



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-10023
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines H (Drug Involvement), E (Personal Conduct), and J (Criminal Conduct). Clearance is denied.

Statement of the Case

On February 25, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.¹ The SOR alleges security

¹On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, Personnel Security Program

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

On March 5, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 26, 2009, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.² Applicant did submit information within the 30-day time period after receiving a copy of the FORM. The case was assigned to an administrative judge on May 5, 2009, and was reassigned to me on May 11, 2009 due to caseload considerations.

Findings of Fact

Applicant denied or partially denied SOR ¶¶ 1.a., 2.a., 2.b., 3.d., admitted SOR ¶¶ 3.a., 3.b, and neither admitted or denied SOR ¶ 3.c. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 38-year-old self-employed contractor for a defense contractor. He was awarded a Bachelor's Degree in May 2001. Applicant has never married and has no dependents.³

Applicant's background investigation included a review of his February 2008 e-QIP, his March 2008 FBI Record Report, his November 2008 Response to Interrogatories, and his March 2009 Response to SOR.⁴

Drug Involvement/Personal Conduct/Criminal Conduct

The Government established by Applicant's admissions and/or evidence presented that from about 1989 to about 2005 he used marijuana on average approximately three to four times per month. (SOR ¶ 1.a.)

(Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

² DOHA transmittal letter is dated March 26, 2009; and Applicant received the FORM on April 28, 2009. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to file objections, or to supply additional information. Applicant timely submitted a letter dated April 23, 2009, which was within the 30-day time period after receipt of FORM.

³ Applicant's background information was derived from his e-QIP, Item 5, unless otherwise stated.

⁴ Items 5, 7, 6, and 4, respectively.

Applicant admits he used marijuana during the time period alleged from about 1989 to about 2005. He denies, however, using marijuana on average three to four times per month during that time period. Applicant says in his Response to SOR that he used marijuana once in 1989, approximately three times in 1996, and “on occasion” approximately three to four times per month in the months he used marijuana during the time period 2000 to approximately December 2004.⁵ This version is markedly different than what Applicant disclosed when he was interviewed by an Office of Personnel (OPM) investigator in July 2008, when he said he “smoked marijuana about three times per month from 1989/1990 to 1995” and “from 1996 – 2005” his use of marijuana “increased to about once per week.”⁶ Applicant also admitted to the investigator that when he completed his e-QIP, he “minimized the number of times he used marijuana and the time frame he used marijuana for fear that he would look like a habitual drug user.”⁷

The information Applicant provided in his Response to SOR is also markedly different than the information he provided when responding to Interrogatories Concerning Drugs in November 2008, in which he said “prior to Jan. 2006, before I started truck driving school, I smoked aprox (sic) once per week with friends socially.”⁸ This statement more closely aligns or parallels with another statement Applicant made earlier to the OPM investigator, when he told the investigator he enrolled in truck driver’s school in January 2006 and “decided that as a truck driver, he shouldn’t use marijuana.”⁹ Applicant in his Response to SOR appears to minimize his extended history and frequency of illegal drug use. I find his earlier disclosures to an OPM investigator establishing a more accurate and clearer picture of that use and to be more credible because they result from an in-person interview by an investigator. Moreover, they are in closer temporal proximity to the drug use.

The Government established by Applicant’s admissions and/or evidence presented that he falsified material facts on his February 2008 e-QIP, in response to Section 23 of his e-QIP inquiring whether he had ever been charged with or convicted of any felony offense; and Section 24 of his e-QIP inquiring since the age of 16 or in the last 7 years, whichever is shorter, had he illegally used any controlled substance. (SOR ¶¶ 2.a. and 2.b.)

Applicant admitted he was charged in 1995 with the offense of Criminal Sexual Conduct III. He further admitted he spent approximately nine months in jail and served

⁵ Item 4.

⁶ Item 6 at 6. Item 6 includes a report of Applicant’s interview by an OPM investigator, which Applicant certified to be accurate except for minor corrections he made to the report which were unrelated to the specific allegations in the SOR.

⁷ *Id.*

⁸ *Id.*, at 2.

⁹ *Id.*, at 6.

approximately two and a half years on probation, following a plea to a charge of Gross Indecency.¹⁰ In his e-QIP, Applicant answered “Yes” to the question whether he had ever been charged with or convicted of any felony response, and identified the offense as “Gross Indecency” and “Action Taken” as: “Plea agreement changed felony charge to misdemeanor. Spent 3 days in jail, placed on 6 months’ probation, paid \$250.00 fine.”¹¹

In his Response to SOR, Applicant says he “made the mistake of thinking that the honest answer to the question was the conviction of Gross Indecency – not the original charge” and “totally made a mistake if I stated that I only spent 3 days in jail and was placed on 6 months probation, paid \$250.00 fine.”

Applicant also has provided differing factual accounts of his illegal drug use history. Notably, Applicant’s admission to the OPM investigator that he deliberately “minimized” information he provided in his e-QIP in responding to questions regarding his illegal drug use and drug activity, out of “fear he would look like a habitual drug user” had he honestly disclosed accurate information.¹² Applicant provided a more accurate account of his illegal drug use during his OPM interview and in his Response to Interrogatories Concerning Drugs.¹³ Record evidence clearly establishes that Applicant used illegal drugs much more frequently than the “15-20 times total” he disclosed in his e-QIP, and as he admitted to the OPM investigator, provided that false information in a deliberate attempt to “minimize” the true frequency and extent of his illegal drug use.¹⁴

Despite Applicant’s denials in his Response to SOR, there is sufficient record evidence to support findings that he deliberately falsified his responses to his e-QIP as alleged in SOR ¶¶ 2.a. and 2.b.

The Government established by Applicant’s admissions and/or evidence presented that in May 1995, he was charged with Criminal Sexual Conduct III, a felony, and Gross Indecency. In November 1995, he pled guilty to the charge of Gross Indecency, and served about nine months in jail, followed by about two and a half years on probation, and paid fines and fees of approximately \$4,500.00. (SOR ¶ 3.a.) Further established is that in about 1998, Applicant was cited for possession of marijuana, and attended a drug treatment program as part of an agreement to have the citation removed from his criminal record. (SOR ¶ 3.b.) See facts *supra*.

Applicant did not submit any work-related or character reference evidence.

¹⁰ Items 4 and 6. See also, Item 7.

¹¹ Item 5 at “26 of 31.”

¹² Item 6.

¹³ *Id.*

¹⁴ Item 5 at “27 of 31” and Item 6 at 6.

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

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

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"¹⁵ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).¹⁶

¹⁵ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁶ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Drug Involvement

Under Guideline H, the Government's concern is:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24.

AG ¶ 25 provides two potentially Disqualifying Conditions that could raise a security concern and may be disqualifying:

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

Applicant's admitted drug abuse and possession over an extended period of time, evidenced by his own disclosures and especially his OPM interview warrant application of these two Disqualifying Conditions.

AG ¶ 26 provides four potential Mitigating Conditions under this concern:

- (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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's admitted illegal drug use occurred over multiple years and at least as recently as 2005. Although there is record evidence to support possible application of AG ¶¶ 26(a) and (b), Applicant has not produced sufficient evidence to warrant their application in this case. In considering the possible application of these Mitigating Conditions, it is fair and reasonable to consider that there is record evidence to support a conclusion that Applicant's admitted illegal drug use was substantial and occurred well into his adult years, and such use cannot be fairly or accurately attributed to youthful indiscretion. After considering all available evidence, I am unable to apply any of the Mitigating Conditions under this concern.

Personal Conduct

Under Guideline E, the Government's concern is:

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

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes two Disqualifying Conditions that could raise a security concern and may be disqualifying:

(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.¹⁷

Because Applicant's e-QIP response contains very specific and admittedly false information that minimizes to a significant extent the true and serious nature of his actual charges and punishment, Applicant's explanation that he simply made a "mistake" in his e-QIP response lacks credibility. Despite his denials in his Response to SOR, the evidence supports findings that he deliberately falsified his e-QIP answers. AG ¶¶ 16(a) and 16(b) both apply.

AG ¶ 17 provides seven Mitigating Conditions under this concern:

(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;

¹⁷The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

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

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Additionally, there is credible evidence to support a conclusion that Applicant has again, and recently, attempted to minimize his history of illegal drug use in his Response to SOR. This conclusion is further evidenced by Applicant's statement in his Response to SOR regarding his 1998 citation for marijuana possession: "Please note that I had not been using, there were three other people in my car (a few had been using). I was the driver of the car so the legal responsibility was mine."¹⁸

This statement conflicts with Applicant's earlier account of the citation that he made to the OPM investigator:

Subject stated that the only incident he had with any authorities regarding marijuana was in approximately 1998 when he was driving with a couple of friends in [location]. One of the friends had a marijuana cigarette and they were passing the marijuana cigarette around while they were driving. While subject was taking a puff from the cigarette, a [name]. County Control Officer pulled up beside Subject and observed him. Subject was stopped and issued a citation for the drug use.¹⁹

None of the Mitigating Conditions fully apply. Applicant deliberately falsified information in his e-QIP, raising significant concerns about Applicant's judgment, reliability, trustworthiness, and ability to comply with rules and regulations. It is clear from Applicant's Response to SOR that he still attempts to minimize or change facts, including facts he previously admitted or provided, and that he does not accept full responsibility for his conduct.

¹⁸ Item 4.

¹⁹ Item 6 at 6.

Criminal Conduct

Under Guideline J, the Government's concern is:

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 two potentially Disqualifying Conditions that could raise a security concern:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's criminal conduct includes his 1995 Criminal Sexual Conduct III and Gross Indecency charges, his 1998 marijuana citation, his marijuana usage from 1989 to 2005, and his 2008 e-QIP falsification warranting application of AGs ¶¶ 31(a) and 31(c).

AG ¶ 32 provides four potential Mitigating Conditions:

- (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.

Based on record evidence, and for the reasons discussed *supra*, I am unable to apply any of the Mitigating Conditions under this guideline.

Lastly, it is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. See *Egan*, 484 U.S. at

527. Applicant deliberately provided false information on his February 2008 e-QIP, which is a serious felony and recent, as discussed *supra*.²⁰

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Government must be able to repose a high degree of trust in those to whom it grants access to sensitive information.²¹ Applicant's drug involvement, criminal conduct, and falsification creates doubts about his eligibility for a security clearance. Absent significant evidence of mitigation or extenuation, those doubts must be resolved against the Applicant.²²

The comments in the Analysis section of this decision are incorporated in the Whole Person Concept. Record evidence establishes that Applicant's unlawful conduct commenced in 1989 with drug use and continued until he falsified his e-QIP in 2008. He presented little or no mitigating evidence. After weighing the disqualifying and mitigating

²⁰Deliberate and materially false answers on a security clearance application may violate 18 U.S.C. § 1001. The Supreme Court defined "materiality" in *United States v. Gaudin*, 515 U.S. 506, 512 (1995): as a statement having a "natural tendency to influence, or [be] capable of influencing, the decision making body to which it is addressed." See also *United States v. McLaughlin*, 386 F.3d 547, 553 (3d Cir. 2004). If Applicant had provided accurate answers on his security clearance applications, his accurate answers are capable of influencing the government to deny his security clearance. His criminal offenses are sufficiently serious to potentially jeopardize approval of his security clearance. Making a false statement under 18 U.S.C. § 1001 is a serious crime, a felony (the maximum potential sentence includes confinement for five years and a \$10,000 fine). In light of my ultimate decision, and the absence to alleged a violation of 18 U.S.C. § 1001 in the SOR, it is unnecessary for me to decide whether or not Applicant actually violated 18 U.S.C. § 1001.

²¹ *Snepp v. United States*, 444 U.S. 507 (1980).

²² See, *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) and *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir., 1990).

conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated security concerns pertaining to drug involvement, personal conduct, and criminal conduct.

To conclude, Applicant presented little or no evidence to explain, extenuate, or mitigate the security concerns raised. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration, and that analysis does not support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”²³ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the Government’s case. For the reasons stated, I conclude he is not eligible for access to classified information.

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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.b.:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a. – 3.d.:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge

²³ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

