



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-01988
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: J. Ransdell Keene, Esq.

January 9, 2012

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated sexual behavior security concerns, but he has not mitigated criminal conduct, drug involvement, and personal conduct security concerns.

**Statement of the Case**

On August 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J (criminal conduct), H (drug involvement), E (personal conduct), and D (sexual behavior). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 24, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for

December 9, 2011. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 32. GE 15 was admitted over Applicant's objection. The other exhibits were admitted without objection. Applicant testified and submitted exhibits (AE) A through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 19, 2011.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2007. He seeks to retain his security clearance. He attended college, but he has not earned a degree. He served in the U.S. military from 1985 until he received a general under honorable conditions discharge in 1995. He is married for the third time. He has four children and a stepchild.<sup>1</sup>

Applicant smoked marijuana and used cocaine before he joined the military. He had a series of disciplinary problems in the military. He was stationed overseas in 1986. In June 1986, the wife of another service member complained that she was swimming in a lake when Applicant attempted to pull her bikini bottom off, grabbed her in the groin area, and attempted to kiss her. Applicant admitted to attempting to kiss her, but he denied attempting to pull her bikini bottom off or indecently assaulting her. The Criminal Investigation Division (CID) conducted an investigation and listed the offense as indecent assault. In July 1986, Applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ). He received restriction and extra duties for 14 days. It is unclear what punitive article of the UCMJ he was determined to have committed.<sup>2</sup>

In March 1987, Applicant and another service member told the employee at the door of the enlisted club that they were CID agents. They told the employee that they needed to enter the club because they were working on an investigation, and they would be attempting to make a drug purchase. They entered the club without paying the entrance fee. In May 1987, Applicant received NJP for impersonating a CID agent with intent to defraud. He received restriction and extra duties for 45 days and \$150 in forfeiture of pay.<sup>3</sup>

Applicant was arrested in November 1992 and charged with driving under the influence of intoxicating liquor (DUI). He pleaded guilty. He was fined \$495, incarcerated for 24 hours, ordered to have alcohol screening, and his driver's license was suspended for 90 days.<sup>4</sup>

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<sup>1</sup> Tr. at 18, 22, 43, 78-80; GE 1.

<sup>2</sup> Tr. at 19-21, 74; GE 2.

<sup>3</sup> Tr. at 21-22; Applicant's response to SOR; GE 3.

<sup>4</sup> Tr. at 22-23; Applicant's response to SOR; GE 4, 21.

A woman alleged in April 1994 that Applicant had sexually assaulted her. The CID investigated the allegation, but the woman ultimately refused to cooperate, and Applicant was never prosecuted for the offense. Applicant denied an assault ever occurred. He stated that he was “not in the room and DNA excluded [him].”<sup>5</sup>

In December 1994, as part of a unit-directed urinalysis, Applicant’s urine sample tested positive, indicating the use of cocaine. Applicant held a security clearance at the time. On February 1, 1995, Applicant received NJP for using cocaine between October 30, 1994, and November 1, 1994. He received a one-pay-grade reduction, extra duties and restriction for 45 days, and \$600 in forfeiture of pay per month for two months. The restriction and the second month of forfeitures were suspended.<sup>6</sup>

On February 7, 1995, military police were informed that a urine sample that Applicant submitted as part of a unit-directed urinalysis on January 23, 1995, had tested positive indicating the use of cocaine. On February 14, 1995, Applicant received NJP for using cocaine between January 21, 1995, and January 23, 1995, and using marijuana between January 3, 1995, and January 23, 1995. He received reduction to pay grade E-1, extra duties and restriction for 45 days, and \$427 in forfeiture of pay per month for two months.<sup>7</sup>

Applicant was discharged from the military in February 1995, with a general under honorable conditions discharge. The basis of the discharge was misconduct.<sup>8</sup>

Applicant was arrested in January 1996 and charged with simple battery. He pleaded guilty to the amended charge of disturbing the peace. He was sentenced to a fine or ten days in jail, and probation for six months. Applicant stated that he “caught [his] girlfriend at the time cheating and took a wreath off of her door and threw it in a swimming pool.”<sup>9</sup>

Applicant was arrested in January 1997 and charged with driving while intoxicated (DWI), first offense. He pleaded guilty to the amended charge of reckless operation. He was fined \$200, plus \$76 court costs. He stated that he “did not blow over the limit so the charge was reduced to a misdemeanor.”<sup>10</sup>

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<sup>5</sup> Tr. at 23-24; Applicant’s response to SOR; GE 5.

<sup>6</sup> Tr. at 24-32, 46-49; Applicant’s response to SOR; GE 6, 10, 21.

<sup>7</sup> Tr. at 24-32, 46-49, 80; Applicant’s response to SOR; GE 7, 8.

<sup>8</sup> Tr. at 31, 53; Applicant’s response to SOR; GE 9.

<sup>9</sup> Tr. at 32-33; Applicant’s response to SOR; GE 18; AE C.

<sup>10</sup> Tr. at 33-35; Applicant’s response to SOR; GE 18; AE D.

A restraining order was issued against Applicant in May 2001, granting Applicant's ex-wife custody of their child, and prohibiting Applicant from removing the child from the jurisdiction of the court.<sup>11</sup>

As part of a custody battle, the judge ordered that Applicant and his ex-wife undergo drug tests. Applicant tested positive for the active ingredient in marijuana during a drug test administered in May 2001.<sup>12</sup>

Applicant was terminated from his employment in March 2002, when he violated his company's smoking policy. He was previously warned not to smoke in his office, but he did it anyway.<sup>13</sup>

In April 2002, police responded to a call at Applicant's stepfather's house. Applicant's wife at the time told the police that Applicant grabbed her by the back of her head and pushed her down while she was holding their baby. He then grabbed the baby and ran out of the house. Applicant's stepfather tried to stop him, but Applicant pushed his stepfather. Applicant put the baby in the truck and drove off. Applicant's stepfather verified the account given by Applicant's ex-wife. He also told the police that he heard Applicant say that he wanted to blow his head off. Applicant returned while the police were at his stepfather's house. He agreed to go to the Department of Veterans Affairs (VA) hospital. Applicant's stepfather and ex-wife later told the police that they did not want to pursue charges. Applicant was never prosecuted for the incident. Applicant denied the incident, stating "[n]othing was substantiated." He admitted that he pushed his stepfather out of the way.<sup>14</sup>

As part of treatment by the VA, Applicant had a drug test in April 2002. He tested positive for the active ingredient in marijuana.<sup>15</sup>

Applicant submitted an online application for a position with the Federal Bureau of Investigation (FBI) in May 2003. He reported "use of marijuana, more than fifteen times in life." That disclosure was an automatic disqualifier, and he never received a position.<sup>16</sup>

Applicant submitted a Declaration for Federal Employment (OF 306) in May 2005. He answered "No" to the question that asked if, during the last five years, he had been fired from a job, quit after being told he would be fired, or left a job by mutual

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<sup>11</sup> Tr. at 35-37; Applicant's response to SOR; GE 11.

<sup>12</sup> Tr. at 49; Applicant's response to SOR; GE 12.

<sup>13</sup> Tr. at 53-54; Applicant's response to SOR; GE 13.

<sup>14</sup> Tr. at 37-38; Applicant's response to SOR; GE 14.

<sup>15</sup> Tr. at 49-52; Applicant's response to SOR; GE 12; AE E.

<sup>16</sup> Tr. at 54-55; Applicant's response to SOR; GE 16; AE B.

agreement because of specific problems. He failed to list his 2001 termination for smoking. Applicant denied intentionally falsifying the OF 306. He stated that he “may have got confused with the dates.” A copy of Appellant’s resume is attached to the OF 306. The resume lists September 2002 as the end date for Applicant’s employment with the company that terminated him for smoking.<sup>17</sup> I find that Applicant intentionally falsified the OF 306.

Applicant’s ex-wife applied for a protective order against Applicant in May 2007. She stated that he had been abusive toward the children. She stated that in February 2007, Applicant hit her in the jaw, spit in her face, and told her that he would kill her if she called 911. She stated that he told family friends that he would kill her. A protective order was issued against Applicant on May 10, 2007. The order was dismissed on May 22, 2007. Applicant denied any abuse, stating “[n]othing was substantiated.”<sup>18</sup>

In May 2007, police investigated Applicant for allegations related to his child. The investigation reported the allegations as unfounded, and no further action was taken.<sup>19</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2007. He answered “No” to the question that asked if, during the last seven years, he had been fired from a job, quit after being told he would be fired, left a job by mutual agreement following allegations of misconduct or unsatisfactory performance, or left a job for other reasons under unfavorable circumstances. He failed to list his 2001 termination for smoking. Applicant also answered on the SF 86 that he had not used illegal drugs during the last seven years. Applicant denied intentionally falsifying the SF 86. He stated that he did not know why the SF 86 did not list his marijuana use.<sup>20</sup> I find that Applicant intentionally falsified the SF 86.

As part of his divorce action and custody battle, the judge ordered a mental health evaluation of Applicant and his former wife. A licensed clinical social worker (LCSW) submitted a report in September 2007. The LCSW reported that Applicant refused to comply with four random drug screening tests scheduled during the evaluation process. He complied with a random drug test in August 2007, which tested negative. He admitted to the LCSW that he smoked marijuana on a consistent basis since his teen years, but he stated that he was no longer smoking marijuana. He admitted to the LCSW that he had been physically abusive to his ex-wife.<sup>21</sup>

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) in November 2007. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). In November 2009,

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<sup>17</sup> Tr. at 55-59, 74; Applicant’s response to SOR; GE 17.

<sup>18</sup> Tr. at 39-41; Applicant’s response to SOR; GE 20.

<sup>19</sup> Tr. at 40, 74, 76; Applicant’s response to SOR; GE 19.

<sup>20</sup> Tr. at 59-63, 74; Applicant’s response to SOR; GE 1.

<sup>21</sup> GE 22.

Applicant certified the ROI as accurate. He told the investigator that he had not used illegal drugs since he left the military. Applicant testified that he used marijuana until 2002. He stated that he did not know why the investigator reported that Applicant stated that he had not used marijuana since before he left the military.<sup>22</sup> I find that Applicant intentionally provided false information to the OPM investigator.

As part of a court-ordered evaluation, Applicant answered a written questionnaire on January 16, 2008.<sup>23</sup> He wrote that he last used marijuana in February 2007, and he last used cocaine in 2000.<sup>24</sup>

Applicant was arrested on February 18, 2008, and charged with unauthorized entry of an inhabited dwelling. An abuse prevention order was issued against him on February 28, 2008. In January 2009, Applicant pleaded guilty to the amended charge of entering and remaining after being forbidden. He was sentenced to serve six months in jail, a fine, and probation for one year. The time in jail was suspended. Applicant stated that he “went to his girlfriend’s house and she demanded that [he] leave.”<sup>25</sup>

Applicant was interviewed again by an OPM investigator in September 2008. He told the investigator that, while he was in the military, he had intentionally smoked marijuana before a drug test as a means to be discharged from the military. He denied any illegal drugs use since that incident. He stated that he had never been arrested in any state. Applicant certified the accuracy of the report of this interview when he responded to DOHA interrogatories in November 2009. Applicant testified that he did not remember if he told the investigator that he had not used illegal drugs since he left the military. He also testified that he thought the investigator was asking about arrests within the last seven years. He stated that he did not tell the investigator about his February 2008 arrest because “[he] thought that was a misdemeanor.”<sup>26</sup> I find that Applicant intentionally provided false information to the OPM investigator.

Applicant initially testified that he only used cocaine once, when he was about 19 or 20 years old. He later stated that he used it “Once, twice. Less than five [times],” when he was about 19 years old. He stated that he did not use cocaine before his first urinalysis in the military. He stated that he placed cocaine in his urine, so that he would test positive and be discharged from the military. He stated that he had post-traumatic stress disorder (PTSD) related to his multiple deployments to combat zones, and his mother was critically ill. He stated that he was unable to get help from the military medical facility.<sup>27</sup> Applicant’s testimony about his cocaine use was not credible.

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<sup>22</sup> Tr. at 63-65, 74; Applicant’s response to SOR; GE 24.

<sup>23</sup> The questionnaire is misdated in some places as January 16, 2007.

<sup>24</sup> GE 31.

<sup>25</sup> Tr. at 41-42; Applicant’s response to SOR; GE 23, 25.

<sup>26</sup> Tr. at 65-70, 74; Applicant’s response to SOR; GE 24.

<sup>27</sup> Tr. at 25-32, 45-46.

Applicant admitted that he smoked marijuana before his positive drug test in the military. He stated that he periodically smoked marijuana until 2002. He denied any illegal drug use after 2002. He received drug counseling as mandated for his divorce and custody proceedings. He stated that his employer randomly tests its employees for drugs, and he has never tested positive on one of the tests.<sup>28</sup> Applicant's testimony about his marijuana use was not credible.

Applicant received a number of awards and medals while he was in the military. The attorney in Applicant's custody case wrote a letter on his behalf. He wrote that Applicant is "trustworthy and loyal," and "a hard-working man who is extremely passionate about his children and the responsibilities of being a father." A retired sergeant major, who has known Applicant for more than 25 years, wrote that Applicant's "level of reliability and integrity would be an asset to any organization," and that he "would gladly have [Applicant] serve with [him] again."<sup>29</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>28</sup> Tr. at 25-32, 43-46, 64, 71, 77.

<sup>29</sup> GE 9, 29; AE A.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’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 ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant’s multiple military offenses, arrests, and convictions are sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.j and 1.k allege that Applicant was investigated for criminal acts. Neither allegation resulted in an arrest or a conviction. However, there is sufficient evidence that Applicant assaulted his ex-wife and stepfather in April 2002, and he assaulted and threatened his ex-wife in February 2007. AG ¶ 31(c) is applicable for those allegations.

SOR ¶ 1.d alleges that Applicant was investigated in 1994 for indecent assault, indecent exposure, and forcible sodomy. SOR ¶ 1.i alleges that a restraining order was issued against Applicant in May 2001. SOR ¶ 1.l alleges that Applicant was investigated in 2007 for aggravated incest. There is insufficient evidence for a determination that



Applicant committed a criminal offense on any of those occasions. SOR ¶¶ 1.d, 1.i, and 1.l are concluded for Applicant.

SOR ¶ 1.m duplicates the criminal conduct alleged in SOR ¶ 1.k. SOR ¶ 1.o duplicates the criminal conduct alleged in SOR ¶ 1.n. SOR ¶¶ 1.m and 1.o are concluded for Applicant.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (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;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant denied committing an indecent assault in 1986. He stated that he only kissed the girl. He received NJP for the offense. It is unclear what punitive article of the UCMJ he was determined to have committed. AG ¶ 32(c) is applicable to the allegation that he committed an indecent assault. It does not mean that he did not commit another criminal act.

Applicant's last arrest was in February 2008, almost four years ago. However, he provided intentionally false information to an OPM investigator in September 2008, and he provided intentionally false testimony at his hearing. Those false statements constitute criminal violations of 18 U.S.C. § 1001. I have considered Applicant's favorable character evidence and work history. I do not find sufficient evidence of successful rehabilitation to warrant the application of AG ¶ 32(d). I am unable to determine that Applicant's criminal behavior is unlikely to recur. AG ¶ 32(a) is not applicable.

## **Guideline H, Drug Involvement**

The security concern for drug involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any drug abuse;<sup>30</sup>
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant admitted that he used cocaine when he was young, and he smoked marijuana until 2002. He used illegal drugs while he held a security clearance. He tested positive for cocaine use in 1994 and 1995 and for marijuana use in 2001 and 2002. All of the above disqualifying conditions are applicable.

There is insufficient evidence for a determination that Applicant tested positive for amphetamine, methamphetamine, MDA, and MDMA in April 2002. SOR ¶ 1.g is concluded for Applicant.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

Applicant denies smoking marijuana after 2002, and he denies using cocaine since he was about 20 years old. His denials lack credibility. He tested positive for cocaine use in 1994 and in 1995. He denied using cocaine before the drug test. He stated that he placed cocaine in the urine, so that he would test positive and be discharged from the military. Applicant was interviewed as part of a court-ordered

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<sup>30</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

mental health evaluation in September 2007. He admitted to the LCSW that he smoked marijuana on a consistent basis since his teen years, but he stated that he was no longer smoking marijuana. He answered a written questionnaire in January 2008. He wrote that he last used marijuana in February 2007, and he last used cocaine in 2000. There is sufficient evidence for a finding that Applicant used cocaine until at least 2000 and marijuana until at least 2007. Because Applicant's testimony is unbelievable, I am unable to conclude that there has been an appropriate period of abstinence or that illegal drug use is completely in his past. Applicant's drug use continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) has limited applicability. He does not receive full mitigation under AG ¶ 26(b) for the same rationale. In sum, I conclude that security concerns remain despite the presence of some mitigation.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant intentionally falsified his OF 306 in 2005 and his SF 86 in 2007, when he failed to list his 2001 termination for smoking. He intentionally falsified his SF 86, when he failed to list his marijuana and cocaine use. AG ¶ 16(a) is applicable.

Applicant intentionally provided false information about his drug use to an OPM investigator in 2007, and he intentionally provided false information about his drug use and criminal history to an OPM investigator in 2008. AG ¶ 16(b) is applicable.

Applicant's termination for violating his company's smoking policy establishes AG ¶ 16(d) as a disqualifying condition.

Applicant's criminal conduct and illegal drug use in the military created a vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) has been raised as a disqualifying condition.

SOR ¶ 3.a and 3.c allege personal conduct that is already alleged under another personal conduct allegation. SOR ¶¶ 3.a and 3.c are concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

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

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

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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant provided intentionally false information on questionnaires in 2005 and 2007. He provided false information to background investigators in 2007 and 2008. He was less than candid at his hearing. There are no personal conduct mitigating conditions applicable.

#### **Guideline D, Sexual Behavior**

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which can subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

There is insufficient evidence for a determination that Applicant committed the sexual behavior alleged in the SOR. SOR ¶ 4.1 is concluded for Applicant.

#### **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, H, E, and D in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence and his military service, including his deployments in support of our nation's defense. However, Applicant has a long history of questionable behavior, including illegal drug use, criminal conduct, and dishonesty.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated sexual behavior security concerns, but he has not mitigated criminal conduct, drug involvement, and personal conduct security concerns.

### **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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	Against Applicant
Subparagraph 2.g:	For Applicant

Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Subparagraphs 3.d-3.j:	Against Applicant
Paragraph 4, Guideline D:	FOR APPLICANT
Subparagraph 4.1:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge