abuse in October 2004. The motivations to stop using drugs are evident.[15] She understands the adverse results from drug abuse. She has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to her access to classified information.

Personal Conduct (Guideline E)

AG ¶ 15 expresses the security concern pertaining to personal conduct:

> 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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

> (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; and
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

[15]Retention of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

Applicant failed to disclose her 2004 criminal possession of drug paraphernalia arrest and charge, and her drug abuse from 1997 to October 2004 on her 2006 security clearance application (SOR ¶¶ 2.a and 2.b). AG ¶¶ 16(a) and 16(b) both apply.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (c) 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;
>
> (d) 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;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
>
> (f) the information was unsubstantiated or from a source of questionable reliability; and
>
> (g) 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.

The mitigating condition in AG ¶ 17(f) fully applies to the allegation that she falsified her answer to the question about her prior arrests and charges. Although she admitted preparing her 2006 security clearance application and answering incorrectly on this clearance document, she did not fully understood the requirement to provide the information the government sought. She was unaware of the responsibility to report her stet offense of possession of drug paraphernalia. She believed that with the charge or arrest "dismissed," it was gone and not reportable. She thought her police record was

"clean" for reporting purposes.[16] I found her statement at the hearing to be credible. She honestly thought the charges were gone and not reportable. Her statement shows confusion about the requirement to disclose criminal/police record information. At the time she provided this particular false information to security officials, she thought that the answer she provided was permitted. She did not intend to violate the rules, and did not have the necessary intent to establish the disqualifying conduct. Applicant has provided sufficient information to unsubstantiate the allegations in SOR ¶ 2.a.

The allegation that she falsified her answer to Section 24 of her security clearance application is substantiated. She admitted preparing her 2006 security clearance application and answering Section 24 incorrectly. She provided false information for several reasons. One reason was because she was worried the government might not approve her clearance if she disclosed her drug abuse and rehabilitation treatment. The allegation of deliberate falsification in SOR ¶ 2.b is fully substantiated.

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.

[16]The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

There is considerable evidence supporting approval of her clearance. Applicant revealed her drug abuse to an OPM investigator on June 20, 2007, and at her hearing. I specifically find her statements about her drug use and her description of the changes in her drug-abusing behavior to be credible. Applicant used illegal drugs from the age of about 17 to about 22. She successfully completed a 29-day, in-patient drug treatment program, followed by lengthy treatment in a half way house. She no longer associates with her drug-abusing friends. Now that she is in the workforce, the consequences of drug abuse will be much more severe. She stopped using illegal drugs almost four years ago. Through drug therapy, she knows the consequences if she resumes her drug abuse. Applicant is a valued employee with excellent potential. There is no evidence at work of any disciplinary problems. There is no evidence of disloyalty or that she would intentionally violate national security. Her law-abiding character and good work performance shows some responsibility, rehabilitation and mitigation. Her co-workers and supervisors supported approval of her clearance. I am satisfied that her current judgment, reliability, trustworthiness, and her current ability or willingness to comply with laws, rules and regulations show solid future potential for access to classified information.

The evidence against approval of Applicant's clearance is more substantial. Applicant abused marijuana and/or cocaine from 1997 to October 2004. These serious drug problems are fully mitigated for the reasons previous discussed. However, the falsification of her security clearance application in September 2006 cannot be mitigated at this time. The falsification of her security clearance application was knowledgeable, voluntary, and intentional. She was sufficiently mature to be fully responsible for her conduct. Falsification of a security clearance application shows a lack of trustworthiness and poor judgment. Such conduct goes to the heart of the clearance process, and a security clearance is not warranted at this time. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to drug involvement, but not personal conduct.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[17] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude she is not currently eligible for access to classified information.

[17] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a to 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

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Mark W. Harvey
Administrative Judge