



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-00431

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 27, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On July 30, 2009, 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 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 revised Adjudicative Guidelines (AGs), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on August 17, 2009, and requested a decision on the record. At the government's request, the case was converted to a hearing. The case was assigned to me on September 11, 2009, and was scheduled for hearing on October 8, 2009. A hearing was convened on the scheduled date, and for good cause shown was continued (Tr. 9-11). The case was rescheduled for hearing on December

10, 2009. A hearing was held on the scheduled date. At the hearing, the government's case consisted of five exhibits; Applicant relied on one witness (himself) and seven exhibits. The transcript (Tr.) was received on December 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is denied.

Procedural Issues and Rulings

Before the close of the hearing, Department Counsel moved to amend subparagraph 1.a of the SOR to substitute the date of 1982 for 1972 and subparagraph 2.a to change the date of 1977 to 1980. For good cause shown, Department Counsel's motion requests were granted. Applicant admitted the allegations as amended.

Prior to the close of the hearing, Applicant requested leave to supplement the record with chips commemorating 18 months of sobriety. For good cause shown, Applicant was afforded seven days to supplement the record. Within the time permitted, Applicant documented his receipt of chips commemorating 18 months of sobriety. Applicant's submission was admitted for consideration as exhibit H.

Summary of Pleadings

Under Guideline G, the Government alleged that Applicant: (a) consumed alcohol to excess and to the point of intoxication between 1972 (amended to 1982) and February 2008; (b) was arrested and charged with driving under the influence of alcohol (DUI) in 1985 under the Uniform Code of Military Justice (UCMJ) and awarded 25 days of correctional study and reduction in rank; (c) participated in a substance abuse treatment and detoxification program operated by a charitable organization (S Services) in 1997; (d) participated in a 28-day outpatient substance abuse program in 2000; (e) participated in a substance abuse first step program (sponsored by the Department of Veterans Affairs (DVA)) between March 2008 and April 2008, where he was diagnosed with alcohol dependence and cannabis abuse; and (f) experienced negative affects in his marriage and loss of jobs attributable to his abuse of alcohol.

Under Guideline H, the Government alleged that Applicant: (a) used and purchased marijuana and cocaine on multiple occasions between 1977 (amended to 1980) and February 2008; (b) was diagnosed with cocaine dependence in 2008; (c) used marijuana frequently while in the U.S. Marine Corps (between 1983 and 1989), (d) tested positive for marijuana in 1986 and 2006, respectively; (e) was diagnosed with cocaine dependence and cannabis abuse; (f) was charged with marijuana possession in August 1994 (dismissed) and November 2006; (g) was treated for substance abuse in 1997 and 2000, respectively; and (h) used marijuana on multiple occasions while possessing a DoD security clearance and serving in the U.S. Marine Corps.

Under Guideline E, the Government alleged that Applicant falsified his security clearance application (e-QIP) in August 2008 by (a) omitting his drug-related arrests in 1994 and 2006 and (b) understating his marijuana use.

In his response to the SOR, Applicant admitted all of the allegations, except for the date corrections he cited. He added explanations.

Findings of Fact

Applicant is 44-year-old security professional for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is unmarried and has no children. After high school, he enlisted in the Marine Corps and served for four years of active duty (between 1983 and 1987) and two years in the active reserves (see ex. 1; Tr. 48-49). During his active service, he was assigned to an air and naval gunfire company and belonged to a rapid deployable forward operating airborne unit (Tr. 49-50). He received his honorable discharge in 1989 (Tr. 51).

Applicant's alcohol and drug history

At a very early age, Applicant was introduced to alcohol. By the time he was 13, he was consuming a six-pack of beer a week in social situations. While in high school, he regularly consumed alcohol at abusive levels on a virtually daily basis (see ex. 4). He graduated from high school in 1981, and soon enlisted in the Marine Corps. (see exs. 1 and 3; Tr. 62).

During his active duty tour in the Marine Corps, Applicant developed serious alcohol and drug abuse problems. His medical records reveal he consumed alcohol regularly when not on duty (see ex. 4). In 1985, he was charged with drunk driving under the UCMJ, and was awarded article 15 punishment and sentenced to 25 days in correctional study, and reduced in rank (see exs. 3 through 5). Despite his alcohol and drug problems during his active military tour of duty, Applicant continued to function at acceptable levels and received numerous awards and commendations recognizing his contributions to his command.

Following his discharge from active military service in September 1989 (see ex. C), Applicant continued to abuse alcohol on a regular basis. Between 1982 and February 2009, he abused alcohol daily, both on the job and at home (ex. 4). In 1997, he turned to a recognized charitable organization (S Services) for guidance in controlling his drinking. Records document that he participated in an outpatient substance abuse program operated by HL. He completed this program and was able to remain sober for the duration of the program and for about six months thereafter (see ex. 4; Tr. 56-57), before returning to abusive drinking. Because of his drinking, Applicant encountered considerable difficulties in his marriage and in holding jobs. His continued drinking also contributed to serious strains in his relationships with his father and siblings (see ex. 4).

Applicant admitted himself to a 28-day substance abuse program offered by a recognized substance abuse facility in 2000 (Tr. 58). It is not clear from the record what this program entailed and how Applicant progressed in the program.

Besides alcohol, Applicant abused drugs over a period of many years. He was introduced to marijuana when he was about 14 years of age (ex. 3). He continued using it on a recurrent basis between 1980 and February 2008 (exs. 3 and 4). Typically, he smoked marijuana with friends and used the drug throughout his active duty military tour. His frequent use of marijuana in the Marine Corps contributed to six reductions in rank and several forfeitures of pay (see ex. 4). Records document that he used marijuana continuously between November 1983 and December 1989 while in the Marine Corps. and holding a security clearance (see exs. 3 and 5; Tr. 66-67). Applicant freely acknowledges that his use of illegal drugs violated DoD's drug policy (Tr. 67). Records reflect that he tested positive for marijuana in 1986, and again in 2006 (see ex. 3; Tr. 47).

In 1989, Applicant was introduced to cocaine. Between 1989 and December 2008, he used cocaine with varying frequency. Except for an extended period of non-use between 1996 and 2000, he used cocaine regularly between 1980 and February 2008, a period of almost 28 years (exs. 3 and 5; Tr. 63).

Over the course of his use of both drugs (marijuana and cocaine), Applicant occasionally purchased small quantities of both drugs for his personal use and sharing with friends (Tr. 64). However, he never purchased nor sold drugs for the purpose of producing a profit. Twice, he was arrested and charged with possession of illegal drugs: once in August 1994 (charge later dismissed) and again in November 2006 (dismissed) (see exs. 3 and 5; Tr. 45-47).

In March 2008, Applicant enrolled in a VA-sponsored First Step program. This was an inpatient program designed to treat admitted patients for substance abuse (both drugs and alcohol) over the course of the 90 days allotted to the program (see exs. 3 and 4; Tr. 59-60). Upon admission, Applicant was diagnosed with alcohol dependence, cocaine dependence, and cannabis abuse. His provider-designed treatment regimen included daily sessions of milieu therapy (including community meetings), group therapy, psycho-educational classes (e.g., relapsed prevention, 12-steps, communication, and cognitive coping), recreational therapy, and individual drug and alcohol counseling. His hospital report reveals he encountered First Step problems in his associations with his First Step peers (ex. 4). His records note that he sometimes left the organized group setting to isolate with a female member of the group.

After spending just a little over a month in the VA program, Applicant was discharged from the program, as the result of reported verbal altercations with one of his peers in the program (see ex. 5; Tr. 59-60). Notwithstanding the objectionable behavior of the other patient in the cited exchange, Applicant was determined by the VA's hospital staff to be the most culpable party and was discharged from the program prior to completion due to aggressive behavior and the altercation with another patient of the community (ex. 4).

Prior to his discharge from the VA's First Step program, Applicant was advised to maintain his abstinence from alcohol and drugs after his discharge, attend a local housing shelter, attend aftercare meetings, attend Alcoholics Anonymous (AA) sponsored 12-step meetings and other peer-oriented support groups in the community, and continue to work with Next Step groups seeking employment and vocational assistance (ex. 4). He was discharged in April 2008 with no reported change in his diagnoses.

Since his discharge from the VA's First Step program, Applicant has maintained his abstinence from alcohol and drugs and is committed to a lifestyle of permanent abstinence (ex. 4). Applicant's substance abuse coordinator with the VA First Step program he was involved with in 2008 credited him with making an excellent transition from the VA's program to the clean and sober transitional housing system it operates on campus (see ex. F). This VA coordinator stressed Applicant's continued participation in VA aftercare groups and individual case management, his regular attendance at 12-Step meetings with the aid of his sponsor, his local church affiliation, and his service as a source of support and inspiration for his fellow Veterans (ex. F; Tr. 81-82). Applicant assures he has not consumed any alcohol since February 2008, and provides chips that commemorate his sobriety since February 2008 (a period of almost 22 months) with the support of his recovery programs (see ex. H; Tr. 80-82). Applicant's assurances of sustained sobriety since February 2008 (Tr. 54-55) are credible ones and are accepted.

Other VA staff members who are familiar with Applicant's progress since his discharge from the VA's First Step program vouchsafe for his commitment to sober living, involvement with outpatient therapy groups, and regular meetings with his AA sponsor (see ex. F). They make optimistic assessments of his ability to stay sober in the foreseeable future.

Applicant's e-QIP omissions and understatements

Asked to complete an e-QIP in August 2008, Applicant omitted his drug-related arrests in 1985 and 2006, and understated his use of marijuana and cocaine (see ex.1). He attributed his omissions and understated drug use to misunderstanding how much background information the e-QIP questions were intended to elicit (Tr. 70). When interviewed by an OPM agent in November 2008, he voluntarily disclosed his arrests and more extensive drug use without any prompting from the agent (see ex. 3; Tr. 45, 70-71).

Applicant's explanations of misunderstanding and confusion are not very convincing. He impresses as a very intelligent and experienced ex-Marine who was clearly embarrassed over his transgressions with alcohol and drugs and determined to limit as much adverse information about his abuse of alcohol and drugs as he could plausibly achieve without exposing himself to detection.

To his credit, Applicant was completely honest and forthcoming about his alcohol and drug abuse with his military and VA providers who treated his extensive alcohol and

drug addictions in March and April 2008. And when he appeared for a scheduled OPM interview in August 2008, he promptly disclosed all of his drug-related arrest history and involvement with drugs without any prompting by the interviewing OPM agent. Applicant's credible corrections are accepted upon consideration of all of the facts and circumstances.

Endorsements

Applicant's direct supervisor and work colleagues, aware of his continuing participation in recovery programs (Tr. 74-82), describe Applicant as professional in every way in carrying out his responsibilities and an outstanding employee (see ex. G). His plant manager and direct supervisors describe Applicant's job performance under stressful conditions as exceptional and credit him with dependable and reliable performance on a consistent basis (ex. G). Applicant's military and employment credits include numerous training certificates and team awards (see exs. D, E, and G; Tr. 51-52, 68-69).

Applicant's father explained Applicant's reasons for enlisting in the Marine Corps following his high school graduation and described Applicant's continued devotion to the United States (see ex. B). A former teacher characterized Applicant as honorable, honest, prudent, and possessed of good morals (ex. B). She credits him with turning his life completely around and attending AA meetings regularly (ex. B). Other family members extol his Marine service, his sobriety commitments, and his active and healthy lifestyle (ex. B).

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering 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 all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. However, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the 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 ¶ 2(a) 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 individual guidelines are pertinent herein:

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. See AG ¶ 21.

Drug Involvement

The Concern: 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.

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

By virtue of the principles and policies framed by the AGs, 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 commonsense 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. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, 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 materiality showing, 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 proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a highly regarded employee of a defense contractor with a history of recurrent abuse of alcohol and illegal drugs over 30 years. Applicant's exhibited alcohol and drug abuse raise security concerns covered by Guidelines G and H of the AGs. Applicant's omissions create initial concerns about his trustworthiness and reliability under Guideline E.

Applicant's alcohol issues

Applicant's recurrent problems with abusive and addictive drinking raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption (AG ¶ 21) may be applied: 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," ¶ 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," ¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

Historically, Applicant has experienced serious and recurrent problems with abusive and addictive drinking. His difficulties include an award of Article 15 punishment during his active tour duty in the Marine Corps for a DUI offense, and several treatment episodes to address his alcohol dependence issues.

Whether Applicant can safely avert recurrent drinking cannot be firmly established without an updated professional evaluation by a credentialed physician or licensed substance abuse counselor. His recent participation in a VA First-Step program was encouraging but abbreviated by his necessitated early discharge from the program due to behavior issues. To his credit, Applicant has continued to abide by the abstinence principles he absorbed during his stay with the VA-First Step program and has utilized a combination of VA and community resources to further solidify his sobriety and promote his recovery and progress as a valued member of his community. The updated assessment he provided from his clinical services coordinator with the VA and documented chips commemorating his 18 months of sustained sobriety strengthens his prospects for maintaining his alcohol-free commitments.

Documented support of Applicant's sustained sobriety over the past 18 months is, of course, an important consideration in determining what weight to assign to his rehabilitation claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004). While his sobriety efforts certainly improve his chances for staying alcohol-free, with his recurrent history of alcohol abuse and diagnosed dependence, it is still too soon to make safe predictions that Applicant is at no foreseeable risk to relapse. DOHA's Appeal Board has consistently stressed the importance of a fairly lengthy period of abstaining from alcohol consumption in serious cases that involve extensive alcohol use and diagnosed dependence. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007).

Here, although Applicant has been able to avoid any more alcohol-related arrests since his last arrest and conviction in 1985, his past excessive alcohol consumption was frequent, extreme, and recurrent over long periods of time. His relatively recent conversion to sobriety under the circumstances (almost 22 months) precludes any more than partial application of MC ¶ 23(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."

Without proof of a longer period of sustained abstinence (almost 22 months here), none of the other potentially available mitigating conditions under the alcohol guideline are available to Applicant. Passage of time without a recurrent incident, and renewed commitments to sobriety, while certainly important, are not enough to warrant application of any of the other mitigating conditions without any demonstrated satisfaction of the requirements imposed by these other mitigating conditions.

Faced with similar evidence of recurrent alcohol abuse over a considerable period of time, and the absence of any lengthy abstinence observance, DOHA's Appeal Board has expressed reluctance to make safe, predictive judgments about an

applicant's ability to avoid abusive incidents in the future without strong probative evidence of sustained recovery, aided by positive professional reinforcements, DOHA's Appeal Board has expressed reluctance to make safe, predictive judgments about an applicant's ability to avoid abusive incidents in the future. See cases, *supra*. Another year of abstinence is needed by Applicant to provide sufficient assurances he will not relapse.

Taking into account both Applicant's history of alcohol abuse, his strong work record, the applicable guidelines and a whole person assessment of his most recent alcohol moderation efforts, conclusions warrant that his overall efforts, while encouraging, do not reflect sufficient evidence of sustained commitment to a program that provides optimum protections against recurrent alcohol abuse. In the past, he has enjoyed considerable periods of abuse avoidance, only to return to abusive drinking that involved alcohol-related incidents away from work. Because of this recurrent abuse problem, his earlier incidents and treatment history cannot be considered sufficiently behind him to afford reliable assurances he will not again relapse in the foreseeable future.

Based on a whole-person assessment, Applicant fails to make a sufficiently convincing showing that he has a sufficient period of sustained abstinence, considering his lengthy history of recurrent alcohol abuse (with diagnosed dependence) to avert any recurrent problems with judgment lapses related to alcohol. His contributions to the Marine Corps and other participants in the VA's First Step program are notable and worthy of praise. Applicant's mitigation efforts, while considerable, are not enough, however, to overcome risks of potential relapse, given his recurrent abuse and addictive history. Some additional time in sustained abstinence (at least a year) is needed to facilitate safe predictions that he is no longer at risk to judgment impairment associated with alcohol abuse. Unfavorable conclusions warrant with respect to the allegations covered by the alcohol guideline of the SOR.

Applicant's drug concerns

Over a 27-year period (between 1980 and February 2008), Applicant used and purchased marijuana and cocaine intermittently in social situations and tested positive for marijuana use during his active duty tour with the Marine Corps (in 1986), and again in 2006. His active involvement with illegal drugs includes arrests in 1994 and 2006 for marijuana possession. Use and purchase of illegal drugs, (inclusive of marijuana and cocaine) are proscribed by both state law and federal law (see 21 U.S.C. § 802, *et seq.*

Applicant's admissions of his marijuana-related arrests, his use and purchases of marijuana and cocaine over recurrent periods, his testing positive for marijuana while serving in the U.S. Marine Corps, and his diagnosed cocaine dependence raise both judgment concerns and security concerns over risks of recurrence. On the strength of the evidence presented, several disqualifying conditions of the AGs for drug abuse are applicable: DC ¶ 25(a), "any drug abuse," DC ¶ 25(b), "testing positive for illegal drug use," DC ¶ 25(c), "illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," DC ¶ 25(d),

“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;” DC ¶ 25(f), “failure to successfully a drug treatment program prescribed by a duly qualified medical professional,” and DC ¶ 25(g), “any illegal drug use after being granted a security clearance.”

Based on his own creditable testimony, the testimonials of Applicant’s character references, and his demonstrated abstinence over an appreciable period of time, Applicant is entitled to take some advantage of two of the mitigating conditions of MC ¶ 26(b)(1), “disassociation from drug-using associates and contacts,” and MC ¶ 26(b)(2), “changing or avoiding the environment where drugs were used,” to the merits of his situation. In fairness to Applicant, he has exhibited candor about his past marijuana and cocaine use and his associations with persons who have used the substances.

From a whole person perspective, Applicant has established independent probative evidence of his overall reliability and trustworthiness with his employer and community sponsors and understanding of DoD policy constraints on the use of illegal substances. His positive endorsements from his colleagues who are familiar with his past marijuana involvement reinforce his discontinuance assurances. Whole-person assessments, however, are still insufficient to enable Applicant to surmount the judgment questions raised by his recurrent use of illegal drugs over a prolonged period (some while holding a security clearance) and diagnosed addiction to cocaine. Despite his credible abstinence efforts over the past 22 months and his strong character references from friends and colleagues who know him, it is still too soon to make safe predictions about his ability to avert any recurrence risks. Lingering doubts remain concerning his current reliability, trustworthiness, or good judgment. Some additional time in sustained abstinence (a year or more) is needed to provide sufficient assurance that he will not return to illegal drug use.¹

Considering the record on a whole, at this time there is insufficient credible seasoning of Applicant’s mitigation efforts (almost 22 months of sustained abstinence) to avert foreseeable risks of recurrent cocaine and marijuana use. Taking into account all of the facts and circumstances surrounding Applicant’s drug use and purchases, his drug-related arrests, his positive drug tests, and his judgment lapses associated with his use of marijuana while holding a security clearance in the U.S. Marine Corps. Applicant fails to mitigate security concerns under Guideline H. Unfavorable conclusions warrant with respect to the allegations covered by Guidelines H, as they pertain to his drug involvement.

¹Any recommendation to approve Applicant’s clearance in the future, of course, is not binding on the Government. If Applicant’s company sponsors him for a clearance one year after the date of this clearance, approval of a clearance at that time will be based on all the facts and circumstances at that point in time. An administrative judge does not have authority to commit the government to approval of a clearance at some future date. See *generally* ISCR Case No. 08-07540 at 2 (App. Bd. Jan. 8, 2010); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [him or] her the opportunity to have a security clearance decision while [he or she] works on [his or] her financial problems.” and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)).

Personal conduct concerns

Security concerns over Appellant's judgment, reliability and trustworthiness are raised under Guideline E as well as the result of his omissions of his two drug-related arrests and his understatement of his drug use. By omitting his recurrent drug use and past experiments in marijuana cultivation, 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. DC ¶ 16(a) of the personnel conduct guideline, "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," is fully applicable to the facts of Applicant's situation.

Applicant's omissions are not excusable and cannot plausibly be attributable to misunderstanding and confusion over the scope of the questions presented in his e-QIP. His full and voluntary disclosures to the OPM agent who interviewed him three months later enable him, however, to take advantage of one of the mitigating conditions of the personnel conduct guideline: MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Taking into account all of the evidence produced in this record, Applicant may be credited with mitigating trust and reliability concerns associated with his e-QIP omissions and understatements. Favorable conclusions warrant with respect to the Guideline E allegations that Applicant knowingly and wilfully (a) omitted his two drug-related arrests and (b) understated the extent of his use of marijuana and cocaine.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in ¶ 2(a) of the AGs.

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 G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparas. 1.a through 1.f: Against Applicant

GUIDELINE H: (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparas. 2.a through 2.m: Against Applicant

GUIDELINE E: (PERSONAL CONDUCT): FOR APPLICANT

Subparas. 3.a and 3.b:

For 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