DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-00489
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

December 23, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 22, 2007. On June 28, 2010, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines J, H, and E. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on July 6, 2010; answered it partially on July 13, 2010; completed his answer on July 26, 2010; and requested a hearing before an administrative judge. DOHA received the request on July 26, 2010. Department Counsel was ready to proceed on August 25, 2010, and the case was assigned to me on August 27, 2010. DOHA issued a notice of hearing on September 2, 2010, scheduling it for September 22, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until October 8, 2010, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through DD, which were admitted without objection. Department Counsel's comments regarding AX A through DD are attached to the record as Hearing Exhibit (HX) I. DOHA received the transcript (Tr.) on October 4, 2010.

Bond Amendment

Department Counsel submitted a post-hearing brief on the applicability of the Bond Amendment, 50 U.S.C. § 435c. (HX II.) I agree with Department Counsel's analysis, and I have concluded that the Bond Amendment does not apply to this case. The reasons for my conclusion are set out in the "Analysis" section below.

Findings of Fact

In his answer to the SOR, Applicant admitted the Guideline J allegations in SOR ¶¶ 1.a-1.r and the Guideline H allegations in SOR ¶¶ 2.a-2.c. He admitted failing to fully disclose his criminal record on his SCA, alleged under Guideline E in SOR ¶ 3.a, but he denied intentional falsification. At the hearing, he reiterated his denial of SOR ¶ 3.a. (Tr. 20-21, 73.) His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old welder employed by a defense contractor since June 2007. He has worked for federal contractors since January 2000. He was granted an interim security clearance in January 2005. (Tr. 25.) He supervises about 20 employees working on four different U.S. Navy ships. (Tr. 27.)

Applicant did not finish high school, but he later received his general educational development (GED) certificate. He completed a three-year apprenticeship in welding in about 1986. (Tr. 24.)

In March 1983 and May 1983, Applicant was charged with petit larceny. He was 18 years old and living at home. His memory of the offenses was vague, but he believes he and some friends stole some tires. They made restitution and were placed on probation. (GX 4 at 2; Tr. 35-36.)

In June 1985, Applicant was charged with interfering with a police officer. He testified that he and some friends were throwing tomatoes at cars, and they were

chased by a plain-clothes police officer. He testified that he did not know the person chasing and subduing him was a police officer. He was fined but not jailed. (Tr. 38-39.)

In July 1985, Applicant was again arrested and charged with petit larceny. He could not remember the details of this arrest, but he believed he was again fined but not jailed. (GX 4 at 2; Tr. 38-39.)

Also in July 1985, Applicant was charged with possession of cocaine, a felony. He testified that he possessed a "user amount" of cocaine. Pursuant to a plea bargain, adjudication was deferred and he was sentenced to time served in jail and supervised probation for five years. He successfully completed a 30-day drug rehabilitation program. There is no evidence that he was diagnosed with drug abuse or drug dependence. (GX 1 at 25; Tr. 39-40.)

In June 1987, Applicant was charged with possession of marijuana with intent to distribute, a felony. He denied intending to sell marijuana, but he admitted that he possessed more marijuana than what would be needed for personal use. He testified the charges were dismissed "on a technicality." (Tr. 41-41.)

In June 1989, Applicant was arrested and charged with felony possession of cocaine. This arrest was for his possession of cocaine in July 1985, but the charge was revived because he violated his probation. He pleaded guilty in January 1990 and was sentence to five years in prison, with four years and six months suspended, and supervised probation for five years. (GX 2 at 13;Tr. 41-42.)

In January 1991, Applicant was charged with shoplifting a package of sausages. The offense was treated as a felony because of his previous offenses. He served about 30 to 45 days in jail awaiting trial and was sentenced to time served. (GX 4 at 2; Tr. 45-46.)

In June 1992, Applicant was charged with receiving stolen property, and in October 1992, he was charged with breaking and entering with intent to commit a felony and burglary of a dwelling. He testified that the two arrests arose from the same incident, in which he and a person who owed him money went into the home of the debtor's parents, and the debtor stole his parent's property and gave it to Applicant in repayment of the debt. Applicant was uncertain about the sentence but believed he served about six months in jail. (GX 1 at 25; GX 4 at 2: Tr. 47-48.)

On April 1, 1993, Applicant was arrested for violation of probation. His probation was revoked in July 1993, and he was sentenced to confinement for four years, with all confinement suspended. (GX 2 at 19.)

Applicant married in September 1993. He and his wife live lived together for about four years before they married. (Tr. 50.) They have three children, ages 18, 16, and 3 (Tr. 23.)

In December 1994, Applicant was charged with possession of marijuana. (GX 4 at 2.) In October 2007, he told a security investigator that the charges were dismissed because of an illegal search. (GX 3 at 10.) At the hearing, he testified that he could not remember this incident. (Tr. 51.)

In August 1995, Applicant was arrested and charged with unauthorized use of an automobile and possession of cocaine. Both offenses were felonies. The charges arose when Applicant kept a company car at home over a weekend instead of returning it to the shop. He was convicted of the unauthorized use of an automobile and sentenced to five years in prison with two years and two months suspended. (GX 2 at 15; Tr. 52.) His probation was revoked in May 1996, and he was sentenced to two years in prison. (GX 2 at 17.) He served a total of five years in prison, based on his conviction of unauthorized use of an automobile and revocation of his earlier probation. (Tr. 53.)

In April 1999, Applicant was charged with contempt of court. (GX 4 at 3.) He admitted this charge in his answer to the SOR, but at the hearing he testified he could not remember the circumstances of this arrest. (Tr. 54-55.)

In October 2004, Applicant was arrested and charged with possession of a firearm as a convicted felon. In October 2007, he told a security investigator that he was stopped by police for failing to signal a turn, and the police found a handgun under the passenger seat of his vehicle. He told the investigator he was not convicted of any charges arising from this event. At the hearing, he testified that he and a passenger were stopped by the police at a driver's license checkpoint, and the police found a pistol under the passenger seat of his truck. He testified that he did not know the pistol was in his vehicle, and he did not know if the pistol belonged to his passenger. Contrary to his statement to the security investigator in October 2007, the court records reflect that he pleaded guilty and was placed on unsupervised probation for 20 years. (GX 2 at 6-7; GX 3 at 11; GX 4 at 3; Tr. 55-57.)

In May 2006, Applicant was arrested and charged with sale and distribution of marijuana, a felony, and unlawful possession of a Schedule III controlled substance. In October 2007, he told a security investigator that he did not know the drugs were in his car and did not know how they were placed in his car. In a subsequent interview in November 2007, he told the investigator that the drugs were placed in his car by his girlfriend. At the hearing, he testified that the marijuana belonged to a passenger in his car and was in the passenger's luggage. He denied knowing that his passenger had marijuana in his luggage. He testified that he had a prescription for the Schedule III substance, a pain killer prescribed for his back pain. The court records reflect that he was convicted of both offenses and was sentenced to 30 days of jail time, suspended. (GX 2 at 1-2; GX 3 at 11, 14; Tr. 58.)

In April 2008, Applicant was cited and fined for a speeding infraction (driving 80 miles per hour (mph) in a 55 mph zone). According to Applicant, he mailed a payment to the court, but his fine was $20 more than the amount he remitted. While he was overseas on a project for his employer, his driver's license was suspended. When he

returned from overseas and found that his license had been suspended, he paid the remaining $20, and the suspension of his license was lifted. (GX 2 at 8-12; GX Tr. 59-60.) At the hearing, he promised to submit documentation that he was overseas when he was convicted and proof that he paid the remaining $20 due on his fine, but he did not include any documentation of these events in his post-hearing submission. (Tr. 83.)

When Applicant submitted his SCA in August 2007, he answered "Yes" to question 23a, asking if he had ever been charged with or convicted of a felony, and question 23d, asking if he had ever been charged with or convicted of an offense related to alcohol or drugs. He disclosed that he had been convicted of receiving stolen goods (a felony) in June 1992 and possession of cocaine in July 1985. He answered "No" to question 23b, asking if he had ever been charged with or convicted of a firearms or explosives offense, and "No" to question 23f, asking if in the last seven years he had been arrested for, charged with, or convicted of any offenses not covered in questions 23a, b, c, d, or e. He did not disclose the criminal offenses alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.g, 1.i, 1.k, 1.l, and 1.m.

During an interview by a security investigator in October 2007, Applicant admitted the criminal conduct alleged in SOR ¶¶ 1.b, 1.c, 1.e, 1.g, and 1.n, after being confronted with the evidence. At a subsequent interview in November 2007, he admitted the criminal conduct alleged in SOR ¶¶ 1.l, 1.q, and 1.r. He did not disclose the conduct alleged in SOR ¶¶ 1.d, 1.f, 1.h, 1.i, 1.k, 1.m, 1.o, and 1.p.

In his response to DOHA interrogatories in July 2009, Applicant expressed some uncertainty about whether a five-year period or a seven-year period was covered by some of the questions on the SCA. (GX 3 at 5.) At the hearing, he testified that he had difficulty remembering the dates of various incidents and was confused by some of the questions on the SCA. (Tr. 19-20.)

In his response to DOHA interrogatories in July 2009, Applicant admitted recreational use of marijuana and cocaine an undetermined number of times between 1982 and 1991. He decided to stop using marijuana and cocaine because it was interfering with his ability to further his education and employment. (GX 3 at 3.)

Applicant attributed his criminal record to associating with the wrong people and not having regular employment. He no longer lives in his old neighborhood and has no contact with his former friends. Since 2000, he has been regularly employed by federal contractors and has progressed to a supervisory position. He owns his home and several vehicles. (Tr. 37, 60-61.)

Applicant's current employer has a drug-free workplace policy that allows unannounced inspections and drug screening. After the hearing, Applicant submitted a statement agreeing to automatic revocation of his security clearance for any drug violations. (AX A.)

Since being hired in June 2007, Applicant has completed two fire watch training programs and a shipyard competence course. (AX X, Y, and Z.) In July 2010, Applicant received a cash award for his outstanding performance. (AX CC.) After the hearing, Applicant submitted photographs of 24 command coins given to him as tokens of appreciation from the crews of U.S. Navy ships and submarines for whom he had provided professional and technical services. (AX DD.)

Applicant's first program manager described him as "incredibly dependable," trustworthy, ambitious, and responsible. (AX B.) His current program manager, who has known him for about 15 months, has observed "a great level of professionalism and maturity, reflecting that Applicant has learned from his mistakes. (AX C.) A vice-president of Applicant's company believes Applicant has been a reliable employee who takes great pride in his work. (AX D.) The company vice-president submitted 21 letters from customers attesting to Applicant's character and performance. These letters from supervisors, project managers, coworkers, and friends uniformly describe Applicant as a skillful, effective, compassionate, and caring leader. He has a reputation for high integrity, hard work, and trustworthiness. His technical skills are exceptional. He is a generous and skillful mentor. He is a loyal friend and a devoted husband and father. (AX E through W, AA, and BB.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline J, Criminal Conduct

The SOR alleges 18 criminal incidents between March 1983 and April 2008, including several felonies. The concern raised by 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."

Applicant's criminal record establishes five disqualifying conditions under this guideline:

> AG ¶ 31(a): (a single serious crime or multiple lesser offenses);
>
> AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted);
>
> AG ¶ 31(d) (currently on parole or probation);
>
> AG ¶ 31(e) (violation of parole or probation); and

> AG ¶ 31(f) (conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year).

Applicant's long criminal record establishes AG ¶¶ 31(a) and (c). His 20-year probation based on his illegal possession of a firearm in October 2004 establishes AG ¶ 31(d). His parole revocations in July 1993 and May 1996 establish AG ¶ 31(e). His five-year stint in prison after his arrest in August 1995 and parole revocation in May 1996 establishes AG ¶ 31(f).

Before enactment of the Bond Amendment, 50 U.S.C. § 435c, the Smith Amendment, 50 U.S.C. § 986, provided that disqualifying condition in AG ¶ 31(f) made an applicant ineligible for a security clearance unless a waiver was granted by the Secretary of a military department or an authorized designee. The Bond Amendment repealed the Smith Amendment and limited the statutory disqualification to applicants seeking clearances for Special Access Programs, Restricted Data, and Sensitive Compartmented Information. 50 U.S.C. § 435c(c)(3). The Bond Amendment does not apply to Applicant because he is not seeking access to any of the special programs covered by it.

It is unclear whether the Bond Amendment eliminated AG ¶ 31(f) as a disqualifying condition. The interim guidance for implementation of the Bond Amendment issued by the Under Secretary of Defense for Intelligence on June 20, 2008, did not address the issue. Whether or not AG ¶ 31(f) remains in effect does not affect my decision in this case, because Applicant's convictions and sentences are covered by the other disqualifying conditions under this guideline.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 31(a), (c), (e), and (f), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). In this case, the number and seriousness of Applicant's crimes and his lengthy period of incarceration placed a heavy burden of persuasion on him to show that the security concerns raised by his criminal conduct have been mitigated.

Security concerns under this guideline may be mitigated by evidence that "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 32(a). The first prong of this mitigating condition focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. *See* ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must

determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id*.

Applicant offered a plausible explanation for his failure to appear in August 2008, but he produced no documentation to support his explanation, even though he stated at the hearing that he would provide it. An infraction is a lesser offense than a misdemeanor and is punishable only by a fine. Department Counsel produced no evidence that an infraction is considered a criminal offense under the law of the jurisdiction where it occurred.

Whether or not an infraction is a criminal offense, Applicant's serious disregard of the speed limit militates against a finding of reform or rehabilitation, because it demonstrates a continuing pattern of disregarding laws and regulations. The inconsistencies among Applicant's hearing testimony and his two statements to a security investigator in October and November 2007 raise doubt about his candor and indicate that he has not been rehabilitated. On the other hand, Applicant has completed training to improve his technical skills, been promoted to a supervisory position, and established a reputation for hard work, dependability, reliability, integrity, and leadership. I conclude that the period from April 2008 until the hearing in September 2010 is a "significant period of time" but his conflicting statements about the circumstances of his arrests in October 2004 and May 2006 negate the positive evidence of rehabilitation. Thus, I conclude that his criminal conduct is not mitigated by the passage of time. The remaining elements of this mitigating condition are not established because his criminal conduct did not occur under unusual circumstances and it casts doubt on his current reliability, trustworthiness, and good judgment. Therefore, I conclude that AG ¶ 32(a) is not established.

Security concerns raised by criminal conduct also may be mitigated if "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." AG ¶ 32(d). Applicant expressed remorse during interviews by security investigators, in response to DOHA interrogatories, and at the hearing. He is regarded as an outstanding employee. However, for the reasons set out in the above discussion of AG ¶ 32(a), I conclude that this mitigating condition is not established.

Guideline H, Drug Involvement

The SOR ¶ 2.a cross-alleges that Applicant was arrested, charged, and convicted of drug offenses in 2006 (SOR ¶ 1.b), arrested for and charged with cocaine possession in 1995 (SOR ¶ 1.f), charged with marijuana possession in December 1994 (SOR ¶ 1.g), charged with cocaine possession in 1989 (SOR ¶ 1.l), charged with marijuana possession in 1987 (SOR ¶ 1.m), and charged with cocaine possession in 1985 (SOR ¶ 1.n). The SOR also alleges that Applicant used marijuana and cocaine an undetermined number of times from approximately 1982 to 1991.

The concern under this guideline 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." AG ¶ 24(a)(1) explains that Guideline H encompasses "drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)."

Applicant's admissions in his response to DOHA interrogatories and his answer to the SOR establish the following disqualifying conditions under this guideline:

> AG ¶ 25(a) (any drug abuse, defined in AG ¶ 24(b) as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction"); and
>
> AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.)

Security concerns under this guideline may be mitigated if "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 26(a). Applicant's last drug involvement was in May 2006, more than four years ago. However, for the reasons in the above discussion of AG ¶ 32(a), I conclude that this mitigating condition is not established.

Security concerns also may be mitigated by "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." AG ¶ 26(b). Applicant's statement (AX A) does not expressly state that he will not use drugs again, but that intent is implied in his statement agreeing to automatic revocation of his security clearance for any drug violations. I conclude that all four prongs of this mitigating condition are established.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by intentionally failing to disclose the full extent of his criminal record. The concern under this guideline is set out in AG ¶ 15 as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire." AG ¶ 16(a). When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant attributed his incomplete answers on his SCA to difficulty in remembering the dates of his offenses and confusion about some of the questions. His responses to DOHA interrogatories reflect some uncertainty about whether a five-year or seven-year period was covered by some of the questions.

Applicant's testimony at the hearing caused me concern about whether he was totally candid about his criminal record. His description of the circumstances of having a pistol under the seat of his truck in October 2004 was not consistent with his explanation to a security investigator in October 2007. Although he told the investigator that he was not convicted of any offenses arising from this incident, the court records show that he pleaded guilty.

In addition, Applicant's description of the circumstances of his arrest, charges, and conviction of possessing marijuana and a controlled substance in May 2006 varied substantially from the two inconsistent descriptions of this event he provided to the security investigator in October 2007 and November 2007. The SOR does not allege that Applicant gave false answers to the security investigator, but I have considered the inconsistency between his answers to the security investigator and his hearing testimony for the limited purposes of assessing his credibility, determining whether he has demonstrated successful rehabilitation, and deciding whether AG ¶ 16(a) is applicable. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Concerning his answers on the SCA, I found his explanations implausible and not credible. Questions 23a, 23b, and 23d asked, "Have you ever been charged with or convicted of" any felony offense or any firearms, explosives, or drug-related offenses. Any confusion about a five-year or seven-year period does not plausibly explain a negative answer to these questions. Question 23f asked if, in the last seven years, Applicant had been charged with or convicted of any offenses not covered by the preceding questions. His faulty memory about the dates of his offenses does not plausibly explain his failure to disclose his drug-related arrest in May 2006, less than a year before he submitted his SCA, or his arrest for a firearms offense in October 2004, less than three years before he submitted his SCA. I conclude that AG ¶ 16(a) is raised by Applicant's responses to questions 23a, 23b, 23d, and 23f.

Security concerns raised by false or misleading answers on an SCA or during a security interview may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). He did not make any effort to complete or correct his responses until he was confronted with the evidence by a security investigator two months after he submitted his SCA. Even after he was interviewed by the security investigator, he provided inconsistent information about the omitted offenses and did not fully disclose his criminal record. I conclude that AG ¶ 17(a) is not established.

Security concerns raised by personal conduct also may be mitigated if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 17(c). Falsification of an SCA is not "minor" because it undermines the integrity of the security clearance process. Applicant's falsification is recent, because it pertains to his current SCA. It is arguably "infrequent," but it did not happen under unique circumstances making it unlikely to recur. For these reasons and the reasons set out in the above discussion of AG ¶ 32(a), I conclude that AG ¶ 17(c) is not established. No other enumerated mitigating conditions are applicable.

Whole-Person Concept

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

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines J, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult who has made significant progress in overcoming his checkered past. He presented himself as sincere and remorseful at the hearing. He is obviously embarrassed by his past. The testimonials from his supervisors, friends, and

coworkers were impressive. On the other hand, he has persisted in trying to explain away his arrests for the firearms offense in October 2004 and the drug offenses in May 2006, resulting in inconsistent explanations for his conduct and unmitigated concerns about his candor.

After weighing the disqualifying and mitigating conditions under Guidelines J, H, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his criminal conduct, drug involvement, and lack of candor on his SCA. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a-1.r:	Against Applicant
Paragraph 2, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge