



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



In the matter of:)
)
-----) ISCR Case No. 09-00146
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jefferies, Esquire, Department Counsel
For Applicant: Wade A. Lieske, Jr., Personal Representative

April 11, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the security concerns regarding his finances, alcohol issues, criminal conduct, and personal conduct. Eligibility for access to classified information is denied.

Statement of Case

On July 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR in July 2010 (undated) and requested a hearing. The case was assigned to me on October 18, 2010. It was scheduled for hearing on November 18, 2010. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny Applicant's application for a security clearance. At hearing, the Government's case consisted of nine exhibits; Applicant relied on one witness (himself) and eight exhibits (AE A-H). The transcript (Tr.) was received on November 30, 2010.

Procedural Issues

Before the close of the hearing, Department Counsel moved to amend the SOR to add a falsification allegation (omission of recent drug use) under Guideline E to conform to the evidence. For good cause demonstrated, Department Counsel's motion was granted. Applicant denied any attempt to falsify his security clearance application. Department Counsel was granted seven days to file a written brief concerning the application of the Bond Amendment to the developed facts of the case. Applicant was afforded seven days to respond. Post-hearing briefs were not filed by either party.

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of a Chapter 7 protection petition. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant supplemented the record with a clerk notice of Appellant's bankruptcy case filing on October 31, 2010. The notice reflects an actual bankruptcy case filing by Applicant, but contains no copy of Applicant's petition or additional bankruptcy schedules. The notice is admitted as AE E.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 35 debts exceeding \$106,000. Under Guideline G, he allegedly was (a) arrested and charged in November 2001 with DUI, convicted of the same offense (later amended to reckless driving), fined, and ordered to attend driving school and perform community service and (b) arrested in May 2009 and charged with DUI and reckless driving, fined, and ordered to serve two days in jail, attend a victim impact panel; and complete a course in alcohol abuse. And under Guideline J, he allegedly was charged with various offenses (six in all, inclusive of his two alcohol-related offenses) between 1994 and 2009.

In his undated response to the SOR, Applicant admitted all of the specific allegations. But he denied that his actions reflect poor judgment, unreliability, and untrustworthiness, or call into question his willingness or ability to properly protect classified information and other protected information.

Findings of Fact

Applicant is a 35-year-old-electrician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant

are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in December 1996 and separated shortly thereafter. (GE 1) He has four children from this marriage. He remarried in 2010 and has a six-month daughter from this marriage. (Tr. 84) His 16-year-old daughter, a granddaughter, and one of his sons from his previous relationship/marriage reside with him and his wife. (Tr. 65, 82-84) His two other sons reside with their mother. (Tr. 65, 83)

Records document that Applicant attended high school between 1990 and 2002 and received his high school diploma in 2002. (GE 1) Since May 2008, he has taken trade school courses. (GE 1)

Applicant has worked for his current employer for the past two and one-half years. (GE 1; Tr. 66) Before joining his current employer, he worked for a variety of employers. He was out of work due to a non-work related accident disability in 2003. He was unemployed with another non-work accident-related disability in 2006. (Tr. 67-68)

Applicant's arrest history

Applicant was just 17 years of age when he first tried marijuana. (Tr. 63, 75-76) His then girlfriend introduced him to methamphetamine (speed). (Tr. 63, 76) In 1994, he was arrested and charged with two counts of possession of marijuana (a controlled substance) with intent to sell and one count of possession of a controlled substance (a felony). Applicant pled guilty to one count of possession of a Schedule I controlled substance (a felony), and was sentenced to two years in prison (all but six months suspended) and placed on two years of probation. (Tr. 111)

During the six months he served in a prison boot camp, he participated in the facility's 12-step program. (Tr. 124-125) Once he was released from prison in 1996, he returned to smoking marijuana. (Tr. 112, 124-126) In September 1996, Applicant was arrested for probation violation after he was found in possession of marijuana by arresting officers. (GE 9; Tr. 125) When he appeared for his hearing, the court revoked his probation and ordered that he complete the two-year sentence he was ordered to serve in 1994. (GEs 7 and 9; Tr. 111) The court credited him with pre-sentence incarceration, and he thereafter served a total of 13 months of his prison sentence before he was released in early 1998. See GE 9; Tr. 111, 126-131.¹

¹ Under Smith Amendment prohibitions (10 U.S.C. § 986), Applicant's sentence and prison time served would have subjected him to the Amendment's *per se* clearance bar. The Smith Amendment was repealed, however, in January 2008 by the National Defense Authorization Act for fiscal year 2008 and replaced by Sec. 3002 to 50 U.S.C. § 435b (the Bond Amendment), which applies throughout the Federal government. Sec. 3002(c) of this new provision continues the requirement for disqualification, absent a meritorious waiver, for persons who were sentenced to and served imprisonment for more than a year. However, this disqualification only applies to prevent clearances that would provide access to

Applicant continued to use marijuana following the completion of his prison sentence in 1998. (Tr. 70-76). He last used marijuana in 2006. (Tr. 70-78) He attributes his marijuana use to poor choices. Although he no longer uses marijuana, he continues to associate with friends who do use the drug. (Tr. 78)

In September 1996, Applicant was arrested for domestic violence following his girlfriend's filing of a police report that he struck her. (Tr. 58, 112) Applicant denied the charges, and they were ultimately dismissed. (Tr. 58, 81, 132-133) In May 1997, Applicant was arrested for domestic battery. His middle-son's mother attempted to stab him during their argument. (Tr. 58, 113-114) She then called the police who responded and arrested Applicant. (Tr. 12) Applicant denied these 1997 battery charges, and they, too, were dismissed. (Tr. 112, 132-133)

While in high school, Applicant was also introduced to alcohol. He continued to consume alcohol throughout his high school years and usually consumed two to four beers at a time, but occasionally he consumed as much as a six-pack in a day during fishing events. (Tr. 137-138) During his time in boot camp and prison (1996-1997), he participated in 12-step alcohol programs organized by prison administrators. (Tr. 137) But once he completed his prison term, he ceased his 12-step participation and returned to consuming alcohol. (Tr. 64, 137-138)

In November 2001, he was arrested and charged with DUI and reckless driving after registering a .12 blood alcohol content (BAC) on the breathalyzer that the arresting officer administered at the scene. (Tr. 102) Before his arrest, he had consumed a few shots of whiskey and beers with friends at a local bar, and had become intoxicated. (Tr. 104) He was subsequently convicted of DUI, fined, and ordered to attend driving school and perform community services. However, the court did not impose any counseling services. (Tr. 106) And Applicant did not initiate any alcohol counseling on his own after he completed his court-ordered conditions. After completing his court-imposed conditions, Applicant returned to drinking. (Tr. 106)

In May 2009, Applicant attended a chili cookout and consumed several alcoholic beverages before driving himself to a local ATM site for additional cash. (Tr. 106-107). While in transit, he was stopped by police and administered a field sobriety test. (Tr. 107-108) After being tested by a breathalyzer and registering a .08 BAC on this test (Tr. 108), he was arrested for DUI. (Tr. 109) At his scheduled hearing, Applicant pled guilty to a DUI charge and was fined and ordered by the court to serve two days in jail, attend a victim impact panel, and complete an alcohol abuse course. (GEs 7 and 9; Tr.109-110) The court, in turn, reduced the DUI charges to reckless driving. (GEs 7 and 9; Tr. 62)

Applicant's court-ordered alcohol abuse course did not include a 12-step program. He completed the course prescribed for him and was credited by the court

special access programs (SAP, restricted date (RD), or any other information commonly referred to as "special compartmented information" (SCI).

with successful completion. (GEs 7 and 9) He has never sought or received additional counseling and has never been diagnosed with alcohol dependence or alcohol abuse by any certified substance abuse professional. (Tr. 137-138) While he believes he had an alcohol problem when he was younger (potentially an alcoholic), he does not believe he has one now. (Tr. 110, 134)

Finances

While he was out of work in 2003 and 2006, Applicant accumulated a number of delinquent debts. His credit reports reveal 35 debts exceeding \$106,000. (GEs C through F) A number of the listed debts are medically-related to a motorcycle accident he was involved in 2003. (Tr. 53-54) In the crash he shattered his knee and was disabled for six to seven months in 2003. (Tr. 67) Because he had no medical insurance at the time, he incurred major medical expenses.

In September 2006, Applicant was involved in another accident. He lost control of his truck when he encountered rainy conditions and was thrown from his vehicle. (Tr. 54-55) He had no insurance to cover him in this accident either, and once again incurred major medical expenses. (AE B) As a result of this accident, he was out of work for over 12 months with a medical disability. (AE D; Tr. 55)

Many of the delinquent accounts listed in Applicant's credit reports represent medical bills associated with his 2003 and 2006 accidents. Some comprise credit card, auto loan, and utility accounts. Unable to address these debts with his limited income, he consulted a bankruptcy attorney in 2010. (AE A) The proposed schedule of unsecured, non-priority claims that he attached to a bankruptcy clerk's notice of a Chapter 7 petition filed by Applicant in October 2010 contains claims approximating \$119,000 and includes all of the listed claims in the SOR. (AE A) Missing from AE A are Applicant's other bankruptcy schedules (*e.g.*, his schedules containing secured claims, his real and personal assets, his exemptions, and his current income and expenses) and his verification of financial counseling. Verified financial counseling is a prerequisite to any approved bankruptcy petition.

In his post-hearing submission, Applicant documented filing his Chapter 7 petition in October 2010. (AE E). He did not provide evidence of the actual petition, any of his other bankruptcy schedules, or evidence of required financial counseling. Whether Applicant ever obtained his bankruptcy discharge is unknown at this time.

Applicant currently nets about \$2,977 a month. (GE 2; Tr. 92) Since completing his last personal financial statement, he listed has monthly expenses of \$1,678, monthly debts of \$1,229, and a net monthly remainder of \$69 in his 2009 personal financial statement. (GE 2)

Since completing his 2009 financial statement, his income has for the most part remained constant; while his expenses and debts have risen. (Tr. 92-98) He currently reports monthly expenses of around \$2,600 a month (Tr. 96-99), an increase of over

\$900 over what he reported in 2009. His financial obligations have also increased this past year. By paying off his listed motorcycle and Mustang vehicle, he saves himself around \$675 a month. (Tr. 98-100) At the same time, he has added more debt from his recent purchase of a new \$30,000 pick-up in his mother's name (\$662 a month) for his wife to drive. (Tr. 94-95) Insurance costs associated with his added vehicle approximate \$100 a month. (Tr. 96) This leaves him with virtually no remainder for most months. (Tr. 100-101)

Applicant has no 401(k) retirement account and virtually no savings. (Tr. 100) He offered no concrete plans for avoiding recurrent financial setbacks in the foreseeable future.

E-QIP omissions

Asked to complete a security clearance application (E-QIP) in July 2008, Applicant omitted his most recent use of marijuana in 2006. (GE 1) Applicant attributed his omissions to oversight but provided no further details. (Tr. 71-77) When subsequently interviewed by an investigator from the Office of Personnel Management (OPM), Applicant failed to correct his omission or apprise the investigator of any marijuana use since 1996. (Tr. 78-80)

Whether Applicant's return to marijuana use in 2006 represented one isolated incident or part of a recurrent pattern is unclear and warrants no adverse inferences. But considering his historical involvement in illegal drugs and his failure to mention his 2006 marijuana use in both his e-QIP and his ensuing OPM interview, his omissions raise too many doubts about his willingness to discuss his recent drug use to treat them as unintentional.

Without more probative explanations from Applicant about his more recent drug use omissions, there is not enough evidentiary support to accept Applicant's claims that his drug use omissions were inadvertent. Considering all of the circumstances surrounding his drug use omissions in his e-QIP and ensuing OPM interview, inferences warrant that they were knowingly and wilfully made.

Endorsements

A coworker and friend described Applicant as honest and responsible. (AE C) This coworker extolled Applicant's displayed work ethic and judgment and characterized him as an asset to his organization. (AE C) Based only on his letter, it cannot be determined whether this coworker is aware of the Government's concerns.

Policies

The AGs list guidelines to be used by administrative judges in deciding DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the

individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and any of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(c) factors:

- (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Alcohol Consumption

The Concern: 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. AG ¶ 21.

Criminal Conduct

The Concern: 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 ¶ 30.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

Burden of Proof

A decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common-sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a respected employee of a defense contractor who accumulated a number of delinquent debts during periods of disability and unemployment that followed two serious vehicle accidents. Unable to resolve his accumulation of delinquent debts, he recently petitioned for Chapter 7 protection. Final discharge is uncertain.

Besides raised initial security concerns over Applicant's finances, concerns are also raised over his recurrent history of criminal arrests and dispositions that includes both drug-related and alcohol-related offenses. Applicant's omissions of his more recent marijuana use are also raised as a security concern.

Financial concerns

Applicant's accumulated debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations."

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily impose important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. *See Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Addressing his listed debts, Applicant provided limited evidence of any repayment efforts but instead relied on his recently filed Chapter 7 bankruptcy petition to resolve his debts. Many of his scheduled debts do encompass medically-related debts associated with his two road accidents. Other listed debts involve car loans and consumer accounts that are attributable in part to his extended periods of disability in 2003 and 2006, but also to some indicia of living beyond his means. A full evaluation of Applicant's bankruptcy petition is complicated, though, by the absence of counseling verification and many of the important schedules that comprise his petition. Without the complete Chapter 7 filing to examine and evaluate, educated assessments about his prospects for a successful discharge of his considerable debt (over \$119,000) cannot be made at this time.

Based on his evidentiary showing, Applicant's proofs are sufficient to establish considerable extenuating circumstances associated with many of his debt accumulations. His circumstances include recurrent periods of unemployment and non-work-related disabilities. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly)," applies to Applicant's circumstances.

Applicant's failure to address his delinquent debts during the more than two years he has worked for his current employer and his recent resort to the use of federal bankruptcy protections to resolve his substantial delinquent debt are too belated, incomplete, and uncertain to entitle him to mitigation credit under MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Neither this mitigating condition nor any of the other potentially available ones have application to Applicant's situation, considering the recency and incompleteness of his petition and the uncertainty of success that surrounds his petition at this time.

To Applicant's credit, he has recognized the seriousness of his current financial situation since his receipt of the SOR and has taken legal measures to resolve his debts through the federal bankruptcy laws. But it is still too soon to make any safe predictions on his obtaining a bankruptcy discharge and near and long-term prospects for restoring control of his finances. At this time, Applicant is not able to demonstrate that he is firmly in control of his finances and can be expected to stay current with his debts.

Based on a whole-person assessment, Applicant fails to surmount the judgment questions raised by his accumulation of substantial delinquent debts. His positive endorsement from his coworker praise merits commendation, but is not enough to overcome doubts about his financial judgment and ability to restore his finances to manageable levels.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to work with since his two accidents, his recurrent periods of unemployment and disability, and the recent efforts he has mounted to seek bankruptcy protection, more time is needed to determine whether Applicant can successfully obtain a bankruptcy discharge and restore his finances to stable levels commensurate with his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.kk.

Criminal conduct and alcohol concerns

Applicant's history of arrests and convictions over a 15-year period (two alcohol-related, two drug-related, and two that involved domestic violence and battery

arrests) raise important security concerns about his risk of recurrent arrests and charges associated with alcohol and drug abuse, and to a lesser extent with potential domestic violence. On the strength of the evidence presented in connection with his two alcohol-related arrests and convictions, one disqualifying condition (DC) of the AG for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 22(a), “alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.”

Because all of Applicant’s arrests are classed as criminal offenses, they are covered by DC ¶ 31(a) of the criminal conduct guideline as well: “a single serious crime or multiple lesser offenses.” This disqualifying condition applies to all of Applicant’s listed arrests and convictions.

Despite the seriousness of his two alcohol-related arrests, Applicant does not believe he is alcoholic and assures he only occasionally consumes alcohol since his 2009 alcohol-related arrest. Without any demonstrated post-DUI abstinence, Applicant’s assurances cannot be reliably gauged and evaluated.

Based on the historical pattern of cited arrests for drugs and alcohol, evidence of counseling and other remedial steps (such as continued 12-step participation and self-enforced abstinence) could be reasonably expected of Applicant and fully warranted. Active mitigating steps are lacking, though, in Applicant’s proofs, and not enough time has passed to consider his alcohol and drug-related offenses aged and isolated. As a result, neither MC ¶ 22(a), “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” of the alcohol guideline nor MC ¶ 32(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,” of the criminal conduct guideline can be applied to Applicant’s circumstances at this time.

By contrast, Applicant’s domestic violence and domestic battery charges were all dismissed without any admitted wrongdoing. As such, the domestic violence charges filed against Applicant in 1996, and the domestic battery charges filed against him in 1997, are concluded to be unproven.

Taking into account Applicant’s history of alcohol and drug-related arrests and convictions, and the recency of his last DUI offense in 2009, the applicable guidelines, and a whole-person assessment of his recurrent history of alcohol consumption and arrests/convictions involving drugs and alcohol, conclusions warrant that his overall efforts reflect insufficient evidence of sustained commitment to counseling, 12-step participation or comparable alcohol-support group to ensure that he is not at any risk of recurrent alcohol or other substance-related arrests in the foreseeable future. Applicant’s mitigation efforts are not enough to warrant safe predictions that he is no

longer at risk to judgment impairment associated with alcohol abuse and arrests and convictions related to drugs and alcohol.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b of the alcohol guideline of the SOR and subparagraphs 3.a, 3.b, and 3.e of the criminal conduct guideline. Favorable conclusions warrant with respect to subparagraphs 3.c and 3.d of the criminal conduct guideline.

Personal Conduct issues associated with Applicant's e-QIP omissions

Security concerns over Applicant's judgment, reliability, and trustworthiness are raised under Guideline E as the result of his determined knowing and willful omissions of his use of marijuana in 2006 and before. By omitting his use of illegal drugs during the listed period of inquiry in his questionnaire, Applicant failed to furnish materially important background information about his drug use that was needed for the Government to properly process and evaluate his security clearance application.

Because Applicant's omissions of his marijuana use are determined to be knowing and willful based on the evidence presented at hearing, one disqualifying condition of the personal conduct guideline is applicable: DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

Applicant's omissions were insufficiently explained in his hearing testimony. And when he was later interviewed by an OPM agent, he failed to make his prior drug use in 2006 and before known to the investigating agent. His omissions reflect his conscious decisions to omit material information concerning his past marijuana involvement.

In evaluating all of the circumstances surrounding Applicant's e-QIP omissions, his failure to correct his omissions when afforded an opportunity in his ensuing OPM interview, and his hearing explanations, his proofs are insufficient to enable him to convincingly refute or mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations reflect core policy security concerns of the personal conduct guideline (AG ¶ 15).

Applicant's deliberate omissions of his past marijuana use are clearly evident under the facts and policy considerations developed under this Guideline. Overall, Applicant's explanations of his omissions and misrepresentations are not persuasive enough to warrant favorable conclusions relative to the falsification allegations pertaining to his e-QIP drug-use omissions and failure to make necessary corrections when interviewed by an OPM agent in his follow-up interview.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Subparagraphs 1.a through 1.kk :	Against Applicant
GUIDELINE G (ALCOHOL CONSIDERATIONS):	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 3.a, 3.b, and 3.e:	Against Applicant
Subparagraphs 3.c and 3.d:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusions

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 security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

