



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07575
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: Michael O'Connor, Esquire

July 14, 2010

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SCA) on February 7, 2006. On December 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). It was issued pursuant to 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).

In a January 11, 2010, response, Applicant admitted all allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on March 18, 2010. The parties proposed a hearing date of May 4, 2010. DOHA issued a notice setting that date for the hearing on April 13, 2010. I convened the hearing as scheduled. Represented by counsel, Applicant gave testimony and presented nine documents, which were accepted into evidence without objection as exhibits (Ex.) A-I. Department Counsel offered two documents, which were admitted as exhibits (Exs.) 1-2 without objection.

Before the parties presented their cases, the Government noted that the SOR, under Guideline E at allegations ¶¶ 2.a and 2.b, reflected an incorrect date for Applicant's SCA. The SCA indicated that the application was signed in July 2006, when, in fact, the proper month was February. On motion, the discrepancy was corrected.<sup>1</sup>

The Government also moved to correct the SOR under Guideline E and eliminate allegation ¶ 2.b, alleging that Applicant falsely answered "no" to a SCA question asking whether he had illegally used drugs while maintaining a security clearance, and noting that Applicant was granted a security clearance in November 2006. Because the SCA predated the Applicant's security clearance, and since the dates for both Applicant's SCA and security clearance were noted during the parties' cases-in-chief, the motion was granted without objection.<sup>2</sup>

The Government then moved to add an additional allegation under Guideline H that Applicant "used illegal drugs after having been granted a DOD security clearance on November 14, 2006," as SOR allegation ¶ 1.e.<sup>3</sup> Applicant objected to this addition, having come after testimony had concluded. Inasmuch as it was an admitted and material fact clearly relevant to my consideration of the allegations and whole-person analysis, the proposed amendment added little to the proceeding or my consideration of the case. Acknowledging the Appeal Board's liberality regarding my discretion in granting such motions to amend, however, the parties were provided the opportunity to present written argument on the motion. The Government's brief was received on May 5, 2010; Applicant's brief was received on May 17, 2010.<sup>4</sup> I considered both positions in the matter. Both arguments had merit. Inasmuch as Applicant already had been provided an opportunity to respond to the facts underlying the proposed amendment, however, the SOR was amended to include SOR allegation ¶ 1.e.<sup>5</sup>

The transcript (Tr.) of the proceeding was received on May 11, 2010. The record was closed on May 17, 2010. Based on a full review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to the guidelines raised. Clearance denied.

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<sup>1</sup> Tr. 9, 72.

<sup>2</sup> Tr. 67-69.

<sup>3</sup> Tr. 68-70.

<sup>4</sup> Tr. 71; Exs. 3 (Government's brief) and J (Applicant's brief).

<sup>5</sup> There was no constructive need to amend the SOR. Both Applicant's testimony and his Response to the SOR clearly reflect that Applicant's dates of drug use extended past the date he was granted a security clearance. Consequently, such facts were already inherently relevant and material to any examination of a case under the guideline at issue. The SOR is an administrative pleading. It is not held to the strict standards of a criminal indictment. See ISCR Case No. 03-27157 at 2 (App. Bd. May 11, 2006).

## Findings of Fact

Applicant is a 38-year-old systems analyst working for a defense contractor. He was hired by his present employer in 2006. He is a graduate of a technical institute. He is married and has two children. Applicant has a history of using illegal and controlled drugs. He used marijuana with varying frequency, to include, at times, daily use, from about 1980 until April 2007.<sup>6</sup> From about 1988 until July 2007, he used cocaine with varying frequency, sometimes as often as twice a week. Applicant used opiates on occasion between 2001 and 2007. He used heroin one to three times a week between about May and June 2007.<sup>7</sup> Between 2006 and 2007, he used Percocet without a valid prescription.<sup>8</sup> He purchased cocaine and heroin on several occasions during the times he used those drugs. Applicant never used drugs on the job, nor went to work under the influence of drugs. He hid his drug use, often using them as his family slept.<sup>9</sup>

Much of Applicant's drug use continued after he completed his February 2006 security clearance application (SCA),<sup>10</sup> on which he intentionally answered "no" to Section 24a, which essentially asked whether he had illegally used any controlled substances within the preceding seven years.<sup>11</sup> In certifying the SCA, he acknowledged that "a knowingly and willfully false statement on this form can be punished by fine or imprisonment or both."<sup>12</sup> His drug use continued after he was granted a security clearance on November 13, 2006.

After beginning his current work and receiving a security clearance, Applicant realized his drug use was "out of control."<sup>13</sup> In late 2006, he decided to change his life. Applicant felt his use of alcohol was the gateway to his drug use, so he began attending Alcoholics Anonymous (AA). There, however, he met a man who eventually shared his supply of painkillers and heroin with Applicant when the two should have been at

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<sup>6</sup> Tr. 17. Applicant testified he first tried marijuana in about fifth grade. The experience scared him to the extent that he did not use it again until his mid-teens.

<sup>7</sup>Tr. 64.

<sup>8</sup> Tr. 19. Applicant's use of Percocet started after he was prescribed the drug for migraines and which he used to help him sleep. Its use, however, led to an addiction that extended past his prescription supply.

<sup>9</sup> Tr. 48.

<sup>10</sup> Tr. 9, 71-72. The SOR erroneously stated that Applicant signed the SCA in July, not February.

<sup>11</sup> See Response to the SOR and Tr. 17. "Section 24: Your use of Illegal Drugs and Drug Activity. a. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Allegation ¶ 2.b regarding Section 24b was subsequently deleted. Tr. 67-69.

<sup>12</sup> Ex. 1 (SCA), *citing to* 18 U.S.C. § 1001.

<sup>13</sup> Tr. 18.

meetings.<sup>14</sup> This covertly continued on various occasions until early July 2007, when Applicant realized his level of desperation. Although he wanted to quit using drugs, his guilt over his drug use and the deceit involved in covering it up somehow fueled his need for drugs.<sup>15</sup> He quit using all drugs and immediately disclosed his drug abuse and deceit to his wife and mother. Applicant quickly sought assistance regarding his drug abuse. As he began treatment, he had his wife inform his security officer of his drug issues and need for medical treatment.<sup>16</sup> From July 13-17, 2007, he underwent detoxification at a credentialed medical center.<sup>17</sup> This was followed by a July 17, 2007, to August 14, 2007, rehabilitation period at an intensive in-patient substance abuse treatment center, where he was diagnosed with “Opioid and Cocaine Dependence (continuous) and Alcohol and Cannabis Dependence (in remission).”<sup>18</sup> On discharge, his prognosis was considered positive if he followed an out-patient treatment program.<sup>19</sup> Applicant followed that program.

After his release, Applicant concentrated on his rehabilitation. He found support through two out-patient options. He obtained private counseling with a licensed psychologist, with whom he conferred once a week for six to eight months. He completed that counseling at the end of 2008.<sup>20</sup> He also began attending a new AA meeting venue, where he diligently attended AA daily for the first 90 days after his release.<sup>21</sup> Since that time, he has regularly attended AA about four to five times a week.<sup>22</sup> He now sponsors others in his AA group. Although his employer was informed of his drug use in July 2007, Applicant personally informed the government of his need for drug treatment during his first post-rehab investigatory interview, which occurred in March 2008.<sup>23</sup> Although there is no notation that he was asked about specific dates of

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<sup>14</sup> Tr. 49.

<sup>15</sup> Tr. 64-65. “I didn’t want to feel the guilt. . . . I was trying to stop . . . and then [sic] I’d just go back.”

<sup>16</sup> Tr. 54-55.

<sup>17</sup> Tr. 21.

<sup>18</sup> See SOR; Ex. I (Discharge summary, dated Aug. 14, 2007). The center is a recognized medical facility. Its staff includes licensed clinicians acting under medical supervision. While the diagnosis does not reflect a doctor’s name, it may be assumed the diagnosis was made by or under a qualified medical professional.

<sup>19</sup> *Id.* See also Ex. D (Treatment Center letter, dated Jan. 6, 2010)

<sup>20</sup> Tr. 57.

<sup>21</sup> Applicant was also referred to Narcotics Anonymous, but he found AA to be a more productive. Tr. 57.

<sup>22</sup> Applicant now sponsors two individuals and is very active in the program. See Tr. 60.

<sup>23</sup> Ex. H (Interrogatories, interview of Mar. 21, 2008); Tr. 55-56. See also Tr. 87-89. Applicant was not interviewed by investigators between the time he completed his 2006 SCA and the March 2008 meeting.

use, the interview notes reflect that he disclosed that he had used marijuana, heroin, cocaine, and Percocet, and depicted his drug use as his “little secret.”<sup>24</sup>

Today, Applicant diligently applies and follows AA’s core principles.<sup>25</sup> He has complemented his aftercare measures by avoiding all high-risk situations regarding alcohol and drugs. He now concentrates on running and health. Applicant considers himself a “changed man.”<sup>26</sup> Consistent with AA’s 10<sup>th</sup> step of its 12-step program, he continues to “take personal inventory and when [he is/was] wrong, promptly” admit it.<sup>27</sup> He discussed his problems at length with his security officer.<sup>28</sup> He expressed contrition for hiding his addictions and providing a false answer on his SCA.<sup>29</sup> He acknowledges and regrets his past drug use and the behavior his addictions promoted.

Moreover, Applicant remains alcohol and drug-free.<sup>30</sup> He has had no relapses since he quit using controlled substances in July 2007.<sup>31</sup> There is no alcohol in his home and his wife does not use alcohol. His family is highly supportive of Applicant’s sobriety. He always distances himself from alcohol when it is present at a function, such as a wedding or a social gathering.<sup>32</sup> He has not attended any functions at which drugs were available.<sup>33</sup> The physician that initially referred Applicant for in-patient rehabilitation recently noted no indication of alcohol or drug abuse, opining that Applicant’s “likelihood of relapse would be very low as long as he continues on the path that he has maintained since the successful completion of his rehab program.”<sup>34</sup> It is Applicant’s express intent to continue that path, maintain sobriety, and not use illegal drugs in the future.<sup>35</sup> He signed a notarized statement of intent to continue to abstain from illegal drugs and not abuse prescription drugs that includes his consent to the

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<sup>24</sup> Ex. H, *supra*, note 18.

<sup>25</sup> Tr. 28-29; Ex. G (12-Step Program).

<sup>26</sup> Tr. 29.

<sup>27</sup> *Id.*

<sup>28</sup> Ex. F (Security letter, dated Jan 7, 2010).

<sup>29</sup> *Id.*

<sup>30</sup> Ex. B (Drug screening results, dated Jan. 6, 2010).

<sup>31</sup> Tr. 61-62.

<sup>32</sup> Tr. 61.

<sup>33</sup> *Id.*

<sup>34</sup> Ex. C (Doctor.’s report, dated Jan. 11, 2010).

<sup>35</sup> Tr. 31.

automatic revocation of his security clearance if he uses illegal drugs or abuses prescription drugs in the future.<sup>36</sup>

At work, Applicant is a valued employee. In depicting his work record since June 2006, his superior describes him as a having “established an excellent working relationship with the customer of the program he supports and has shown loyalty to the company.”<sup>37</sup> She further describes him as a “model employee” who is also a “trustworthy, reliable, and skilled employee.”<sup>38</sup> She noted his “spotless” attendance record and willingness to work long hours.<sup>39</sup> His employer’s corporate facility security officer volunteered to write on Applicant’s behalf.<sup>40</sup> She wrote a positive letter of support, acknowledging his past problems, SCA misrepresentations, rehabilitation, and current focus.<sup>41</sup> All evidence indicates that he was and remains an excellent employee who has successfully overcome his addictions.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

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<sup>36</sup> Ex. A (Statement of Intent, dated Jan. 11, 2010).

<sup>37</sup> Ex. E (Management letter, dated Jan. 5, 2010). The author’s letter notes that she is aware that Applicant was a substance abuser until July 2007 and failed to report that abuse on his 2006 SCA. Her comments detail his entire performance from June 2006 to January 5, 2010. Consequently, her assessment and recommendation reflect a professional appraisal of Applicant extending beyond his current work performance.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Tr. 35. In doing so, the officer noted, “I do not take this lightly and want to share that this is the first letter in my 10 years in security which I have written for anyone who has been a substance abuser.”

<sup>41</sup> Ex. F (Security letter, dated Jan 7, 2010).

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>42</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>43</sup>

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>44</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>45</sup>

Based upon consideration of the evidence, Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## **Analysis**

### **Guideline H – Drug Involvement**

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,

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<sup>42</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>43</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

rules, and regulations.<sup>46</sup> “Drugs” are defined as mood and behavior altering substances, and include 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 inhalants and other substances.<sup>47</sup> “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.<sup>48</sup>

Applicant admitted he used a variety of illegal drugs and used Percocet without a prescription at various times and with varying frequency until early July 2007, after he was granted a security clearance in November 2006. He also admitted he illegally purchased such substances during that time. While undergoing treatment in 2007, he was diagnosed as being dependent on opioids, cocaine, and cannabis at a respected in-patient medical center focused on alcohol and substance abuse.<sup>49</sup> Consequently, Drug Involvement Disqualifying Condition AG ¶ 25 (a) (any drug abuse), AG ¶ 25 (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia), either AG ¶ 25 (d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence) or AG ¶ 25(e) (evaluation of drug abuse or drug dependence by a licenses clinical social worker who is a staff member of a recognized drug treatment program), and AG ¶ 25 (g) (any illegal drug use after being granted a security clearance)<sup>50</sup> apply.

Applicant started using marijuana and cocaine recreationally as a teen. After suffering from migraines, he began to abuse Percocet and other drugs. His drug use continued until July 2007. While his treatment has been diligently and successfully pursued and his current prognosis is good, such facts do not give rise to Drug Involvement Mitigating Condition AG ¶ 26 (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).

Since undergoing detoxification, receiving treatment, and following his post-treatment program, Applicant has diligently disassociated himself from people, venues, and events associated with drugs. Such facts give rise to AG ¶ 26 (b)(1) (disassociation from drug-using associates and contacts) and AG ¶ 26 (b)(2) (changing or avoiding the environment where drugs were used).

Applicant has been drug-free for nearly three years. He has changed his environment, avoided relapse, concentrated on his health, and currently has a positive

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<sup>46</sup> AG ¶ 24.

<sup>47</sup> *Id.* at ¶ 24(a)(1-2).

<sup>48</sup> *Id.* at ¶ 24(b).

<sup>49</sup> See note 14.

<sup>50</sup> Given the facts in this case, this disqualifying condition would apply regardless of the addition of allegation ¶ 1.e to the SOR.



prognosis. Given the fact he abused drugs for over 20 years, three years may not be an appropriate gauge of his successful abstinence, despite his recent success at maintaining sobriety. There is insufficient evidence to raise AG ¶ 26 (b)(3) (an appropriate period of abstinence). However, Applicant has not only expressed his intent not to use drugs in the future, he has also signed a statement of intent with automatic revocation of any security clearance he should be granted should he ever resort to illegal drugs or abuse legal, but controlled, medications in the future. Consequently, AG ¶ 26 (b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) applies.

In light of Applicant's past drug abuse, he has demonstrated exhaustive efforts in seeking and maintaining his current drug-free life. He was hospitalized for detoxification, attended an intensive drug treatment at a well-regarded in-patient medical treatment center, attended psychiatric counseling for over half a year following his treatment, and diligently attended AA. Today, he remains active with his AA group, attends AA four to five times a week, and is a sponsor to others seeking to be equally substance-free. He has rigidly followed all after-care advice and recently been given a positive prognosis by the physician who initially referred him for treatment. He has the full support of his family, employer, and AA associates. He is living a life supportive of his needs and goals. He has no intention of returning to drugs, and signed a statement of intent with automatic revocation of security clearance for any lapses in the future. There is little more he can do to rehabilitate himself. His efforts have been personally rewarding and demonstrably effective. Given these considerations, the mitigating conditions raised, and the facts of record, drug involvement security concerns are mitigated.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.”<sup>51</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>52</sup> Here, Applicant denied having used illegal drugs since the age of 16 or in the seven years preceding certification of a February 2006 SCA. He also failed to disclose his purchase of illegal or controlled drugs. Such facts are sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

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<sup>51</sup> AG ¶ 15.

<sup>52</sup> *Id.*

Applicant denied his use of illegal drugs, his abuse of controlled drugs, and his purchase of both forms of drugs when he completed his February 2006 SCA. He failed to inform his employer of his drug use and purchase until July 2007, after he had been granted a security clearance and as he was seeking immediate medical treatment. It is noted in DOHA case law that disclosures that can invoke Personal Conduct Mitigating Condition AG ¶ 17(a) (the individual made prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted by with the facts) should not be protracted. Consequently, this mitigating condition does not apply.

Applicant did not merely experiment with drugs in the past. His long-term abuse of drugs involved many illegal and controlled substances, and was intentionally covert. When he certified his SCA answers, he did so in the knowledge that falsity was grounds for criminal action under 18 U.S.C. § 1001. He only volunteered the truth of his drug abuse and SCA falsity when facing a prolonged period of detoxification and treatment. Therefore, AG ¶ 17(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) does not apply.

Applicant's eventual honesty and disclosure must be commended, as must be his success in beating a drug abuse history extending over 20 years. Indeed, given his extensive drug history, his efforts demonstrate remarkable diligence, commitment, and perseverance. Since making the commitment to quit drugs, he has been completely forthcoming regarding his drug abuse and history, assuaging the feelings of guilt he once endured. For three years, he has been open about his drug abuse with his wife, his family, and his employer. AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies. None of the other mitigating conditions apply.

While Applicant's successful recovery was extraordinary and his candid testimony was heartfelt, the AG specifically notes that "any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process" is of special interest. Consequently, heightened scrutiny is warranted. The issue here is not about Applicant's abuse of drugs, but his failure to disclose it. This failure was compounded when he continued to keep his "little secret" after being granted a security clearance. His drug abuse and false SCA answer were not disclosed until the prospect of a protracted absence from work was anticipated for detoxification and treatment. That occurred less than three years ago, in mid-July 2007. Given the heightened scrutiny required in this situation, insufficient time has passed to reestablish the level of trust and candor expected of one seeking access to classified or sensitive information. While Applicant's accomplishments put him on the path toward restoring that level of trustworthiness, it is premature to conclude that personal conduct security concerns have been dispelled. When, as here, personal conduct security concerns remain, resolution under the clearly consistent standard must be made in favor of the national security.

## Guideline J – Criminal Conduct

The concern under this guideline is that “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.”<sup>53</sup> Here, Applicant illegally abused drugs, a habit that continued after he was granted a security clearance. He obtained and used controlled medication without a prescription. He also falsely denied his drug use on his SCA. In completing and certifying his SCA answers as true, Applicant was advised that “a knowingly and willfully false statement on this form can be punished by fine or imprisonment or both.”<sup>54</sup> Such acts constitute criminal conduct and Applicant has admitted the conduct alleged. Therefore, Criminal Conduct Disqualifying Condition AG ¶ 31(a) (a single serious crime or multiple lesser offenses) and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted) apply. Consequently, it is Applicant’s burden to mitigate the security concerns raised.

Applicant denied illegal drug use on his February 2006 SCA. That abuse continued after he was granted a security clearance in November 2006. He did not quit abusing drugs until July 2007. That same month, he had his wife inform his employer through its security officer of his drug abuse and need for treatment, thus giving notice of his false SCA answer and of his drug dependence. In addition, when interviewed by investigators for the Defense Department in March 2008, he disclosed the fact that he had abused drugs and sought appropriate. He has repeatedly demonstrated remorse in his poor judgment and for concealing the truth of his drug dependence from his family and the investigative process.

Applicant provided a false answer on his SOR in February 2006 and he quit using illegal drugs in July 2007. For the past three years, his life has been devoid of further criminal acts. He has undergone exhaustive rehabilitation regarding his former drug problem. He has been thoroughly candid about both his drug use and efforts to gain and remain drug-free. He has made significant changes in his life, now focusing on his health and his family. He has excelled at work and earned the respect of his associates. He has not only participated in AA, but has become a sponsor for others in his community. While he cannot erase either his past illegal drug use or his SCA falsification, Applicant is contrite. He has spent three drug-free years honestly trying to make amends for his past transgressions and demonstrate straight-forward and honest judgment. Given such factors, Criminal Conduct Mitigating Condition AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, 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) and AG ¶ 32(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 service) apply. Criminal conduct security concerns are mitigated.

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<sup>53</sup> AG ¶ 30.

<sup>54</sup> Ex. 1 (SCA), *citing to* 18 U.S.C. § 1001.

## 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 an applicant's conduct and all the 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 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 the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a credible man who has successfully fought a drug abuse problem that has plagued him his entire adult lifetime. Contributing to his already existent drug abuse were migraines and sleep problems that led to his abuse of prescription drugs. He voluntarily sought extensive drug treatment when his drug abuse and his guilt over concealing it became overwhelming. He is now in recovery, lives a different lifestyle, has a positive medical prognosis, and is a strict adherent of AA. He is now forthright about his past drug problems and an active AA sponsor, helping others in need. He genuinely regrets lying about his drug use. Given his remorse and the three years of diligence and commitment demonstrated thus far, there is little likelihood he will relapse, fail himself and his family, and return to drugs.

Similar remorse was demonstrated and efforts made to compensate for Applicant's past criminal conduct, both in terms of his drug use and failure to disclose that drug use. In terms of criminal conduct, there is little more he can do to correct his past and start anew. His recent past is devoid of further criminal conduct, and there is every indication that he will continue AA's 10<sup>th</sup> step in making up for his past.

Remaining are the security concerns regarding personal conduct. In light of the AG, and given the nature of his SCA falsity, such conduct demands heightened scrutiny. Unlike drug involvement and criminal conduct, abstention and self-correction do not necessarily lead to demonstrable rehabilitation. Less than three years have passed since Applicant first disclosed the truth about his drug abuse, an act that revealed his untruthfulness on the SCA which provided the basis for his November 2006 security clearance. While he diligently adheres to the tenets of AA and its emphasis on making amends, insufficient time has passed to reestablish the level of trust required of one seeking and maintaining a security clearance. While he is on his

way toward reestablishing that trust, there is insufficient evidence to mitigate all associated personal conduct security concerns. Consequently, personal conduct security concerns remain. Clearance denied.

### **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
Subparagraph 1.a – 1.e:	For Applicant
Paragraph 2, Guideline E: <sup>55</sup>	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a – 3.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge

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<sup>55</sup> As noted, *supra*, Subparagraph 2.b was deleted on motion by the Government.