



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



In the matter of:)
)
-----) ISCR Case No. 08-10545
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro Se*

January 8, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant frequently used marijuana from approximately 1995 until June 2007. On November 2, 2007, he completed a security clearance application and falsely denied that he used marijuana in the last seven years. An Office of Personnel Management (OPM) investigator interviewed Applicant on June 9, 2008, and Applicant falsely denied using marijuana after June 2001. On June 16, 2008, he admitted his extensive marijuana use to the OPM investigator. He mitigated security concerns arising from drug involvement because his drug abuse was not recent. However, personal conduct concerns are not mitigated. Clearance is denied.

Statement of the Case

On November 2, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On June 30, 2009, DOHA issued a statement of reasons (SOR) (Hearing Exhibit (HE) 2) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and

modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The June 30, 2009, SOR alleged security concerns under Guidelines G (alcohol consumption) and E (personal conduct) (HE 2). On July 30, 2009, Applicant responded to the June 30, 2009, SOR and requested a hearing (HE 3). With the consent of the Applicant, the government withdrew the June 30, 2009, SOR and issued an amended SOR on August 13, 2009 (Transcript (Tr. 14); HE 4). The amended SOR alleged security concerns under Guidelines H (drug involvement) and E (personal conduct) (HE 4). The amended 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 Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

Applicant responded to the amended SOR allegations on August 21, 2009. Department Counsel indicated he was ready to proceed on September 15, 2009. On October 22, 2009, the case was assigned to me. On November 13, 2009, the hearing notice was issued, and his hearing was held on December 16, 2009 (HE 1). Department Counsel offered four exhibits (GE 1-4) (Transcript (Tr.) 15-16), and Applicant did not offer any exhibits (Tr. 11). There were no objections, and I admitted GE 1-4 (Tr. 16). Additionally, I attached the Hearing Notice, SOR, response to the SOR, amended SOR, and response to the amended SOR to the record (HE 1-5). I received the transcript on December 28, 2009.

Findings of Fact¹

Applicant admitted the amended SOR allegations in his response to the amended SOR, except for SOR ¶ 2.a (HE 5). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 30 years old and has worked for a government contractor as a researcher for about 26 months (Tr. 7, 18; GE 1). He is a high school graduate and completed about two years of college (Tr. 7). He majored in chemical engineering (Tr. 8). He has never served in the U.S. military (GE 1). He does not hold a security clearance (Tr. 7). He has never been married, and does not have any children (GE 1).

Marijuana use

In response to DOHA interrogatories, Applicant said he frequently used marijuana sometimes more than once per day; on other times, he used marijuana a few times per week from 1995 to June 2007 (Tr. 19; GE 2 at 2). In June 2007, he left the state where he used marijuana and moved in with his parents (Tr. 19; GE 2 at 2). He

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

also ended his marijuana use (Tr. 19; GE 2 at 2). Applicant's most extensive and recent marijuana use was associated with his playing in a band. He stopped using marijuana because he left the band, and he recognized that marijuana use was limiting him from accomplishing his professional goals (Tr. 20). In the past, he has purchased marijuana or received it from friends (Tr. 21). Applicant has never been convicted of any drug offenses.

Applicant still associates with some marijuana users, who are his friends (Tr. 20, 27-28). He also associates with his brother who uses marijuana (Tr. 20, 27). However, after June 2007, they have not used marijuana in his presence (Tr. 28).

Oxycontin abuse

In March 2001, Applicant injured his knee (Tr. 21). He received a prescription for one or two 20 milligram Oxycontin pills per day to address pain from knee surgery (Tr. 21; GE 2 at 2). He used three or four Oxycontin pills every day until July 2001, exceeding his prescription's limitations (Tr. 21; GE 2 at 2). He said he abused Oxycontin because he was depressed about his injury, the loss of a relationship with his girlfriend, and "being stupid" (Tr. 22).

Therapy

From 2002 to 2003, Applicant received education and therapy in connection with his alcohol consumption and marijuana use (GE 2 at 7). His education and therapy program ended with a successful prognosis on October 14, 2003 (GE 2 at 7). His employer does not conduct urinalysis-drug testing for employees (Tr. 33).

False statements

In 1997, Applicant was arrested for marijuana possession (Tr. 22). He was charged with and convicted of driving under the influence of alcohol (DUI) in March 1999 and December 2000 (Tr. 23-24; GE 2 at 5).

On November 2, 2007, Applicant completed a Security Clearance Application (SF-86).² In response to questions concerning prior alcohol-related charges and convictions, Applicant said in December 2000, he was charged with DUI. He pleaded guilty and received probation. In April 2001, he was charged with driving with a suspended license. He pleaded guilty and was sentenced to thirty days in jail. He did not disclose his 1997 arrest for marijuana possession or his 1998 DUI conviction because he misread the question (Tr. 23-24). He thought it asked for alcohol or drug related charges or convictions in the last seven years (Tr. 23-24).

In response to questions concerning alcohol-related treatment, he disclosed that he attended court-ordered alcohol education from about April 2001 to September 2001

²Applicant's November 2, 2007, SF-86 is the source for all of the facts in this paragraph and the next paragraph, unless another citation is provided.

(Tr. 24). He disclosed his marijuana use during this therapy program (Tr. 25). In response to questions about illegal drug use in the last seven years, Applicant responded, “No” and did not list any marijuana use. He conceded his answer to the question about previous drug use was deliberately false (Tr. 25).

An OPM investigator interviewed Applicant on June 9, 2008.³ The OPM investigator asked Applicant about the medical records generated during his alcohol treatment sessions (GE 2 at 6). Applicant repeatedly told the OPM investigator that he did not use marijuana after June 2001, and the medical records would not show any current marijuana use. Applicant stated:

[I]n June 2001 [] he had a revelation that alcohol use and drug use were hurting him more than helping him. He did not have a supply of marijuana available anymore, and it was while he was on the phone to a nurse trying to get a refill on Oxycontin that he realized he needed to stop all drug [abuse] and stop all drinking if he was going to live. He terminated the call to the nurse and has not used marijuana since June 2001 When he was at his parent’s home in June 2001, he realized that things needed to change if he was going to survive and if he was going to accomplish anything in his life. . . . He could not support himself holding menial jobs. He decided at that moment to stop smoking marijuana and stop drinking. He only recently began consuming a few beers on rare social occasions; he never resumed smoking marijuana.

Id. at 1-2. He explained that his medical records from the alcohol-therapy sessions should reflect that he was not currently using marijuana because “he had discontinued marijuana use in June 2001 and never resumed it.” *Id.* at 2.

The OPM investigator asked Applicant about the medical evidence concerning his more recent marijuana use and he still denied it (Tr. 34; GE 2 at 6). According to the OPM Report of Investigation (ROI), Applicant called the OPM investigator on June 10, 2008, and left the OPM investigator a message, offering to “come clean” about his marijuana use (Tr. 30; GE 2 at 7). He realized that the OPM investigator had his admissions in therapy about drug use that Applicant had written down (Tr. 31). He knew it was hopeless to continue to deny his more recent marijuana use (Tr. 31-32, 34). He wanted his security clearance decision to be made based on the true facts of his drug use (Tr. 32). He felt guilty about lying and did not want the government to waste time and money investigating his drug use (Tr. 31-32, 34).

On June 16, 2008, Applicant admitted his extensive marijuana use to the OPM investigator. He made consistent statements about his marijuana use continuing until June 2007 in response to DOHA interrogatories on February 20, 2009, and April 3, 2009, and at his hearing (Tr. 22-27).

³Applicant’s June 9, 2008, and June 16, 2008, OPM interviews are the source for all the facts in this paragraph and the next two paragraphs, unless another citation is provided (GE 3 at 5-10).

In sum, Applicant admitted that he failed to disclose his 1999 arrest for DUI (Tr. 23; SOR ¶ 2.a) and his extensive marijuana use from 2002 until June 2007 (SOR ¶ 2.b). He also admitted that he provided false information in his OPM interview on June 9, 2008, about his marijuana use from 2002 to June 2007 (SOR ¶ 2.c). At his hearing, he admitted that his statements to the OPM investigator about ending his marijuana use in June 2001 were intentionally false, and noted he used marijuana on numerous occasions after June 2001 (Tr. 26, 29). He expressed his remorse about making false statements to the government (Tr. 35)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from

being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines H (drug involvement) and E (personal conduct) with respect to the allegations set forth in the amended SOR.

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se 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 ¶ 25 describes eight drug⁴ involvement-related conditions that could raise a security concern and may be disqualifying. Two drug involvement disqualifying

⁴AG ¶ 24(a) defines “drugs” as substances that alter mood and behavior, including:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance. See Sch. I(c)(9). See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

conditions could raise a security concern and may be disqualifying in this particular case: AG ¶ 25(a), “any drug abuse,”⁵ and AG ¶ 25(c), “illegal drug possession.”

Applicant admitted frequent marijuana use, essentially on a daily basis, from approximately 1995 until June 2007. He possessed marijuana before he used it. He also admitted using a larger quantity of Oxycontin, a prescription drug, than authorized by his prescription. AG ¶¶ 25(a) and 25(c) apply. The other disqualifying conditions listed in AG ¶ 25 are not applicable.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence; and
 - (4) a signed statement of intent with automatic revocation of clearance for any violation;
- (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.

Security concerns can be mitigated based on AG ¶ 26(a) by showing that the drug offenses happened so long ago, were so infrequent, or happened under such circumstances that the drug offenses are unlikely to recur or do not cast doubt on the individual’s current reliability, trustworthiness, or good judgment. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an

⁵AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."⁶

Applicant's most recent drug use was in June 2007, about 30 months ago. AG ¶ 26(a) fully applies. His overall illegal drug use lasted approximately 12 years (1995 to 2007), and involved numerous uses of marijuana. AG ¶ 26(a) applies because his past drug use does not cast doubt on his current reliability, trustworthiness, or good judgment.⁷ Because of his abstention from drug use for about 30 months, and his recognition of the adverse impact on his life of drug abuse, there is reasonable certitude that he will continue to abstain from drug use. I am reasonably confident his illegal drug possession and use will not recur. Because he will not use illegal drugs in the future, confidence in his current reliability, trustworthiness, and good judgment with respect to drug use is restored.

AG ¶ 26(b) lists four ways Applicant can demonstrate his intent not to abuse illegal drugs in the future. He has disassociated himself from most of his drug-using associates and contacts. After breaking his patterns of drug abuse, he has changed his life with respect to drug use. He has abstained from drug abuse for about 30 months. However, he continues to associate with his brother and possibly some other marijuana

⁶ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

⁷In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

users. He did not provide “a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶ 26(b) partially applies.

AG ¶¶ 26(a) and 26(c) apply to his abuse of Oxycontin. He received Oxycontin to treat his knee injury, and consumed more Oxycontin than he was supposed to from about March 2001 to July 2001. He has not used Oxycontin since July 2001.

AG ¶ 26(d) is not applicable because Applicant did not provide evidence of attendance at any drug treatment program. He has not provided any prognosis focusing on his drug abuse by a duly qualified medical professional.

In conclusion, Applicant ended his drug abuse in June 2007, about 30 months ago. The motivations to stop using drugs are evident.⁸ He understands the adverse results from drug abuse. He has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information.

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. . . .

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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.

SOR ¶ 2.a alleges that on November 12, 2007, Applicant falsely denied that he had ever been charged with or convicted of any offense(s) related to alcohol or drugs. Applicant disclosed his December 2000 driving under influence of alcohol (DUI) arrest and his April 2001 arrest for driving with a suspended license. He explained that he did

⁸Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

not disclose his March 1999 DUI arrest because he thought he only had to disclose information about criminal offenses occurring in the last seven years.

SOR ¶ 2.b alleges that on November 12, 2007, Applicant falsely denied that he used illegal drugs in the last seven years. SOR ¶ 2.c alleges that on June 9, 2008, Applicant falsely denied to an OPM investigator that he used marijuana in the last seven years. On June 16, 2008, he admitted to an OPM investigator that he knowingly and intentionally provided false information on June 9, 2008, in his previous OPM interview about his marijuana abuse. In his amended SOR response and at his hearing he admitted he intentionally falsified his November 12, 2007, security clearance application with respect to the recency of his marijuana use. AG ¶¶ 16(a) and 16(b) apply.

AG ¶ 17 provides four conditions that could mitigate security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

(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.

AG ¶ 17(a) applies to SOR ¶ 2.c, Applicant's false statement to the OPM investigator on June 8, 2009, because he made a prompt, good-faith effort to correct his

falsification before being confronted with the facts. On June 8, 2008, Applicant falsely denied to an OPM investigator that he had used marijuana in the last seven years. He provided a fairly elaborate description to the OPM investigator about why he ended his marijuana use in 2001. After the interview, Applicant realized his lie about the recency of his marijuana use was not credible because medical records that the OPM investigator would review included information about his extensive, more recent marijuana use. According to the OPM ROI, Applicant called the OPM investigator on June 10, 2008, and left the OPM investigator a message, offering to “come clean” about his marijuana use. On June 16, 2008, he admitted to the OPM investigator that extensively used marijuana until June 2007, and that he falsified his June 9, 2008, OPM interview about his marijuana abuse.

AG ¶ 17(f) mitigates the allegation in SOR ¶ 2.a. Although Applicant admitted that on November 12, 2007, he failed to disclose his March 1999 DUI arrest, he explained that he mistakenly thought he only had to disclose information about criminal offenses occurring in the last seven years. This failure to disclose his March 1999 DUI was not deliberate, and this allegation of falsification is unsubstantiated.⁹

AG ¶¶ 17(c), 17(d), 17(e) and 17(g) all apply in part to SOR ¶ 2.b. His false statement in connection with his 2007 security clearance application cannot be fully mitigated because it is too recent and serious. However, there are some positive signs of rehabilitation. He admitted his misconduct. No allegations of problems at his employment have surfaced. He has changed the environment where most of his marijuana use occurred. See AG ¶ 17(g). He paid his fines and court costs in resulting from his DUI conviction. He has demonstrated remorse, an important step toward his rehabilitation. He received job training and has a good employment record. His security manager is well aware of his alcohol-related and drug-abuse problems. Disclosure has eliminated his “vulnerability to exploitation, manipulation, or duress.”

In sum, Applicant intentionally lied on his 2007 security clearance application, and on June 9, 2008, to an OPM investigator. His false statement to the OPM investigator was elaborate and detailed, as he described changes in his life in 2001 that caused him to end his marijuana use in June 2001. However, he corrected the information to the OPM investigator two days later before being confronted with the

⁹The 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)).

medical records showing his extensive marijuana use. However, his deliberately false official statement in 2007 is too recent and serious to be mitigated.

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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines H and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is some evidence supporting approval of Applicant's access to classified information. He has not committed any offenses since he provided false information to an OPM investigator on June 8, 2008. He took full responsibility for his marijuana use on June 16, 2008, and at his hearing, for lying, and for his more recent and extensive marijuana use. Applicant contributed to the national defense through his work for a government contractor. There is no evidence of any disciplinary problems at work. There is no evidence of drug abuse after June 2007. There is no evidence that he has failed to safeguard sensitive or classified information. His character and good work performance show substantial responsibility, rehabilitation, and mitigation.

The evidence against approval of Applicant's clearance is more substantial. Because of his age and maturity, Applicant was well aware of the importance of providing accurate information in the context of evaluating and retaining a security clearance. In November 2007, and on June 8, 2008, he intentionally provided false information about his marijuana use on his security clearance application and to an OPM investigator.¹⁰ His two false statements were knowledgeable, voluntary, and

¹⁰Although Appellant was not charged with any offense because of his incorrect statements about his marijuana use, Congress has manifested the importance of providing accurate information in matters such as security clearance applications by enacting a statute punishing materially false statements as felony under Title 18 United States Code (U.S.C.) § 1001.

intentional.¹¹ His providing of false information about his drug use on his 2007 security clearance application cannot be mitigated at this time. This misconduct shows lack of judgment and a lack of trustworthiness. Such conduct establishes a serious security concern, and access to classified information is not warranted at this time.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude Applicant has not fully mitigated all security concerns. 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,”¹² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. I conclude he has shown sufficient responsibility and rehabilitation to mitigate the drug involvement security concerns. However, personal conduct security concerns cannot be mitigated at this time. 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:	FOR APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant
PARAGRAPH 2, GUIDELINE E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge

¹¹ A prompt correction of the falsification is not a legal defense to a violation of 18 U.S.C. § 1001; however, it is sufficient to mitigate security concerns about this false statement under AG ¶ 17(a).

¹²See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).