



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



In the matter of:)
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) ISCR Case No. 08-08944
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 Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro Se*

September 11, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence and Guideline G, Alcohol Consumption, but failed to mitigate the security concerns under Guideline E, Personal Conduct, Guideline H, Drug Involvement, and Guideline J, Criminal Conduct. Applicant's eligibility for a security clearance is denied.

On March 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, E, G, H and J. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 18, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2009. DOHA issued a Notice of Hearing on July 21, 2009. I convened the hearing as scheduled on August 18, 2009. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. The Government also offered for administrative notice Hearing Exhibits (HE) I through IV, which were accepted. Applicant testified and offered Exhibits (AE) A through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2009.

Procedural Issue

The Government moved to amend SOR ¶ 3.c, deleting the date “March 4, 2005”, and substituting the date “June 2005.” Applicant did not object, and the motion was granted.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except allegation ¶ 4.e. The admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 36 years old. He has been offered a job with a federal contractor which requires a security clearance. He is single. He has a bachelor’s degree and is presently a student completing a graduate program on-line. He does not work and is supported by his father while he finishes his degree. He graduated from high school in 1991. From 1991 to 2005, he worked in the motion picture industry.¹

In late 2007, Applicant met a woman from Colombia through an on-line internet service. He met her about once a month at a coffee shop to talk for about 30 to 45 minutes. They talked about her boyfriend or who they were dating and family matters. They have never dated and their friendship is strictly platonic. He has not spoken to her in more than four months. She is employed by the Colombian embassy. Applicant will discontinue his friendship with her if it is a security concern.²

Applicant is a recovering alcoholic. He began drinking alcohol infrequently in high school while on summer break. He went to college in 1993, and his drinking increased. He quit school in 1994. He moved to another state and his drinking increased again. He would drink two to three times a week and on the weekend with friends. His weekend consumption was approximately 10 to 12 pints of beer.³

¹ Tr. 29-32.

² Tr. 27-28, 33-34.

³ Tr. 34-46.

In August 1995, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI) and Driving on a Suspended License. On September 18, 1995, he pled guilty and was sentenced to probation for three years and was given a \$1,419 fine. He testified he spent a night in jail, but did not remember being sentenced to two days in jail. Applicant disputed he was driving on a suspended license at the time of his arrest. Subsequent to his plea of guilty, his license was suspended. He admitted he continued to drive on a suspended license because he had to get to work. He believes his father paid the fine.⁴

On September 29, 1996, Applicant was arrested and charged with Driving on a Suspended License. He pled guilty and was placed on probation conditioned upon serving 10 days in jail and paying a \$940 fine. He did not serve any jail time and failed to pay the fine. A bench warrant was issued on May 19, 1997, and his probation was revoked. He continued to drive on a suspended license.

On March 25, 2000, Applicant was drinking at a bar with friends. He lived 30 miles from the bar and proceeded to drive home. He was in a one-car accident when he "hit the side of a mountain." He was transported to the hospital and received stitches in his head. He was arrested and charged with DUI and Driving on a Suspended License. His blood alcohol level was .17%. The bench warrant from May 19, 1997, was discovered. He admitted he had been driving on a suspended license for three years. On August 31, 2000, Applicant pled guilty to DUI and was sentenced to 96 hours in jail. He received a \$2,035 fine and was ordered to complete an alcohol abuse program. His license was restricted, and he was ordered to have a monitoring device installed on his vehicle. On April 5, 2002, a bench warrant was issued for Applicant because he failed to comply with the requirements of the alcohol abuse program. Applicant's explanation for his failure to complete the program was because he moved to a different state. He did not contact the state where he was convicted prior to his move. He did not recall if he paid the fine. He admitted he drove on a suspended license from the time of his sentence in September 1996, until he was arrested again in March of 2000.⁵

In the summer of 2002, Applicant moved to a new state and his consumption of alcohol increased. He was drinking approximately 10-12 pints of beer a couple of times a week. In January 2005, he moved again to another new state to attend college. On January 22, 2005, Applicant was cited by the campus police with an alcohol violation, non-compliance with an official, and disorderly conduct. On March 4, 2005, he committed another alcohol violation on campus. He admitted he was drunk on campus, a violation of school policy. The school disciplinary board issued him a deferred suspension and barred him from residing or visiting residences halls, and he was required to complete substance abuse counseling. He sought assistance and met with a clinical psychologist to discuss his alcohol abuse and his attention deficit disorder.⁶

⁴ Tr. 48-56.

⁵ Tr.56-70.

⁶ Tr. 46-48, 70-72, 76-78.

In June 2005, Applicant was arrested by the city police where he attended school, and charged with public intoxication. He spent the night in jail, paid a fine, and was released the next day.⁷

On April 23, 2006, Applicant again violated the school's alcohol policy. He was suspended from school for one year, from May 2006 to June 2007. He was required to attend alcohol treatment as a condition for reinstatement to school. Applicant attended alcohol treatment from September 2006 to November 2006. He was diagnosed as alcohol dependent by a medical doctor and a licensed clinical alcohol/drug counselor (LCADC). While in treatment he was prescribed and took Antabuse. He completed the required 21 sessions of treatment. He attended Alcoholics Anonymous (AA) while attending alcohol treatment. The discharge summary stated: "Follow-up plan: 12-Step group and individual psychotherapy." Applicant attended some AA meetings and saw either a psychotherapist or psychologist.⁸

Applicant testified he last consumed alcohol in September 2006. He is not concerned about drinking now. He last attended an AA meeting in April 2009. He stated he has not attended since then because he is busy with school and caring for his father. He did not have a sponsor. He does not serve as a sponsor. He never completed the 12-step program. He completed Step-4. He stated he intends to go back to AA when he moves from his current location back to where he attended school.⁹

Applicant moved to Morocco in January 2007 for seven months and took classes while there. He stated he helped establish AA meetings. While there he used hashish about 10-15 times. Hashish is legal in Morocco. He moved back to the U.S. in July 2007. His suspension from college expired and he reenrolled in school.¹⁰

On October 17, 2007, Applicant was charged by campus police with disorderly conduct. He had requested through the student disability service that he be permitted an extension of time to complete an exam because he has attention deficit disorder. He was denied the extension. Applicant stated that the Director thought he was overexcited and she felt threatened. No alcohol was involved.¹¹

From 1996 to December 2007, Applicant used illegal drugs. From June 1996 to July 2000, he used marijuana about 100 times each year. From 2000 to 2005, he used marijuana about 25 times each year. From 2005 to December 2007, he used marijuana about three to four times. From June 1996 to July 2000, he used cocaine three times. In

⁷ Tr. 71, 76-86.

⁸ Tr. 86-94; 100-102; AE D and F.

⁹ Tr. 103-107.

¹⁰ Tr. 94-98.

¹¹ Tr. 98-100.

late 2005, he used cocaine one time. From 1996 to 2000, he purchased marijuana for personal use on various occasions.¹²

Applicant used illegal drugs with his roommates at their house. When he used cocaine, it was at parties. He knew the drugs were illegal, but was not concerned about getting caught because he was at home. The last time he used cocaine was in late 2005. He knew he was breaking the law. He stated he does not have a drug problem. He does not consider substance abuse a link to alcoholism. He has never had to take a drug test. He does not intend to use illegal drugs in the future. He still associates with one of his former roommates, with whom he used drugs. They talk on the phone often and last saw each other about five months ago. In answers to interrogatories Applicant stated: "I decided to stop using illegal substances when I chose to pursue a career in the intelligence community." He further stated: "I decided to stop using illegal substances because I realized I wanted more out of life. I want to help combat global terrorism as a valued member of the intelligence community. Once I realized this, stopping was not hard at all."¹³

Applicant completed his security clearance application (SCA) on April 4, 2008. He answered "no" to the question asking if he had ever been charged or convicted of any offense(s) related to alcohol or drugs. He also answered "no" to the question asking if in the last 7 years he had been arrested for, charged with or convicted of any offense(s) not already listed. Applicant, did list he "received a DUI in 2000". He did not list his 1995 DUI conviction. He did not list his arrest for public intoxication in June 2005. Initially when asked why he did not list his 1995 DUI he twice stated "I didn't think to. I only thought to list the DUI in 2000." When questioned if he intended to keep the 1995 DUI a secret, he responded: "Certainly not." He went on to say regarding the 1995 conviction:

I'm filling out this a Standard Form 86 in the hopes of getting a security clearance. I am well aware of all my discrepancies, of all of my indiscretions. And quite honestly it sucks to have to fill this out. I mean DUI's, marijuana smoking. It's humiliating. It doesn't make it right.¹⁴

He further stated "Yes, not putting down the 1995 DUI, I didn't think to do it. I mean I said, 'all right, I'll tell them about my 2000 DUI and move on.' " When questioned further he stated "Okay, I'm thinking, 'do they really need to know about a DUI that I got more than ten years ago? A first offense.'" He then stated he decided not to list the 1995 DUI. I find Applicant intentionally and deliberately omitted relevant information on his SCA. Regarding information provided about his 2000 DUI conviction, Applicant stated in the SCA: "I attended a court-ordered alcohol program. The case has since been

¹² Tr. 109-121.

¹³ Tr. 100-123; GE 2.

¹⁴ *Id.*

dismissed.”¹⁵ The court-ordered alcohol program he mentions is the one he failed to complete when he left the state, for which the bench warrant was issued. He stated at his hearing that he was told by someone at the court that his case was dismissed. He believed that it meant there was no longer a file on him. I did not find Applicant’s testimony credible.¹⁶

On his SCA, Applicant listed that he used marijuana from 1996 to 2000, approximately 25 times. He listed that he used cocaine from June 1996 to 2000, approximately three times. He failed to list that he used marijuana from 2000 to 2005, approximately 25 times, and he again used it from 2005 to December 2007, three to four times. He did not list his 2005 cocaine use. He did not list his hashish use because it was legal in Morocco. In answers to interrogatories, Applicant again did not list his more recent drug use. He admitted at his hearing that he “low balled” the number of uses on his SCA. He stated:

I low balled this number because filling out the original questionnaire, the original SF 86, I’m thinking to myself, ‘My God, if I let the U.S. Government know that I smoked marijuana maybe 100 times a year between 1996 and 2000, its laughable. What’s the point in even filling out the questionnaire? They’ll never give me a security clearance.’¹⁷

He admitted he deliberately falsified the number of time he used illegal drugs. He explained he now realizes he did not have to divulge some of his illegal drug use because it fell outside of the time period of “since the age of 16 or in the last 7 years whichever is shorter.” He believed he made a mistake by including the information on his drug use from 1996 to 2000. He acknowledged that regardless what information he provided, he was required to tell the truth.¹⁸

Applicant stated in his answer to the SOR that he has been in recovery since December 2007. He explained what he meant is that he has not had any alcohol or drugs since then.

¹⁵GE 1 at page 27.

¹⁶ Tr. 129-137. Applicant’s omissions about his 1995 DUI and public intoxication convictions, and incomplete information about the court ordered alcohol program are not considered for disqualifying purposes, but will be considered when analyzing his credibility and the “whole person.”

¹⁷ Tr. 137-144, 152-154.

¹⁸ *Id.*; GE 1.

Colombia¹⁹

Colombia is a constitutional, multi-party democracy and the second most populous country in South America. Any person born in Colombia is considered a Colombian citizen. There are travel warnings for U.S. citizens by the Department of State highlighting the dangers of violence by narcoterrorist groups and other criminal elements in Colombia. Foreigners continue to be victims of threats, kidnappings, and other criminal acts and there are severe restrictions on travel to and within Colombia for Americans residing there for official duties. Victims of violence have included journalists, missionaries, scientists, human rights workers, and tourists including children. The Secretary of State has designated three Colombian groups as Foreign Terrorist Organizations that have carried out bombings and other attacks. They have also targeted critical infrastructure, public recreation areas and modes of transportation. They have also targeted civilians, government workers, politicians and soldiers. One terrorist organization held three U.S. citizen government contractors as hostages for five years. The government of Colombia's record on human rights has improved, but there are still serious problems, including unlawful and extrajudicial killings, forced disappearances, insubordinate military collaboration with criminal groups, torture and mistreatment of detainees, and other serious human rights abuses.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

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 common-sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹⁹ All of the information was taken from HE I through IV.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

I have considered all of the foreign influence disqualifying conditions under AG ¶ 7. I have especially considered the following:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has inconsistent and infrequent contact with a woman who is a Colombian national and works at the Colombian embassy. Their relationship is platonic and casual. There is no evidence that it would create a heightened risk of foreign exploitation, pressure or inducement. There is no evidence that Applicant's infrequent contact with her creates a conflict of interest. Applicant has not seen her in several months and although they appear to be friends, there is not an emotional commitment. I find none of the foreign influence disqualifying conditions apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to 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, rules, and regulations.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

- (a) any drug abuse; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant has a significant history of marijuana use. He also has used cocaine. He admitted he purchased marijuana. I find all of the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (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; (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.

Applicant's illegal drug use from 1996 to 2007 was frequent. He decreased the frequency in the latter years, but was still a consistent abuser. He last used it in December 2007. His motivation for discontinued use is career development. Applicant's period of abstinence is less than two years. Although hashish was not illegal when he used it, he did continue to use mind altering drugs. Most of Applicant's use of illegal drugs was not during a period of youthful indiscretion, but was rather while he was adult. I do not find there were unusual circumstances. I do not find mitigating condition (a) applicable.

Applicant has not used illegal drugs since December 2007. He indicated his intent not to use them in the future. He has contact with only one of his friends with whom he used drugs. He appears to be devoted to his college course work. It appears Applicant's motivation for abstaining from use of illegal drugs is due to his goal to work in the intelligence field. It also appears he is ready to put his life in order. I find mitigating condition (b) applies.

Applicant has not participated in a drug treatment program. I find mitigating condition (d) does not apply.

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.

I have considered all of the disqualifying conditions under AG ¶ 22 including:

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse 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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant was diagnosed by a medical doctor and licensed alcohol counselor as alcohol dependent. He has had numerous alcohol incidents, including criminal charges and school violations, resulting in his suspension from college. He failed to comply with a court ordered alcohol program which resulted in a bench warrant being issued. Applicant had a consistent pattern of excessive drinking. I find all of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 23 and especially considered the following:

(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); 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 has abstained from drinking alcohol since September 2006. Prior to then he had a consistent pattern of alcohol abuse. I find mitigating condition (a) applies because Applicant has abstained from alcohol consumption for almost three years. He has not had any alcohol-related incidents in three years. I find mitigating condition (b) applies. Applicant successfully completed alcohol rehabilitation in September 2006. It was recommended that he continue to participate in AA, complete the 12-step program, and attend individual psychotherapy. Applicant has participated in AA, but at present his attendance is sporadic. He does not have a sponsor. He has completed four steps of the 12-step program. Finally, I find (d) only partially applies, because although Applicant did complete an alcohol rehabilitation program, he is somewhat sporadic in his

participation with AA, when regular participation was recommended. He also is not actively engaged in a 12-step program and has not received a favorable prognosis from a duly qualified medical professional.

Criminal Conduct

AG ¶ 30 sets out the security concern relating 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.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and especially considered the following:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has numerous arrests, charges and convictions, including for DUI, driving on a suspended license, and public intoxication. Applicant used illegal drugs regularly for more than ten years. He purchased illegal drugs. He violated the terms of his probation by driving on a suspended license. He failed to complete a court-ordered alcohol program, thereby resulting in the issuance of a bench warrant. Applicant intentionally and deliberately omitted relevant information on his SCA, which constituted a felony offense.²⁰ There is sufficient evidence to raise all of the above disqualifying conditions.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 23 and especially considered the following:

- (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; 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.

²⁰ Title 18 U.S.C. § 1001.

Applicant repeatedly violated the law for more than ten years. He has two convictions for DUI. He showed a repeated disregard for the court-mandated suspension of his driver's license. He intentionally omitted relevant information from his SCA. Based on his long history of criminal violations, deliberate omissions, and his failure to comply with his probations, I find none of the mitigating conditions apply.

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 conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to considerations of: (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant admitted he deliberately failed to divulge important relevant information on his SCA pertaining to his drug usage because he knew it would hinder his ability to

obtain a security clearance. He deliberately minimized his drug usage. Applicant may not have had to divulge some of his drug use because it was outside the period of time requested. However, I find that when he chose to provide such information, he had a duty to tell the truth and provide accurate information and not deliberately provide false information. In addition to Applicant's omissions on his SCA, he also has a history of violations he committed while attending college, to include alcohol violations, non-compliance with an official, disorderly conduct, receiving a deferred suspension, being barred from residing or visiting residence halls, and finally being suspended from school for a year for violating the school's alcohol policy. Applicant also used hashish from January 2007 to July 2007. Hashish was not illegal in the country where Applicant used it, so it is not disqualifying. It is somewhat disturbing that he stated his motivation for discontinuing his drug use was because he wanted to get into the intelligence field, yet he chose to use a mind altering drug, that is illegal in the U.S., while pursuing a curriculum where government employment was likely. I find all of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

- (a) the individual made prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted with the facts;
- (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.

Applicant intentionally falsified his security clearance application. He felt that if he was truthful, it would reduce his opportunity of obtaining a security clearance. He did not correct the falsification before he was confronted with the facts. His intentional omissions are not minor, nor are they mitigated by the passage of time. There are no unique circumstances that would relieve Applicant from telling the truth. His conduct casts doubt on his reliability, trustworthiness and good judgment. Applicant also has a series of violations that occurred while he was attending college that resulted in being suspended for a year. All but one of these violations was the result of his alcohol dependency. I find he has acknowledged his alcohol dependency and obtained counseling. He has also taken positive steps to remain sober. I find mitigating conditions

(d) and (e) apply to Applicant's conduct which was the result of his alcohol dependency. I do not find any mitigating conditions apply to his intentional omissions on his SCA.

Whole Person Concept

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of drug abuse, alcohol dependency, criminal violations, rules violations, and personal conduct, including lying on his SCA. He has abstained from alcohol use for three years. He last used illegal drugs in December 2007.

For more than ten years Applicant exercised a disregard for the law. Not only on hundreds of occasions did he abuse illegal drugs and misuse alcohol, thereby resulting in DUI and suspended license convictions, but he also failed to abide by the courts' orders imposed on him as part of his sentences. Alcohol was a big factor in his poor judgment. However, even after he started his present period of abstention from the use of alcohol, he continued to use illegal drugs. Although hashish was not illegal because he used it in Morocco, one has to question his commitment to turning his life around and his pursuit to a career in the intelligence field based on his actions. One also has to question his commitment to sobriety, when his motivation for discontinued drug use is due to career motivation. It is also troubling that Applicant was attending AA and was abstaining from alcohol consumption, but not drug use.

I am not convinced that a sufficient period of time has elapsed to test his commitment to abstaining from future drug use. Applicant's long history of alcohol and drug abuse, and criminal conduct does not reflect a period in his life of youthful misconduct. He was well beyond those years. Instead, it reflects a disregard for compliance with rules, whether they are imposed by a legislature or by school officials.

He clearly made a conscious decision regarding information he wanted the government to be made aware about his background. Rather than providing honest thorough responses as was required, he intentionally gave incomplete and inaccurate information. Applicant has been going to school and pursuing a difficult curriculum. It appears he is taking steps towards moving his life in the right direction. However, he has a long history reflecting questionable and illegal conduct that will continue to follow him until he can show a considerable period of consistently law-abiding conduct. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guidelines for Foreign Influence and Alcohol Consumption, but failed to mitigate the security concerns under the guidelines for Personal Conduct, Drug Involvement, and Criminal Conduct.

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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	AGAINST APLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraphs 3.a-3.d:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.c:	For Applicant
Subparagraphs 4.d-4.e:	Against Applicant
Paragraph, Guideline J:	AGAINST APPLICANT
Subparagraphs 5.a-5.c:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge