DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 08-11944
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Francis J. Flanagan, Esq.

May 19, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct), G (Alcohol Consumption), H (Drug Involvement), and J (Criminal Conduct). The security concerns under Guidelines G and H are mitigated, but the security concerns under Guidelines E and J are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 13, 2008. On August 25, 2010, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines E, G, H, and J. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on August 30, 2010; answered it on October 12, 2010; and requested a hearing before an administrative judge. DOHA received the request on October 14, 2010. Department Counsel was ready to proceed on January 1, 2011, and the case was assigned to me on January 13, 2011. DOHA issued a notice of hearing on February 10, 2011, scheduling the hearing for March 1, 2011. On February 15, 2011, Applicant requested a continuance; and on February 17, 2011, DOHA issued an amended notice of hearing, rescheduling the hearing for March 15, 2011. I convened the hearing as rescheduled.

Government Exhibits (GX) 1 through 17 were admitted in evidence without objection. Department Counsel submitted a demonstrative exhibit, listing the Government exhibits and cross-referencing them to specific subparagraphs in the SOR. The demonstrative exhibit is attached to the record as Hearing Exhibit (HX) I.

Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. At Applicant's request, I kept the record open until March 31, 2011, to enable him to submit additional documentary evidence. He timely submitted AX D and E, which were admitted without objection. The cover letter for AX D and E is attached to the record as HX II. Department Counsel's comments regarding AX D and E are attached to the record as HX III. DOHA received the transcript (Tr.) on March 23, 2011.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.g, 1.j-1.m, 2.c, and 3.a-3.c. He admitted part of SOR ¶¶ 1.i and 2.a. He denied SOR ¶ 1.h. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 56-year-old engineering technician employed by a defense contractor since March 1979. He has held a security clearance since May 1998.

Applicant's parents both had military service during World War II. His father served in the Coast Guard and his mother served in the Navy. Applicant was on active duty in the Navy from September 1972 to September 1978. He served aboard Navy ships in a combat zone, and he was honorably discharged. (Tr. 27-30.)

In June 2010, Applicant received an "Individual Achievement Award" for his "ongoing commitment to outstanding job performance" and a $500 cash award. (AX A; AX B.) His performance appraisal for the year 2010 reflects that he "meets requirements." The narrative description states that he "did a great job." (AX C.) Applicant's direct supervisor submitted a letter stating that he is trustworthy and very careful with security issues. (AX E.) Applicant's supervisor is aware of his record of drug and alcohol abuse. (Tr. 43-44.)

Applicant married in April 1985 and divorced in February 2004. No children were born during the marriage. He and his ex-wife have an amicable relationship. They are both in Alcoholics Anonymous (AA). (Tr. 33.)

Applicant began consuming alcohol in high school. While in the Navy, he consumed two to four beers every day after working hours. After he was discharged from the Navy, he continued his level of beer consumption, but he sometimes consumed more than six beers at a sitting. In the late 1990s, he increased his beer consumption because of his marital problems, occasionally consuming eight or nine beers in an evening. He began purchasing and using marijuana in the 1970s, using it five or six times a year. He stopped using marijuana during the late 1980s, but resumed use in the 1990s, when he began purchasing it four to six times a year and using it once or twice a month. He stopped purchasing and using marijuana and drinking alcohol after he was seriously injured in a motorcycle accident in April 2009. (GX 5.)

In February 1977, Applicant was charged with misdemeanor drunk driving (DUI). (GX 4 at 3.) He admitted this offense in his answer to the SOR and at the hearing. (Tr. 38.) The record does not reflect the disposition of this charge.

In December 1995, Applicant was charged with DUI and refusal to take a breathalyzer test. The DUI charge was dismissed and he was fined for his refusal to take a breathalyzer test. (GX 2 at 5; GX 5 at 2; GX 6 at 2.) At the hearing, Applicant admitted that he was intoxicated on this occasion. (Tr. 39.)

In August 2004, Applicant was charged with weaving out of his lane of traffic, possessing an open container of alcohol in a motor vehicle, and refusing to take a breathalyzer test. He was convicted of the breathalyzer refusal, fined, and ordered to complete community service and attend an alcohol-awareness class. His driver's license was suspended for 90 days. (GX 1 at 21-22; GX 5 at 2; GX 15; GX 16.)

In February 2006, Applicant was charged with possession of marijuana and driving with a suspended or revoked driver's license. (GX 4 at 3; GX 6 at 2.) Prosecution was deferred for one year, after which the charges were dismissed and the record was expunged. (Tr. 40, 50-52.)

In October 2007, Applicant was charged with DUI and possession of marijuana, after he was stopped for driving his motorcycle 51 miles per hour (mph) in a 25-mph zone. He was convicted of DUI, fined, and sentenced to community service. His driver's license was suspended for one year, and he was required to attend an alcohol-awareness class. (GX 4 at 3; GX 5 at 2; GX 6 at 1; GX 12; GX 13; GX 14.)

When Applicant submitted an SCA in October 1997, he answered "Yes" to question 24, asking if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He disclosed a DUI in December 1996, for which he was fined and lost his driver's license. He answered "No" to question 27, asking if he had

illegally used any controlled substance since the age of 16 or during the last seven years, whichever is shorter. (GX 2 at 5.)

When Applicant submitted his most recent SCA in May 2008, he answered "Yes" to question 23d, asking if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He disclosed his breathalyzer refusal in September 2004 and his DUI in September 2007, but he did not disclose his DUI arrests in February 1977 and December 1995 or his arrest for possession of marijuana in February 2006. In an affidavit submitted to a security investigator in April 2010, he stated that he forgot to list his 1977 and 1995 arrests on his SCA. (GX 5 at 2.) At the hearing, he testified he thought that he was not required to disclose the 1977 and 1995 arrests because they were so far in the past. He also testified that he thought he was not required to disclose the February 2006 arrest because it was expunged after one year. (Tr. 50-52.) He had been advised by his lawyer that, under state law, an expunged offense "didn't happen." (Tr. 34.)

On the same SCA, Applicant answered "No" to question 24, asking if he had illegally used any controlled substance since the age of 16 or during the last seven years. He did not disclose his marijuana use. At the hearing, he admitted that he intentionally falsified his answer to this question because he was concerned that it would harm his career if he admitted his marijuana use. (Tr. 53.)

In April 2009, Applicant was intoxicated and riding his motorcycle. He was traveling 35-40 miles per hour when he tried to avoid an animal in the road, lost control, and crashed into a tree. The police found him crawling on the ground under the tree. He spent a day in intensive care, a week in the hospital, and two months in rehabilitation. He was charged with DUI (2nd offense), refusal to take a breathalyzer test, and possession of marijuana. The DUI and test refusal charges were dismissed by the prosecutor because of "insufficient evidence as to operation and probable cause." He was convicted of the marijuana offense, placed on probation for one year, ordered to perform community service, and required to obtain alcohol counseling. (GX 5 at 3; GX 6 at 1; GX 9; GX 10; GX 11.)

In October 2009, Applicant was stopped for having an expired inspection sticker and arrested for driving on a suspended license. He was fined and ordered to pay court costs. (GX 7; GX 8.)

Applicant began court-ordered outpatient treatment in December 2009. His diagnosis on admission was an unspecified adjustment disorder and alcohol abuse. He told a member of the staff that he did not use marijuana, had not used it for years, and that his arrest for marijuana possession occurred when he was taking marijuana to a friend for medical use. (GX 17 at 1-2, 9.) He was discharged from the treatment program in February 2010. The diagnostic summary upon discharge stated that he had abstained from alcohol since his motorcycle accident in April 2009. The diagnostic summary comments favorably on his progress but does not include a prognosis. (GX 17 at 16.) The credentials of his treating clinician are listed as MA (a master's degree),

CAGS (Certificate of Advanced Graduate Studies), LMHC (Licensed Mental Health Counselor), and LCDP (Licensed Chemical Dependency Professional). Applicant continued to receive psychotherapy and tested negative for alcohol or drugs at about two-week intervals until March 2010. (GX 17 at 16-35.)

Applicant received counseling from a psychologist for about six weeks before the hearing. His last visit was a week before the hearing. He testified he sought additional counseling because he and his lawyer thought it would be beneficial to supplement his court-ordered treatment with something more recent. (Tr. 45-46.) The psychologist concluded that Applicant is not alcohol dependent. The psychologist's report states that Applicant "has done all the right things since his accident." He expresses confidence that Applicant would value and honor the trust that a security clearance would place in him. (AX D.)

Applicant was interviewed by a security investigator in April 2010. The interview was initiated by the investigator, not by Applicant. (Tr. 57.) Applicant executed an affidavit admitting that he often drove while intoxicated. He admitted that he intentionally did not disclose his marijuana use on his SCA. He also admitted that he deliberately lied during prior interviews about his marijuana use and the amount and frequency of his alcohol consumption. He ended his affidavit by stating, "I lied to cover my mistakes and am sick of lies." (GX 5 at 5.)

Applicant testified that he had not consumed alcohol since his motorcycle accident in April 2009, and he had not used marijuana since the day before his accident. (Tr. 41.) He testified that he admitted lying about his alcohol and drug use because he "had been living with a lie for a long time," and he "didn't want to live like that any more." (Tr. 26-27.) He has been participating in AA for about two years, and he attends AA meetings two or three times a week. (Tr. 46.)

Policies

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[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

Guideline E, Personal Conduct

The SOR alleges that Applicant used marijuana "in at least 1974" while holding a security clearance (¶ 1.a). It cross-alleges the Guideline H allegations (¶¶ 3.a and 3.b) that he purchased, possessed and used marijuana from about 1970 until "at least" April 2009 (¶ 1.b). It alleges Applicant's alcohol-related arrests in February 1977, December 1995, August 2004, and October 2007 (¶¶ 1.c, 1.d, 1.e, and 1.g), and his arrest for

possession of marijuana and driving on a suspended license (¶ 1.f). Finally, it alleges that Applicant falsified his answers to question 23 on his 2008 SCA regarding offenses related to alcohol and question 24 regarding illegal use of controlled substances (¶¶ 1.h and 1.i).

The concern under this guideline is set out in AG ¶ 15:

> 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 relevant disqualifying conditions under this guideline are:

> AG 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ;
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> AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;
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> AG ¶ 16(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 consideration of . . . a pattern of dishonesty or rule violations; and
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> AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an

applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant admitted deliberately falsifying his answer to question 24 on his SCA, regarding his illegal use of a controlled substance, and his admission is corroborated by the Government's evidence. However, he denied deliberately omitting information about his drug- and alcohol-related arrests and convictions. His explanations for omitting his DUI arrests in February 1977 and December 1995 have not been consistent. In his April 2010 affidavit he stated that he forgot to list these two arrests, but at the hearing he testified that he did not think he was required to disclose them because they happened so long ago.

Applicant presented himself at the hearing as intelligent and articulate. He has held a security clearance for many years, has worked for his current employer for 32 years, and has completed an SCA several times. His experience is relevant to determining whether his failure to disclose relevant information on his SCA was deliberate. *See* ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010). Based on his inconsistent explanations, obvious intelligence, and level of experience, I find his explanation for not disclosing the February 1977 and December 1995 arrests implausible and not persuasive. On the other hand, his explanation for not disclosing the drug-related arrest in February 2006 was more plausible, and it was consistent with his April 2010 affidavit. Based on all the evidence, I conclude that his failure to disclose the February 2006 arrest that was expunged was not an intentional falsification, but that his failure to disclose the February 1977 and December 1995 arrests was intentional. Thus, I conclude that the disqualifying condition in AG ¶ 16(a) is established.

Applicant has admitted the drug- and alcohol-related conduct alleged in SOR ¶¶ 1.a-1.l, and his admissions are corroborated by the evidence of record. He also admitted deliberately concealing his marijuana use from medical personnel in December 2009, as alleged in SOR ¶ 1.m. In addition to AG ¶ 16(a), discussed above, his admissions and the corroborating evidence also establish the disqualifying conditions in AG ¶¶ 16(c), (d), and (e).

Security concerns raised by false or misleading answers on a security clearance application or during a security interview may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). Applicant made no effort to correct his admissions until he was contacted by a security investigator in April 2010. Even though his life-threatening motorcycle accident in April 2009 prompted him to stop drinking and using drugs, he continued his pattern of deception and denial when he concealed his marijuana use during his court-ordered treatment from December 2009 to March 2010. I conclude that AG ¶ 17(a) is not established.

Security concerns based on false or misleading answers also may be mitigated by showing that "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." This mitigating condition is not fully established unless, "Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully." AG ¶ 17(b). Applicant testified that his failure to disclose the February 2006 arrest was based on the legal advice he received, informing him that an expunged arrest "didn't happen." Applicant subsequently disclosed the arrest to the security investigator in April 2010. I conclude that AG ¶ 17(d) is established for Applicant's failure to disclose the February 2006 arrest, but not for his failure to disclose the arrests in February 1977 and December 1995.

Security concerns based on personal conduct may be mitigated if "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." AG ¶ 17(c). Some of Applicant's offenses were misdemeanors and arguably minor, but his use of marijuana while holding a security clearance was a serious breach of trust. His offenses were numerous and did not occur under unique circumstances. However, his last offense was more than two years ago. There are no "bright line" rules for determining when conduct is mitigated by the passage of time. The determination must be based on a careful evaluation of the totality of the evidence. *See* ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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." *Id*.

Applicant's two-year period of sobriety and abstinence from drug use is "a significant period of time. He has engaged in no further misconduct related to alcohol or drugs. He has not, however, abandoned his pattern of denial and deception. The explanation he gave the security investigator in April 2010 for omitting some of his offenses from his SCA was inconsistent with his explanation at the hearing. Thus, either his explanation to the investigator was false or his hearing testimony was false. This lack of candor was recent and precludes a finding of rehabilitation for all the conduct alleged under this guideline. I conclude that AG ¶ 17(c) is established for the conduct alleged in SOR ¶¶ 1.a-1.g, 1.k, and 1.l, but not for the falsifications alleged in SOR ¶¶ 1.h, 1.i, 1.j, and 1.m.

Security concerns under this guideline may be mitigated if "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." AG ¶ 17(d). Applicant has acknowledged his drug and alcohol problems and obtained counseling, both court-ordered and voluntary, to help him change his behavior. I conclude that this mitigating condition is established for his conduct related to drug and alcohol use, but it is not established for his lack of candor alleged in SOR ¶¶ 1.h, 1.i, 1.j, and 1.m.

Finally, security concerns based on personal conduct may be mitigated if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." AG ¶ 17(e). This mitigating condition is established by Applicant's full disclosure of his drug and alcohol history to his supervisor.

Guideline G, Alcohol Consumption

The SOR alleges that Applicant consumed alcohol, at times to excess and to the point of intoxication, from 1969, when he was in high school, until "at least" April 2009 (¶ 2.a). It also cross-alleges the conduct alleged under Guideline E in SOR ¶¶ 1.c, 1.d, 1.e, 1.g, and 1.k (¶ 2.b.). Finally, it alleges that Applicant received outpatient treatment from December 2009 to March 2010 for alcohol abuse (¶ 2.c). The concern under this guideline is set out in AG ¶ 21 as follows: "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." The relevant disqualifying conditions are:

> AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence . . . , regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
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> AG ¶ 22(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;
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> AG ¶ 22(d): diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
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> AG ¶ 22(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
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> AG ¶ 22(f): relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's history of DUI arrests and convictions, admitted binge drinking, and alcohol-induced impairment of his judgment establishes AG ¶¶ 22(a) and (c). His diagnosis of alcohol abuse by a clinical psychologist in March 2011 establishes AG ¶ 22(d). His diagnosis of alcohol abuse during his court-ordered treatment from December 2009 to March 2010 was not by a licensed clinical social worker, but her credentials include a master's degree, CAGS, LMHC, and LCDP (defined above in my findings of fact). AG ¶¶ 22(d) and (e) are not limited to the specific credentials that are enumerated in those disqualifying conditions. Instead, AG ¶¶ 22(d) and (e) "contemplate a broad range of providers who, by education and by position, are qualified to diagnose and

treat alcohol dependence and other substance abuse disorders." ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008). I conclude that AG ¶ 22(e) is established.

Although Applicant was ordered to attend alcohol awareness classes in August 2004 and October 2007, his first rehabilitation program, resulting in a diagnosis of alcohol abuse, was from December 2009 to March 2010. He has maintained sobriety and abstained from drug use since April 2009. I conclude that AG ¶ 22(f) is not established.

Security concerns under this guideline may be mitigated if "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." AG ¶ 23(a). This mitigating condition is established for the reasons set out in the above discussion of AG ¶ 17(c).

Security concerns also may be mitigated if "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)." AG ¶ 23(b). This mitigating condition is established for the reasons set out in the above discussion of AG ¶ 17(d).

Finally, security concerns under this guideline may be mitigated if "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." AG ¶ 23(d). This mitigating is partially established for the reasons set out in the above discussion of AG ¶ 17(d), but the final element, a favorable prognosis, is not established.

Guideline H, Drug Involvement

The SOR alleges Applicant purchased, possessed, and used marijuana, with varying frequency from about 1970 to "at least" April 2009 (¶¶ 3.a and 3.b). It also cross-alleges the allegations in SOR ¶¶ 1.a, 1.f, and 1.k (¶ 3.c).

The concern under this guideline is set out in AG ¶ 24: "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(a)(1) explains that Guideline H encompasses "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)."

The evidence establishes the following disqualifying conditions under this guideline:

> AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction;
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> AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
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> AG 25(g): any illegal drug use after being granted a security clearance.

Security concerns under this guideline may be mitigated if "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." AG ¶ 26(a). This mitigating condition is established for the reasons set out in the above discussion of AG ¶ 17(c).

Security concerns also may be mitigated by "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." AG ¶ 26(b). The evidence establishes AG ¶ 26(b)(3), but there is no evidence supporting AG ¶ 26(b)(1), (2), or (4).

Security concerns also may be mitigated by "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." AG ¶ 26(d). Applicant's court-ordered treatment program from December 2009 to March 2010 was provided by medical professionals qualified to treat drug abuse, but no treatment specifically aimed at drug abuse was provided, because Applicant concealed his marijuana use from his treating clinician. Thus, this mitigating condition is not established.

Guideline J, Criminal Conduct

The SOR cross-alleges the conduct alleged in SOR ¶¶ 1.a-1.l under this guideline. The concern raised by criminal conduct is set out in AG ¶ 30: "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."

Applicant's record of criminal conduct related to drug abuse and alcohol consumption raises two disqualifying conditions under this guideline: AG ¶ 31(a) ("a single serious crime or multiple lesser offenses") and AG ¶ 31(c) ("allegation or

admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted"). Applicant's intentional falsifications alleged in SOR ¶¶ 1.h, 1.i, and 1.j were serious offenses within the meaning of AG ¶ 31(a). It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation 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 matters within the jurisdiction of the executive branch of the Government of the United States. A deliberately false answer on a security clearance application or in response to questioning by a security investigator is a serious crime within the meaning of Guideline J. Applicant's false answers on his SCA and deliberate concealment of his drug use during the September 2008 interview with a security investigator raise the disqualifying condition in AG ¶ 31(a),

Security concerns under this guideline may be mitigated by evidence that "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." AG ¶ 32(a). Security concerns also may be mitigated if "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." AG ¶ 32(d). For the reasons set out in the above discussions of AG ¶¶ 17(c) and (d), I conclude that these two mitigating conditions are established for the conduct alleged in SOR¶¶ 1.a-1.g, but not for the falsifications alleged in SOR ¶¶ 1.h, 1.i, and 1.j.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, G, H, and J in my whole-person analysis. Some of the

factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature, intelligent adult. He is a talented and dedicated employee. He served honorably in the U.S. Navy at a time when military service was not popular. His service included duty aboard a Navy ship in a combat zone. He has worked for his current employer for 32 years and is highly regarded by his supervisor. He has held a clearance since May 1998. After a life-threatening accident in April 2009, he stopped drinking alcohol and using drugs. On the other hand, his many years of marijuana use while holding a clearance was a serious breach of trust. He falsified his SCA in May 2008. He deceived medical professionals in 2009 by concealing his marijuana use. He gave a security investigator an explanation for not disclosing his full criminal record that was not consistent with his testimony at the hearing. His lack of candor raises security concerns that have not been mitigated.

After weighing the disqualifying and mitigating conditions under Guidelines E, G, H, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his alcohol consumption and drug involvement, but he has not mitigated the security concerns based on personal conduct and criminal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Paragraph 3, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 3.a-3.c:	FOR Applicant
Paragraph 4, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge