



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00274
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

August 30, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant violated the Department of Defense’s regulations for the safeguarding of classified information while employed as a document control specialist. In October 2002, her careless handling of a classified document led to it being vulnerable to compromise for six days. She failed to properly secure a closed area in April 2001, April 2004, September 2004, and June 2005. Her pattern of inadvertent security violations raises considerable doubts about whether she can be counted on to address security responsibilities with the care and attention required. Applicant deliberately omitted her use of marijuana from 1974 to mid-1995 and of cocaine from 1986 to mid-1995 from her May 1997 security clearance application. Clearance denied.

Statement of the Case

On August 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline K, Handling Protected Information, and Guideline E, Personal Conduct, that provided the basis for its preliminary decision to deny her a security clearance. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on September 11, 2009, and she requested a hearing. On December 11, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for her. With the agreement of the parties, I scheduled a hearing for January 11, 2010.

I convened the hearing as scheduled. Fourteen Government exhibits (Ex. 1-14) and five Applicant exhibits (Ex. A-E) were admitted into evidence without objection. Applicant and three witnesses testified on her behalf, as reflected in a transcript (Tr.) received on January 21, 2010.

Procedural and Evidentiary Rulings

At the hearing, Applicant moved to amend her answer to SOR 2.b based on her testimony that she did not intentionally falsify her November 2002 security clearance application. I granted the motion over the Government's objections while advising the parties that it did not relieve me of the obligation to make findings of fact based on all the evidence. Department Counsel declined an offer of additional time to prepare a response.

Findings of Fact

The SOR alleged under Guideline K, Handling Protected Information, that Applicant failed to properly secure a closed area in April 2001 (SOR 1.a), April 2004 (SOR 1.c), September 2004 (SOR 1.d), and June 2005 (SOR 1.e), and that in October 2002, she failed to secure a secret-level classified document, which was later found in a dumpster (SOR 1.b). Applicant was allegedly removed from her position in document control and reassigned because of these security violations (SOR 1.f). Under Guideline E, Personal Conduct, Applicant was alleged to have deliberately falsified security clearance applications completed in May 1997 (SOR 2.a) and in November 2002 (SOR 2.b) by not disclosing her usage of marijuana and cocaine from about 1970 to 1995. Applicant admitted the allegations when she answered the SOR. But at her hearing, she denied falsification of her November 2002 security clearance application. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 53-year-old senior administrative associate in a defense contractor's security department. She has worked for her employer since September 1984, and held her present position since about November 2005. (Ex. 10, 11.) Before then, she was a security administrator in document control. She has been at her present duty location since June 2009. (Tr. 59.) Applicant was initially granted a secret-level security clearance in 1984. (Ex. 10.) She seeks to retain the top-secret level security clearance that she has held since October 1997. (Ex. 13.)

Handling Protected Information

Applicant began working for her employer as a document control specialist with a secret-level security clearance in September 1984. In 1997, she was issued a top-secret security clearance. (Ex. 1, 2, 13.) Over the years, she received security briefings, including annual refresher briefings, a controlled area briefing in March 2001, and closed area briefings in November 2001 and September 2004. (Ex. 1-5.) As a cleared employee, Applicant had a responsibility under the National Industrial Security Program Operating Manual (NISPOM), DoD 5220.22-M, to safeguard classified information entrusted to her. See DoD 5220.22 § 5-101 (stating, “Individuals are responsible for safeguarding classified information entrusted to them. The extent of protection afforded classified information shall be sufficient to reasonably foreclose the possibility of its loss or compromise.”) Applicant met her employer’s expectations in her primary role as customer support in document control, processing incoming and outgoing classified material into the facility. She was considered by her employer as very capable, but she needed to expand her knowledge of security to become more effective. She did not meet some of the training goals in 2003 or 2004, such as completing Defense Security Service (DSS) correspondence courses on the essentials of security management and protecting secret and confidential documents. (Ex. A.) Gaining more familiarity with the NISPOM requirements for safeguarding classified information was specifically identified as a key development need for Applicant at her annual performance review for 2004. (Ex. A.) In 2005, Applicant was transferred out of document control, a closed area approved for open storage of classified material¹ (Ex. 4.), because of a pattern of inadvertent security violations. The details of those violations follow.

As the last employee to leave document control at the end of the work day on April 4, 2001, Applicant signed the sign-out log, and secured the main door by cipher and “S&G” locks. But she failed to close and properly secure an overhead roll-up door at a service counter in the document control area. She was having problems with her son’s father and was “distracted” when she left for the day. (Tr. 75.) A second-shift security guard at the facility discovered the service door unlocked and unattended. He gained access to the document control area, and notified a security manager. The following morning, the combination to the document control area was changed, and all employees in document control conducted self-inspections of their immediate areas. All material appeared to be in proper order. Following its own investigation, Applicant’s employer determined that Applicant was solely responsible for the security violation. The two visitors, who remained in the facility after Applicant left work, had been

¹The NISPOM provides for the use of closed areas for the storage of classified material in § 5-306. Access to controlled areas must be controlled to preclude unauthorized access, by the use of a cleared employee or by a supplementing access control device or system. Access shall be limited to authorized persons with appropriate level of security clearance and a need-to-know the information within the closed area. Persons lacking the clearance and need-to-know must be escorted at all times by an authorized person where inadvertent or unauthorized exposure to classified information cannot otherwise be effectively prevented. During non-working hours, closed areas must have supplemental protection. Admittance to closed areas shall be controlled by locked entrances and exits secured by either an approved built-in combination lock or an approved combination or key-operated padlock. Doors secured from the inside with a panic bolt, dead bolt, a rigid wood or metal bar, or other means approved by the cognizant security agency, do not require additional locking devices. (Ex. 6.)

escorted until they departed, but the company's security manager concluded that compromise of classified information could not be precluded. The document control area was vulnerable for more than four hours until it was secured by the second-shift guard. Applicant apologized to her employer for her negligence in failing to secure the window. Since it was her first known violation, she was counseled by her supervisor about the importance of being extremely diligent in securing closed areas. A letter verifying that she had been verbally reprimanded was placed in her personnel file. Warning and sign-out forms were posted to remind the last person leaving document control to secure the window. The DSS industrial security representative with cognizant authority over the facility concluded there had been no loss, compromise, or suspected compromise of classified material, and that corrective actions by Applicant's employer were adequate. (Ex. 1, 9.)

On October 10, 2002, Applicant received a secret-level classified document that had been hand-carried into the facility. The document was logged into document control's accountability system. The next afternoon, the document was discovered missing when the intended recipient came to retrieve it. Searches of classified containers and the document control area failed to turn up the document. On October 14, 2002, steps were taken to search and then secure a dumpster at the facility in case the document had fallen into a trash can next to Applicant's desk and collected with other trash on October 11, 2002. The dumpster remained under visual monitoring or was secured before, during, and after its removal to a refuse facility on October 16, 2002, when Applicant sifted through the refuse and found the document intact but soiled. The facility security officer (FSO) determined that the document had been left vulnerable to compromise for six days. Applicant was found primarily responsible, as the classified document was believed to have been inadvertently knocked into the trash can next to her desk, from which it was then deposited into a large hamper and finally the dumpster. She had failed to place the document on the shelf where it belonged and left it on her desk. Corrective actions taken included removing individual trash cans in document control. Applicant was issued a written reprimand under company policy pertinent to first non-deliberate security infractions within a 12-month period.² (Ex. 2, 9.)

²On April 8, 2002, Applicant's employer established a disciplinary process for violations of the NISPOM, which provided for the following levels of disciplinary action.

Except where indicated, the following is a guideline for use in determining what to recommend as appropriate discipline. It is not necessarily a set standard to be followed in all cases and will vary depending upon the severity and circumstances of the violation.

<u>A. Non-Deliberate Breach of Security</u> <u>Within One Year Period</u>	<u>Minimum Security Action</u>
First	Written Warning
Second	Five Day Suspension Without Pay
Third	Ten Day Suspension Without Pay Up to and Including Termination

B. In case of deliberate breaches of security, the minimum disciplinary action is a five day suspension without pay and circumstances may warrant recommendation of termination.

Applicant was the last employee to leave the document control area on April 7, 2004. Security personnel subsequently discovered the door to the secret-level closed area to be closed but not properly secured. The spin-dial lock was not in the proper position to secure the closed area. Applicant had rushed to pick up her young son by a certain time. (Tr. 76.) Applicant admitted to her employer that she had been distracted on exiting the facility, and she failed to engage the lock. Because the closed area had a supplemental locking device, only cleared personnel could gain access, and the door showed no signs of tampering, the facility FSO determined classified information was not compromised. Applicant was reminded of the proper procedures for securing a closed area, and was issued a written reprimand.³ (Ex. 3, 5, 9, 76.)

In May 2004, Applicant was transferred to document control duties at another facility when her former work site closed. (Ex. 9, A, B.) While making his security rounds on September 15, 2004, a company security guard found a lock open (had not been spun) to the document control area, but the alarm was set. Sign-out logs reflected that Applicant had been the last employee to leave the closed area, although she and a coworker had left at the same time. When interviewed by company security personnel during its investigation, Applicant indicated that she had checked the door and it would not open. She set the door/area alarm according to the written directions provided, and once the security light was on, she assumed the door was locked. Security personnel noticed that the procedures for opening and securing a closed area were on the back side of the sign-in/out log. As a result of the incident, the procedures to secure the closed area were posted on the inside of the door, and Applicant and her coworker were instructed to spin the dial to engage the locking mechanism. The FSO determined that compromise of classified information did not occur, since the area was found alarmed, the badge-reader system was engaged, and no one had entered the closed area between the time Applicant left and the security guard found the lock open. Because it was Applicant's second non-deliberate violation within the year, she was suspended one day from work, and a copy of the security violation report was placed in her security file. Applicant was warned that any further violations could result in discipline up to and including termination. (Ex. 4, 9.)

On June 23, 2005, the document control area was found unsecured and unattended during a routine, after-hours security check by a company security guard. The spin-dial primary locking device had not been secured. Applicant had been the last person to log out that day, and when interviewed by the assistant FSO, she admitted that she had forgotten to spin the combination lock. No classified material was lost or unaccounted for. Compromise of classified information up to the secret-level could not be ruled out, although it was considered remote. Applicant was reminded of her

C. A history of any prior security violations will also be considered in determining disciplinary action. (Ex. 7.)

³Disciplinary records for the June 2005 incident indicate that Applicant received a one-day suspension for failure to properly secure a closed area in April 2004. (Ex. 5.) The written reprimand and security violation report on the April 2004 incident indicate that Applicant received verbal counseling and a written reprimand. The evidence is consistent about her one-day suspension for the September 2004 security violation, however. (Ex. 3.)

responsibilities to properly secure a closed area and to safeguard classified information. Because it was Applicant's fifth inadvertent security violation within the last four years, and "given that the protection of classified material [was] the very basis of [Applicant's] assignment," she was suspended from work without pay for three days, and issued a formal notice of security/company violation by her employer. (Ex. 5, Tr. 81.)

In October 2005, after reviewing the company's administrative inquiry of the June 2005 security incident, the DSS requested from Applicant's employer an adverse information report on Applicant based on her "definite pattern of negligence in the handling of classified material." (Ex. 5.) Applicant was reassigned from document control duties around November 2005, where she was no longer tasked with locking a secure area. (Ex. 9.) On December 9, 2005, Applicant's employer notified the DSS that Applicant had been reassigned to a position in the security office where her performance and work assignments could be closely monitored. (Ex. 5, 9.) Applicant's violation was addressed in her annual performance evaluation for 2005, but her supervisor was confident that it would not recur. (Ex. A.)

Applicant attributes her security violations to "situations" rather than to a lack of security training. (Tr. 80.) Events at home were upsetting to her, and she had to pick up her son at a set time. (Tr. 82.) Since her position transfer in late 2005, Applicant's duties in security have focused on security education (keeping track of employees' security briefings, maintaining security posters, noting security education in a notebook for DSS, running security awareness week at her previous job location), processing visit requests, and issuing badges. (Ex. A, Tr. 65-66, 104-06.) She has had limited access to classified information since late 2005, "maybe three times" involving bringing classified material to document control for destruction. (Tr. 79.) She requires a security clearance in her present job to access a clearance verification system, and for access to a closed area. (Tr. 106-07.)

Personal Conduct

Applicant tried marijuana out of curiosity when the illegal drug was passed to her in a social setting in 1974. She continued to smoke the drug in similar circumstances up to twice weekly and then up to twice monthly, until 1993. (Ex. 11.) She continued to smoke the drug after going to work for her current employer as a document control clerk with a secret-level security clearance granted to her in September 1984. (Ex. 10.) Applicant stopped using the drug in mid-1995. (Ex. 14.)

Applicant used cocaine in social settings about once a month from 1986 until 1994. In June 1994, Applicant separated from her now ex-husband. Around that time, Applicant began a personal relationship with a person known by her to use both marijuana and cocaine. Applicant's cocaine use increased to twice monthly, as she smoked the illegal drug with him on occasion. She discontinued using cocaine in mid-1995 ("in like May or June," Tr. 91.) when she became pregnant with their son, who was born in February 1996. In March 1996, Applicant began to attend Narcotics Anonymous meetings on a weekly basis. However, her boyfriend increased his usage of cocaine

and marijuana during her pregnancy, and began to blame her for his drug usage. Applicant left him in May 2007, and she and her son moved in with her sister. (Ex. 11.)

In May 1997, Applicant applied for a top-secret security clearance. (Ex. 13). She executed a security clearance application (EPSQ) on which she responded “No” to the illegal drug inquiries, including question 27 concerning whether she had illegally used any controlled substance in the last seven years, and question 28 concerning whether she had ever illegally used a controlled substance in a sensitive position, including while possessing a security clearance. (Ex. 10.)

In July 1997, Applicant was interviewed by a DSS special agent, in part about her illegal drug use. Applicant provided details of her marijuana use from 1974 to 1993, and of her cocaine use from 1986 until her pregnancy. She added that she was attending Narcotics Anonymous on a weekly basis and had been receiving mental health counseling. She told the investigator that she had knowingly falsified her EPSQ by omitting her drug use, her cohabitation with her former boyfriend, as well as her counseling, because she feared disclosure would adversely affect her security clearance. (Ex. 11.) She initially testified at her hearing that her negative response to the drug use question was “just an honest mistake. I think I was thinking of going back the seven years.” (Tr. 69.) When asked again, she admitted that she falsified her security clearance application in 1997 because “[she] was afraid that [she] wasn’t going to be able to get a clearance.” (Tr. 70-71.)

In late September 1997, Applicant signed and notarized an agreement to abide by the DoD policy to not use any narcotic, dangerous drug, or other controlled substance in any amount in the future. (Es. 12.) In October 1997, Applicant was granted a top-secret security clearance. (Ex. 13.)

In November 2002, Applicant executed a security clearance application (SF 86) to update her top-secret security clearance. As she had in May 1997, she answered “No” to both question 27 inquiring into any illegal use of drugs in the last seven years, and question 28 about any use of illegal drugs and drug activity while in a sensitive position, including while possessing a security clearance. (Ex. 13.) Applicant’s top-secret security clearance was renewed in February 2003. (Ex. 3.)

In October 2003, Applicant was interviewed by a different DSS special agent. In a signed, sworn statement, Applicant admitted that she had used both marijuana and cocaine in the past, but that she was no longer using either illegal drug. In variance to her previous disclosure of cocaine use starting in 1986, she reported first involvement with cocaine in 1993. Applicant told this agent that she stopped using cocaine and marijuana in mid-1995 because of her pregnancy. Applicant admitted that she had purchased both marijuana and cocaine from friends when she used them, spending between \$25 and \$100 per month. Applicant’s statement included the following admission against interest:

I intentionally omitted my use of cocaine and marijuana from my SCA because I was concerned that I would not get a security clearance if I

listed them. I now recognize the importance of being honest and I have attempted to provide all relevant information concerning my past drug use.

(Ex. 14.) Applicant now maintains that she did not deliberately falsify her November 2002 SF 86. Rather, she testified that she was referring to her 1997 application (which she maintains the investigator had with him) when asked why she had not disclosed her drug use. (Tr. 87) Applicant attributed her negative response to the drug inquiries to the fact that she had not used any illegal drugs in the seven years preceding her application. (Tr. 71-73, 88.)

In the latest update of her security clearance, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 18, 2008. She responded negatively to the drug inquiries, including question 24.b, "Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" (Ex. 8.) During an October 2008 interview (Ex. 9) and at her hearing, she was not asked about, and did not offer, an explanation for her apparently false response to question 24.b. Her May 1997 EPSQ indicates that she was granted a secret-level security clearance in 1984. She smoked marijuana from about 1974 to June 1995, and used cocaine from 1986 to June 1995.

Character Evidence

Applicant's performance evaluations from 2003 through 2005 show that she met her employer's expectations, although additional security training was identified as a key development need that had not been fully met by the time of her transfer to a senior administrative associate position. Applicant met or exceeded her employer's expectations in her new role, with her strong customer service orientation and "positive people skills" leading to continued progress in that area within the operations security team in 2006 in 2007. A strong team player, she demonstrated initiative and willingness to accept new tasks. Key development needs were still in the area of security education, where she was advised at her annual performance evaluations for 2006 through 2008 to expand her knowledge of the security office and security responsibilities. (Ex. A.)

A senior site security specialist, who worked with Applicant in document control from 1990 until Applicant was transferred in 2005, attests to Applicant's good work ethic, her professionalism, courtesy, and willingness to help others. She is aware that Applicant committed a couple of inadvertent security violations and is of the opinion that Applicant's security clearance should be continued. (Ex. B, Tr. 45-46.) The former manager of the document control office indicates that Applicant was a dedicated and industrious worker. This former supervisor is aware that Applicant had a "couple of violations over the years [which] were unintentional and were taken very seriously by her." She has no concern about recommending Applicant for a clearance. (Ex. C.) An information systems security manager, who has known Applicant since May 2005, had daily contact with her, including on occasion retrieving or storing classified information within document control. In his opinion, Applicant displayed competency and a professional demeanor. (Ex. D.) Applicant also has the support of the security manager

who disciplined Applicant for the June 2005 violation. (Ex. 5, E.) She continued to be familiar with Applicant's work performance until April 2009, and found Applicant to be an "honest, sincere, and hardworking employee." This security manager also recommends Applicant for a position of trust, based on Applicant's improved duty performance, her commitment to security, and her integrity. (Ex. E.) Applicant's direct supervisor in document control, for all but a couple of years from 1994 until 2002 (Tr. 61-62.), understands that the Government is concerned about "some inconsistencies" in Applicant's security clearance application, and of Applicant's failure to secure a "metal gate" so that document control was left open. He feels that Applicant made an unintentional mistake that she is not likely to repeat. (Tr. 54-55.) He would consider any mistake on her security clearance application to be unintentional based on what he knows about her. He has never seen her under the influence of illegal drugs. (Tr. 56-57.)

A close personal friend of Applicant's for some 47 years knows that Applicant used illegal drugs in the past. She believes Applicant stopped using illegal drugs 20 years ago. She considers Applicant to be of upstanding character. (Tr. 37-40.)

Applicant has been the sole financial supporter for her son since his birth. (Tr. 67.) She and her son live with her sister. (Tr. 77.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other

evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Handling Protected Information

The security concern for handling protected information is set out in Guideline K, AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual’s trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Applicant committed five separate security violations between April 2001 and June 2005 while employed as a classified document control clerk within a closed area cleared to store material to the level of secret. Applicant violated the NISPOM and her employer’s requirements concerning the proper storage of classified material by failing to properly secure the document control area on four occasions, and in October 2002, by failing to protect a secret-level classified document that had been hand-carried into the facility. In addition to her general responsibility as a cleared employee to safeguard classified information entrusted to her (see NISPOM, ¶ 5-100), Applicant was entrusted with the responsibility to secure a closed area.⁴ By not securing the document control window in June 2001, and by failing to engage locking mechanisms in April 2004,

⁴The SOR alleges Applicant violated ¶¶ 5-300 and 5-303 of the NISPOM when she failed to properly secure the document control area, a closed area approved for open storage of classified material up to the secret level. NISPOM ¶ 5-300 is a general provision that requires contractors, such as Applicant’s employer, to meet the requirements for the physical protection of classified material in its custody. NISPOM ¶ 5-303 sets forth the specifics for approved storage of secret material. NISPOM ¶ 5-306 applies to closed areas.

September 2004,⁵ and June 2005, Applicant left the document control area vulnerable to unauthorized access. Under NISPOM ¶ 5-306, access to closed areas must be controlled to preclude unauthorized access. Her negligent handling of the classified document entrusted to her in October 2002 led to its inadvertent removal from the facility to a waste site where it was eventually recovered intact but soiled. Compromise of the secret-level document was considered unlikely, but it could not be precluded because the document was not appropriately secured for six days. AG ¶ 34(g), “any failure to comply with rules for the protection of classified or other sensitive information,” applies. After the April 2004 incident, Applicant was reminded of her responsibility to spin the locking device when she left for the evening. Twice thereafter at her new facility, she failed to engage the spin lock on the door to document control. So AG ¶ 34(h), “negligence or lax security habits that persist despite counseling by management,” also applies.

Applicant’s negligence led to a classified document being improperly stored in a trash dumpster for several days in October 2002, but she did not knowingly store the classified information in an unauthorized location. AG ¶ 34(b), “collecting or storing classified or other protected information at home or in any other unauthorized location,” is not pertinent. Furthermore, AG ¶ 34(a), “deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences,” does not squarely apply because there is no proof of unauthorized disclosure.

Mitigating condition AG ¶ 35(a), “so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” applies in part in that her latest security violation occurred more than four years ago. But the passage of time provides insufficient guarantee against recurrence, especially when she has been called on only three times to handle classified information since November 2005, and none of these occasions involved securing a closed area.

Even with limited opportunity to prove compliance with security regulations, reform may be established under AG ¶ 35(b), “the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.” Applicant admitted her carelessness, which is a vital first step in reform. Yet, despite being reminded by her supervisor to give her full attention to the security task at hand and to exercise extreme diligence in securing her work area, she committed similar violations in April 2004, September 2004, and June 2005. It is difficult to find under these circumstances that she responded favorably to counseling, even though she displayed a positive attitude and willingness to comply with her security responsibilities. As of the date of her performance evaluation

⁵The SOR alleges that Applicant left a document control window open in September 2004 (SOR 1.d). The company’s administrative inquiry shows that Applicant failed to spin a lock to the document control area on that occasion. (Ex.4)

for 2004, she had not completed the DSS security correspondence courses recommended by her supervisor for the second straight year. One would have expected Applicant to have sought security training or re-education to allay her employer's and DSS' concerns about her security practices and there is no evidence that she did so. (See Tr. 81.) When asked about the recurring nature of her violations, Applicant testified that she tried to be more conscious about closing up document control, but that "things were going on at home that were very upsetting to [her]." (Tr. 82.)

Following her fifth inadvertent violation in four years, Applicant was suspended for three days without pay by her employer. After the DSS expressed concerns about Applicant's pattern of negligence, Applicant was reassigned by her employer to a position in security where her work performance and work assignments could be closely monitored. While she provided key support in several areas, including maintaining security education logs and bulletins, key development needs continued to be expanding her knowledge of the security office's functions and her security responsibilities. (Ex. A.)

That said, Applicant does not contend, and there is no evidence to indicate that the security violations were due to improper or inadequate training. AG ¶ 35(c), "the security violations were due to improper or inadequate training," is not pertinent. None of the mitigating conditions fully apply.

Personal Conduct

The security concern for personal conduct is set out in Guideline E, 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.

Applicant abused marijuana and cocaine while she held a security clearance and worked in document control routinely handling classified documents. She used marijuana for some 20 years, from 1974 to around June 1995, and cocaine from 1986 until June 1995. Yet, when applying for a clearance upgrade to top secret in May 1997, she falsely denied that she had used any illegal drugs in the last seven years and that she had ever used an illegal controlled substance while possessing a security clearance. Applicant omitted her drug use because she feared that she would be denied a security clearance. AG ¶ 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," applies.

Applicant also responded negatively to the inquiries about illegal drugs when she completed her SF 86 in November 2002, five years after she had detailed her illegal drug involvement to a DSS agent in July 1997. Applicant had told a government investigator in October 2003 that she intentionally omitted her past illicit drug involvement as she was concerned she would not obtain a security clearance. I am not persuaded by her hearing testimony that this admission against interest was made in reference to her May 1997 EPSQ. There is nothing in her sworn statement of October 2003 (Ex. 14.) that shows the May 1997 EPSQ was discussed. When asked about her counseling in October 2003, Applicant responded, "As I indicated on my SCA, I have received counseling." Applicant answered "No" to the counseling inquiry on her May 1997 EPSQ (Ex. 10.), while she had responded affirmatively to similar inquiry on her November 2002 SF 86. (Ex. 13.) The evidence strongly suggests that the November 2002 SF 86 provided the basis for the interview in October 2003. That said, since there was no evidence of any illegal drug use by Applicant after June 1995, her response to question 27 on the November 2002 SF 86 was not shown to be false. But her answer to question 28 concerning any illegal drug use ever while possessing a security clearance was not true. Because the Government did not allege falsification of question 28, it cannot provide an independent basis for denial of her clearance. However, it is relevant in assessing the extent of her reform of her intentional false statement on her May 1997 EPSQ alleged in SOR 2.a.⁶

Applicant provided a detailed history of her illegal drug involvement when she was interviewed by a DSS agent in July 1997. This effort at rectification was sufficiently timely to qualify as a prompt effort to correct a May 1997 deliberate misrepresentation. Yet, it is unclear whether she volunteered the information up-front. Her disclosures appear to have been in response to questions by the investigators during all of her interviews, including in July 1997. Furthermore, given her false responses on both the November 2002 SF 86 (question 28) and her August 2008 e-QIP (question 24.b) to whether she had ever used any illegal drug while possessing a security clearance, she undermines her evidence in reform. Furthermore, although not alleged in the SOR, there is discrepant information in the record about her first use of cocaine. She told a DSS agent in July 1997 that she used cocaine beginning in 1986. In October 2003, she told a different agent that she tried cocaine while at a party "sometime in about 1993." Applicant made no effort to explain this discrepancy.

⁶In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR misconduct for the five above purposes, and not for any other purpose.

Applicant's May 1997 falsification is now sufficiently dated to satisfy the passage of time component of AG ¶ 17(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." Yet, intentional falsifications on security clearance applications are not minor offenses. The Government justifiably requires full candor from its applicants for security clearance. Applicant's security clearance was upgraded to top-secret in 1997, and there is no indication that the Government knew at the time that she had used illegal drugs in the recent past. Nor am I able to conclude that Applicant's misrepresentations are safely in the past. In October 2003, she told the agent that she understood the importance of being fully honest. Yet, when she completed her latest security clearance application in August 2008, she responded "No" to whether she had ever used any illegal drug while possessing a security clearance. Her previous disclosures about her drug involvement to the DSS agent did not relieve her of her fiduciary obligation to admit on her August 2008 e-QIP that she had used illegal drugs while possessing a security clearance. She presented no reasonable explanation that could excuse her false responses to question 28 on her November 2002 SF 86 and question 24.b on her August 2008 e-QIP. Her evidence in reform falls short of satisfying AG ¶ 17(c) or AG ¶ 17(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."

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 her conduct and all relevant circumstances in light of 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.

Applicant had problems focusing on her security obligations when pressed for time or distracted by problems at home. Disciplinary action and re-education failed to prevent Applicant from committing three security violations between April 2004 and June 2005. Given her limited opportunities to handle classified information in her

present position, one has to look to her overall duty performance for evidence of reform. She has met her employer's expectations, as shown by her annual performance reviews. Applicant is recommended for a position of trust by several coworkers, including her former security manager, who reportedly witnessed an improvement in Applicant's duty performance and commitment to security since the security violations.

At the same time, Applicant's concealment of her drug use from her May 1997 EPSQ, and more recently, her false answers to question 28 on her November 2002 SF 86 and 24.b on her August 2008 e-QIP, are difficult to reconcile with the character witness evidence of her personal integrity and trustworthiness. A former supervisor of Applicant's felt that if Applicant omitted information from her SF 86, it was a mistake and not intentional. (Tr. 56.) Applicant does not dispute that she intentionally concealed her illegal drug involvement from her May 1997 EPSQ. The evidence shows she has not been completely up-front with her character witnesses about her past illicit drug use or her efforts to conceal her drug abuse from the Government. Reform is not demonstrated by looking to her problems at home to excuse her repeated security violations (see Tr. 82), or by responding "No" on her latest e-QIP to whether she had ever used any illegal drug while in a sensitive position. Given the recurring nature of her security violations, and the concerns about her judgment and trustworthiness because of her lack of full candor, I am unable to conclude that it is clearly consistent with the national interest to continue a security clearance for Applicant.

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 K:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant ⁷
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

⁷SOR 1.f alleges only the disciplinary action taken as a result of the security violations in SOR 1.a through 1.e and does not represent additional conduct of security concern committed by Applicant.

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge