



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----¹) ISCR Case No. 08-06385
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Stephanie N. Mendez, Esquire

August 17, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant abused drugs and alcohol from 1998 to 2003, to the point of developing dependencies. After two Minor in Possession of Alcohol (MIP) and one Driving Under the Influence (DUI) convictions, he entered three inpatient and one outpatient treatment programs. The latter two of those were successful, and he has been clean and sober since May 2003. He deliberately falsified and omitted relevant facts concerning this history at various stages of the security clearance process. Applicant mitigated drug and alcohol-related security concerns, but failed to mitigate resulting criminal and personal conduct security concerns. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on September 24, 2007. On August 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under

¹
Applicant's legal given name is ----- . Since the age of six he has used the name -----
----- . Both names appear in various parts of the record, and refer to Applicant. I amended
the original SOR to reflect his correct name.

Guidelines E (Personal Conduct), G (Alcohol Consumption), H (Drug Involvement), and J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* that went into effect within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 17, 2009. He answered the SOR in writing on September 2, 2009, and requested a hearing before an administrative judge. Applicant failed to respond to the allegations in SOR ¶¶ 1.a and 4.a in this response. On September 25, 2009, DOHA resubmitted the SOR to Applicant to correct this error. Applicant again answered the SOR in writing on October 14, 2009. This answer (AR) was identical to his initial answer, but also admitted to SOR ¶ 1.a. He again failed to respond to SOR ¶ 4.a, which essentially alleged the facts set forth in SOR ¶ 1 by reference.

Department Counsel was prepared to proceed on November 16, 2009, and the case was assigned to me on November 18, 2009. Appellant was performing assigned work at a shipyard in another state until mid-February, so DOHA transferred the case to a different administrative judge responsible for that area on December 17, 2009. That administrative judge convened the hearing on January 28, 2010, and initially denied Applicant's motion for a continuance to obtain counsel and further prepare his case. After Department Counsel's opening statement, and before introduction of any evidence, Department Counsel withdrew his earlier objection to Applicant's motion for a continuance, and the judge granted the motion. DOHA received the transcript of this session of the hearing on February 12, 2010, and reassigned the case to me on February 18, 2010.

DOHA issued a Notice of Hearing on March 25, 2010, and I convened the hearing as scheduled on April 9, 2010. The Government offered exhibits (GE) 1 through 8, which were admitted without objection. The Government also submitted Hearing Exhibits (HE) II and III in support of a request for administrative notice of the contents of the Controlled Substances Act. This request was not opposed, and was granted. Applicant offered exhibits (AE) A through L, which were also admitted without objection. He and his wife testified on his behalf. I granted Applicant's request to leave the record open until April 23, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on April 21, 2010. Applicant submitted AE M before the April 23, 2010 deadline. Department Counsel also forwarded four pages of GE 7 that were inadvertently omitted from the original exhibit. This evidence was admitted without objection, and the record was closed.

Findings of Fact

Applicant is a 26-year-old employee of a major defense contractor, where he has worked since 2007. He has no military service, and this is his first application for a

security clearance. He is married with no children.² In his response to the SOR, he formally admitted all of the factual allegations, although he did not respond to SOR ¶ 4.a, which incorporated the information set forth in SOR ¶ 1 by reference. During the hearing, through counsel, he initially admitted SOR ¶ 4.a, then changed his mind and denied that his falsifications were deliberate and intentional.³ Applicant's admissions, including his statements in response to DOHA interrogatories,⁴ are incorporated in the following findings.

Applicant began using marijuana and alcohol when he was 15 years old. By age 17, which he reached in November 2000, he was using marijuana daily and drinking about ten beers a week, frequently to the point of intoxication. That year he also began regularly using cocaine, methamphetamine, and psilocybin mushrooms. He also experimented twice with LSD, prescription codeine, and ecstasy (methylenedioxymethamphetamine).⁵

During July 2001, Applicant was charged with his first MIP offense, for which he received probation and court-ordered alcohol treatment. He completed a one-month inpatient treatment program during September and October 2001. Following a probation violation, he was ordered back into inpatient drug and alcohol treatment in December 2001. He was expelled from that program after three days for bringing marijuana into the facility. After that, he served some time in jail.⁶

During April 2002, Applicant was arrested and charged with DUI after being stopped for running a stop sign and testing two to three times over the legal limit. He subsequently pled guilty and was ordered to pay a \$2,500 fine, serve five years probation, and undergo additional alcohol treatment. During August 2002, he was arrested again for MIP, together with obstructing justice for giving the arresting officer a false name, and a minor theft charge. He pled guilty to these offenses, and was given a suspended three-year jail sentence, fined \$1,000, and ordered into alcohol treatment.⁷

Applicant continued abusing alcohol, marijuana, and methamphetamine into 2003. He entered and successfully completed another inpatient drug and alcohol treatment program in a different city from May to July 2003. He then successfully completed an outpatient drug and alcohol treatment program from November 2003 to May 2004. As reported during the intake evaluation for this latter program, Applicant's primary drug of abuse was marijuana, and the secondary was alcohol. He used each of

²GE 1.

³AR; Tr. 12-19.

⁴GE 3; GE 4; GE 5; GE 6.

⁵AR; GE 7 at I-99; Tr. 67, 90-97.

⁶AR; GE 7; Tr. 101-103.

⁷AR; GE 4.

these on a daily basis until May 16, 2003, when he entered his latest inpatient treatment. His other drug of choice was methamphetamine, which he used three times a week until April 20, 2003. He was diagnosed as dependent on all three substances.⁸

Applicant was discharged from his outpatient treatment with a prognosis from his counselor that he was at low risk of relapse with continued attendance at Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). He has complied with this recommendation, and remained clean and sober since May 2003. He has changed his lifestyle, and no longer associates with his former alcohol and drug abusing friends. He is married to a very impressive and supportive woman, with whom he has developed a pattern of healthy living, remaining free of alcohol and drugs. He also submitted a statement of intent to never abuse drugs in the future, agreeing to automatic revocation of his security clearance for any violation, and three recent urinalysis reports showing negative results for all drugs tested.⁹

When Applicant completed his SF 86, he answered “No” to question 24 that asked whether he had illegally used any controlled substance since the age of 16 or in the last seven years, whichever was shorter. Applicant turned 16 during November 1999, and signed his SF 86 on September 24, 2007. He admitted that he deliberately failed to list the information concerning his drug use detailed above, and set forth in SOR ¶¶ 2.a through 2.h, in his response to the SOR. During his hearing, he changed his position on this point, and claimed that he misunderstood the question. His explanations to that effect were not credible, and his demeanor during that testimony was unconvincing. His subsequent efforts to conceal his drug involvement during questioning about his alcohol-related offenses and court-ordered treatment programs corroborated his intent to conceal that aspect of his substance abuse. I find that his false “No” answer and omission of his history of drug use was a deliberate attempt to deceive the Government concerning those matters. Applicant testified that he is a good reader, and understood his legal obligation to answer all questions fully and truthfully.¹⁰

In his response to question 25, concerning whether he had undergone any alcohol-related treatment or counseling in the last seven years, Applicant said “Yes”, but incorrectly stated that this treatment occurred at his last outpatient treatment center from January 2003 to January 2004. He admitted in his SOR response that he deliberately omitted listing his three earlier inpatient treatment programs discussed above. He said that he did not disclose the earlier treatment because he believed it was under juvenile records and possibly was sealed. Nobody advised him not to disclose this information, he just thought it would not be discovered.¹¹

⁸AR; GE 8 at 2, 12, Tr. 90-93, 97, 105-107.

⁹GE 8 at 2-3; AE B; AE D; AE E; AE F; AE I; Tr. 50-51, 68-79, 88-90, 110-126.

¹⁰AR; GE 5 at I-19; Tr. 16-19, 58-61, 66, 78-82, 136-137.

¹¹AR; Tr. 61-65, 78-79, 82-83.

During his November 2007 interview with an investigator from the Office of Personnel Management (OPM), Applicant disclosed that he had undergone, “one month in inpatient alcohol treatment in late 2002,” in the city where he underwent his last inpatient treatment from May to July 2003. He said he could not remember the name of the facility. He also discussed the follow-on outpatient treatment. He told the investigator that he had not received any other alcohol treatment, nor had any other treatment been recommended.¹² He admitted in his SOR response that he deliberately failed to disclose his earlier inpatient treatment following his 2001 MIP conviction, including his dismissal from the December 2001 treatment for using marijuana during the program. He offered no satisfactory explanation for this failure to disclose this treatment to the investigator.¹³

Applicant also admitted in his SOR response that during his OPM interview he deliberately failed to disclose that his 2001 inpatient programs included treatment for diagnosed dependency to marijuana and abuse of various other drugs, and that his outpatient program from 2003 to 2004 included treatment for diagnosed dependency to marijuana and methamphetamine as well as alcohol. Applicant offered no explanation for this deception, except to claim that he was not directly asked about drugs, which corroborates his ongoing effort to conceal his drug use from the Government.¹⁴

During his OPM interview, Applicant claimed that his last drink of alcohol was during August 2002, coinciding with his latest MIP arrest. When asked to verify the accuracy of this statement in response to DOHA interrogatories, he added “I would like to note that I failed to mention a relapse of alcohol on 5/16/03. I initially quit drinking in August of 2002 but had a misstep in my recovery.”¹⁵ Applicant actually continued regular alcohol use until he reached his “rock bottom” in May 2003. He admitted in his response to the SOR that this failure to disclose the additional alcohol consumption during the interview was deliberate.¹⁶

In his September 2008 response to DOHA interrogatories concerning drug use, Applicant claimed that had used marijuana one to three times a week between ages 16 and 18, and used methamphetamine once every other week for about six to eight months while he was age 17. He claimed that his last drug use was on June 12, 2002.¹⁷ He turned 18 years old in November 2001. Intake documents obtained from his latest outpatient treatment program revealed that he used marijuana daily until May 16, 2003,

¹²GE 4 at I-10.

¹³AR; Tr. 65-66, 82-83.

¹⁴AR; GE 4; Tr. 65-66, 83-85.

¹⁵GE 4 at I-9, I-12.

¹⁶AR; Tr. 99-100, 105-106.

¹⁷GE 5 at I-15.

and used methamphetamine three times a week until April 20, 2003.¹⁸ Applicant confirmed during the hearing that his drug use continued into 2003 as indicated in the outpatient treatment records, and provided no credible explanation for his false response to the interrogatory. In his SOR response, he admitted to deliberately falsifying these facts and failing to disclose his continuing drug use for almost another year after June 2002.¹⁹

Applicant signed his SF 86 under the certification that he understood that a knowing and willful false statement on that form can be punished by fine or imprisonment or both, including a citation to “section 1001 of title 18, United States Code.”²⁰ That statute reads, in relevant part:

§ 1001. Statements or entries generally.

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591 [18 USCS §§ 2241 et seq., 2250, 2251 et seq., 2421 et seq., or 1591], then the term of imprisonment imposed under this section shall be not more than 8 years.

Applicant submitted his performance evaluation for June 2008 to June 2009, reflecting satisfactory to exceptional results. He also provided the record of his extensive training and increasingly responsible job assignments. Numerous supervisors, coworkers, friends, and family members wrote letters describing his good character,

¹⁸GE 8 at 12.

¹⁹AR; Tr. 98-99; 105-107.

²⁰GE 1 at 12.

successful rehabilitation from his earlier substance abuse problems, and outstanding potential. He presented himself in an impressive manner throughout his hearing.²¹

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

²¹GE 5 at I-28-31; AE A; AE B; AE C; AE G; AE H; AE J; AE K; AE L; AE M.

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline E, Personal Conduct

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 the DCs under this guideline. The specific Guideline E concerns raised by the SOR allegations are:

- (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.

Applicant is an intelligent individual who communicates sufficiently well, orally and in writing, to have known he was deliberately falsifying, concealing, and failing to disclose relevant facts concerning his drug and alcohol abuse and treatment on his SF 86, during his OPM interview, and in his response to DOHA interrogatories. The clear weight of the evidence compels the conclusion that his falsifications and omissions of relevant facts on his SF 86 and in response to interrogatories, was deliberate, raising AG ¶ 16(a). The falsifications and omissions during Applicant's OPM interview, as alleged in SOR ¶¶ 1.c, 1.d, and 1.e, were also clearly deliberate. These acts shift the burden to him to establish mitigation.

AG ¶ 17 provides personal conduct MCs. The only MCs with potential applicability to the foregoing security concerns are:

- (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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Mitigation under AG ¶ 17(a) was not established because Applicant did not disclose any of the information he was attempting to conceal until confronted with the facts during subsequent steps in the investigation process. He offered no evidence that would support application of AG ¶ 17(b). No mitigation under AG ¶ 17(c) was established, since the falsifications were numerous, and took place in connection with the present security clearance eligibility determination. AG ¶ 17(d) was not established because he unpersuasively tried to retract his admissions to these deliberate falsifications during his hearing. Applicant did not demonstrate positive steps to reduce or eliminate his vulnerability to exploitation, manipulation or duress. His employer remains uninformed of the extent of his prior substance abuse, and his multiple attempts to conceal those facts demonstrate his understanding of their potential negative impact on his reputation. AG ¶ 17(e) was therefore not established.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DCs supported by the SOR allegations and asserted by Department Counsel are:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol treatment program.

Applicant's alcohol-related incidents in 2001 and 2002 included one DUI and two MIP incidents. He admitted consuming alcohol, at times to excess and to the point of intoxication, from approximately 2000 to at least May 2003. He was diagnosed as alcohol dependent during three inpatient and one outpatient alcohol treatment programs, and admitted to multiple relapses after his 2001 diagnosis of alcohol dependence and completion of inpatient treatment in October of that year. These facts clearly raise security concerns under AG ¶¶ 22(a), (c), (e), and (f).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar

organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's last alcohol-related incident occurred almost eight years ago, and he has not consumed any alcohol since May 2003 when he entered his last inpatient treatment for his diagnosed alcohol and drug dependence. He has completely changed his former lifestyle, married a woman who is highly supportive of his continuing abstinence, and demonstrated his ongoing intention to remain sober. His original relapse behavior following his first court-ordered treatment program occurred before he realized the extent of his problem and made a decision to stop abusing alcohol and drugs. He continues to participate in NA and AA aftercare programs, and received a favorable prognosis from his counselor following completion of his last outpatient treatment in May 2004. Although his relapses between 2001 and 2003 preclude application of AG ¶ 23(c), Applicant met his burden to establish full mitigation of alcohol-related security concerns under AG ¶¶ 23(a), (b), and (d).

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to alcohol consumption:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the facts in this case are:

(a) any drug abuse (see above definition); and

(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.

Applicant admitted to illegally abusing numerous drugs at age 17, as set forth in SOR ¶ 2. He abused marijuana and methamphetamine until age 19, and to the extent that he developed dependence on both of those drugs. This dependence was diagnosed by the social workers serving as counselors in each of the three alcohol and drug treatment programs that Applicant completed.

AG ¶ 26 provides conditions that could mitigate security concerns. The MCs with potential application under the facts in this case are:

(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; 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.

For the same reasons discussed above concerning alcohol abuse, Applicant has met his burden to establish mitigation under the foregoing three MCs. His drug abuse completely ceased more than seven years ago, when he decided to embrace treatment and change patterns of substance abuse that characterized his late teenage years. He relocated to another city, disassociated from his drug-using former friends, and has established a clear pattern of abstinence after successful completion of inpatient and outpatient drug treatment programs from May 2003 to May 2004. He signed a statement of intent with automatic revocation of clearance for any violation, and was entirely credible in testifying that he fully intends to remain clean and sober. His favorable prognosis was not from a "duly qualified medical professional," but his counselor's June 2004 statement that his risk of relapse was low with continued participation in AA/NA has proven true.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The condition supported by this record is ¶ 31(a) "a single serious crime or multiple lesser offenses." As alleged in SOR ¶ 4.a, each of the falsifications and omissions of material facts set forth in SOR ¶¶ 1.a through 1.f were knowing and willful, thereby constituting violations of 18 U.S.C. § 1001.

AG ¶ 32 provides conditions that could mitigate criminal conduct security concerns. These are:

(a) 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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

For the same reasons that Applicant failed to establish the parallel MCs under Guideline E (Personal Conduct), he failed to meet his burden with respect to these MCs. The multiple falsifications were recent, and his unpersuasive attempts to justify them during the hearing demonstrate his lack of rehabilitation in this respect.

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 relevant 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 commonsense 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 pertinent facts and circumstances surrounding this case. Applicant's drug and alcohol abuse occurred when he was young and irresponsible. He successfully completed treatment for those addictions during 2003 and 2004, and has remained clean and sober since then. He established an excellent reputation for responsibility and good character at work and among friends and family. His maturation and changed living circumstances are commendable, and fully mitigate any ongoing security concerns based on those earlier issues.

However, failure to provide truthful and candid answers during the security clearance process is of special concern. Applicant's untruthful statements throughout his application and investigation demonstrated a lack of understanding or respect for the obligations inherent in the Personnel Security program. The criminal nature of these decisions is of collateral concern. The primary issues are Applicant's lack of candor, unwillingness to comply with rules and regulations, and ongoing potential for coercion or duress demonstrated by his consistent attempts to conceal and minimize his past substance abuse. He did not adequately explain or otherwise mitigate his conduct in this regard.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his personal conduct and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a through 2.j:	For Applicant

Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraphs 3.a through 3.h:	For Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge