



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02602
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: David P. Price, Esq.

July 2, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guidelines E (Personal Conduct) and H (Drug Involvement). Security concerns under Guideline H are mitigated, but security concerns under Guideline E are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on December 15, 2008. On November 4, 2009, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines E and H. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on November 11, 2009; answered it on December 1, 2009; and requested a hearing before an administrative judge. DOHA received the request on December 7, 2009. Department Counsel was ready to proceed on February 25, 2010, and the case was assigned to me on March 8, 2010. DOHA issued a notice of hearing on March 17, 2010, scheduling the hearing for April 13, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 13 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on April 21, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.j and 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old systems engineer employed by a defense contractor. He received a bachelor's degree in computer science in December 1994, and he has worked for his current employer since July 1996. He received a security clearance and eligibility for access to sensitive compartmented information (SCI) shortly after he was hired. (Tr. 63.) In May 2004, his SCI eligibility was terminated because of derogatory information falling under several adjudicative guidelines, discussed in greater detail below. In February 2006, his collateral security clearance was administratively terminated at his request. (AX A-3.) His most recent security clearance application dated December 15, 2008, seeks to have his clearance reinstated.

Applicant has a history of substance abuse. He began using marijuana in 1985, when he was 14 years old. He used it about twice a week and then increased to four times a week. He started using alcohol at age 16. In a sworn statement dated October 18, 1996, he stated that he first tried cocaine in 1987, when he was 16 years old, but did not use it again until September or October of 1993. (GX 13 at 1-2.) In a subsequent sworn statement on November 21, 2003, he stated he first used cocaine when he was 21 years old and he used it about twice a year thereafter. He also stated he used marijuana every two or three weeks from December 1994 until some time in 2000, and about every six weeks from 2000 to April 2003. (GX 11 at 1.)

Applicant was arrested for possession of a trace amount of marijuana in 1992. He pleaded guilty and was placed on probation for two years. After completing his probation, the charges were dismissed. (GX 4 at 10; GX 5 at 5; GX 6 at 3; Tr. 79.) He stopped using cocaine and marijuana in April 2003. (GX 11 at 1-2.) He consumes alcohol about three or four times a year. (Tr. 108.)

Applicant met his first wife while they were in college. They married in July 2000. During their marriage, she became heavily addicted to cocaine, and they argued about her drug use. She told Applicant that he would use cocaine with her if he really loved her. Applicant persuaded her to seek drug treatment, but she relapsed after each

treatment and asked Applicant to use cocaine with her. In November 2002, Applicant asked his wife to move out of the house. (Tr. 82.) They stopped living together on December 1, 2002. (AX C-1 at 1.)

On January 9, 2003, Applicant and his spouse executed a separation and custody agreement, providing for joint custody of their children. (AX C-1 at 2-3.) They were divorced on a date not reflected in the record.¹ Seeking to obtain sole custody of his children, Applicant completed a four-hour co-parenting class in June 2009 and an eight-hour anger management class in August 2009 (AX C-3; AX C-4.)

Applicant married his current spouse in May 2006. His current spouse testified that when they started dating in 2004, he told her that his ex-wife was heavily involved in drugs and that he did not wish to begin a relationship with anyone involved in substance abuse. (Tr. 57.)

Applicant has a 15-year-old son from a previous relationship, a 9-year-old daughter from his previous marriage, and two stepchildren, ages 18 and 21. (Tr. 50.) He received sole custody of his children in December 2009. (Tr. 58; AX C-2.)

Applicant submitted a security clearance application in July 1996. In response to question 27, asking if he had illegally used any controlled substance since the age of 16 or in the last seven years, he disclosed that he used marijuana four times between August and December 1992. He did not disclose his marijuana and cocaine use between December 1992 and the date of his application. (GX 3 at 8.)

Applicant submitted another security clearance application in April 2002. He answered “no” to question 27, asking about illegal use of controlled substances, and he did not disclose his marijuana and cocaine use during the preceding seven years. He also answered “no” to question 28, asking if he had ever illegally used a controlled substance while possessing a security clearance. (GX 2 at 9.)

On January 4, 2003, Applicant went out with friends to celebrate his birthday while his wife watched the children. His wife called him while he was celebrating and told him she needed drugs. He started driving home, afraid that she would leave the children unattended or use drugs in their presence, and he was stopped for DUI on his way home. (Tr. 70-71.) The police found marijuana in the glove box of his car. He was arrested and charged with driving under the influence (DUI) and possession of marijuana. He admitted consuming four drinks of hard liquor, but he claimed the marijuana was left in his car by his ex-wife. (GX 12.) However, he admitted taking three puffs from a marijuana cigarette on the day of his arrest. (GX 9 at 5.)

Applicant was given a suspended jail sentence and placed on probation for one year. He attended and completed a court-ordered substance abuse program between

¹ Applicant's most recent security clearance application recites that he was divorced in April 2001, but this date is inconsistent with the separation agreement, which reflects that they were still married in January 2003. (GX 1 at 15; AX C-1.)

June and September 2003. He was diagnosed with substance abuse (alcohol and marijuana) by a licensed clinical social worker. He also was diagnosed with "adjustment disorder," apparently based on his marital problems arising from his spouse's drug abuse. His prognosis was "fair to good," conditioned on completion of aftercare, including participating in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) (GX 9 at 5-16; Tr. 87-88.) At about the same time, he voluntarily sought and received treatment and medication for depression from a social worker and his family doctor. He no longer receives treatment for depression. (Tr. 90-91.) He attended AA meetings, but it is not clear from the record when his AA participation ended.

On October 23, 2003, Applicant executed a sworn statement, declaring that he had not used any illegal drugs during the past seven years or while holding a security clearance. (GX 10 at 3-4.) He was called in for another interview on November 21, 2003. He testified he decided to be completely honest about his drug abuse at this interview. (Tr. 73.) He executed another sworn statement, admitting that his previous statement was not truthful and explaining that he was afraid he would jeopardize his security clearance and his job if he admitted the full extent of his drug use. (GX 11 at 2.)

In May 2004, Applicant's SCI eligibility was revoked based on derogatory information regarding his sexual behavior; personal conduct; financial delinquencies; alcohol consumption; drug involvement; emotional, mental, and personality disorders; criminal conduct; and use of information technology systems. (GX 8.) In February 2006, he asked his supervisors to terminate his collateral clearance so that he could resolve the problems in his personal life and work on demonstrating his rehabilitation. (Tr. 66.)

In Applicant's most recent security clearance application, signed on December 15, 2008, he answered "yes" to question 24a, asking if he had illegally used a controlled substance during the last seven years. He also answered "yes" to question 24b, asking "Have you ever illegally used a controlled substance . . . while possessing a security clearance . . . ?" (The underscoring of the word "ever" appears on the printed form.) In his explanation for the affirmative answer to questions 24a and 24b, he disclosed that he used cocaine three times between December 2001 and April 2003 and he used marijuana eight times between December 2001 and April 2003. (GX 1 at 29-30.) He did not disclose the drug use that occurred before December 2001.

In his most recent application, Applicant answered "no" to question 21, asking if he had "consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.)" during the last seven years. He did not disclose his treatment for depression. He also answered "no" to question 26b, asking if he "ever had a clearance or access authorization denied, suspended, or revoked." (GX 1 at 33.) He did not disclose the revocation of this SCI eligibility in 2004. These omissions were not alleged in the SOR.

Applicant testified that he answered "no" to question 21, the mental health question, because he did not think his treatment for depression was a "mental health

issue.” He testified he was told that his depression was a normal consequence of his ex-wife’s drug addiction and their marital breakup. (Tr. 104).

Applicant testified that he mistakenly limited his answer to question 24b, one of the drug-related questions, to the last seven years, because questions 24a and 24c were limited to the last seven years, and he did not notice that question 24b asked if he “ever” used drugs while holding a security clearance. He testified that his 2008 security clearance application was his first application completed on a computer, and he did not pay close enough attention to the computer screen to notice the word “ever.” (Tr. 99.) He did not explain his negative response to question 26b, regarding previous denial, suspension or revocation of a clearance or access authorization.

On July 1, 2009, Applicant responded to DOHA interrogatories about his drug use. The DOHA interrogatories asked him to state the approximate dates, amounts, types of controlled substances, and the circumstances of his “last use.” It did not ask the duration or frequency of use. Nevertheless, Applicant again stated that he used cocaine three times and marijuana eight times between December 2001 and April 2003. He did not mention that he had used marijuana and cocaine since October 1997. (GX 5 at 2.)

One of Applicant’s supervisors, who has known him for nine years and worked closely with him for five years, testified that Applicant approached him after the arrest in 2003 and explained why he requested termination of his clearance. The supervisor was surprised when he reviewed the statement of reasons, because he had not seen any indication of drug use. He considers Applicant a “top performer.” (Tr. 36-39.)

A coworker who has known Applicant since he was hired also was surprised when he read the SOR. Based on daily contact, the coworker testified that Applicant is a dedicated worker and a trustworthy person. (Tr. 45.)

Applicant submitted numerous letters attesting to his good character. The authors of all the letters declared that they were aware of the allegations in the SOR. Two supervisors described him as very capable, productive, honest, trustworthy, dependable, forthright, and very devoted to his children. (AX A-2; AX A-3.) Two coworkers who have known him for many years consider him dedicated, well-respected, and very devoted to his children. (AX A-1; AX A-5.) His pastor attested to Applicant’s active involvement in church activities and his close relationship with his children. (AX A-6.) His four older siblings consider him trustworthy, generous, tenacious, responsible, dependable, and honest. (AX A-7 through A-10.) A neighbor commented on his honesty and devotion to his children. (AX A-11.) His current wife’s best friend described him as honest and trustworthy (AX A-12.)

Applicant’s performance evaluations have been above average since he began working for his current employer. In 1997, 1998, and 1999, he was rated as exceeding expectations in most categories and outstanding (the highest rating) in a few categories. From, 2000 to 2003, his performance evaluations were in a different format, and he was rated as “commendable” (one block below the highest rating) for 2000, 2002, and 2003.

He was rated as “outstanding,” the top rating, in 2001. For 2004 and 2005, he was rated one block below the highest rating. In 2006 he received the highest rating. In 2007 and 2008, he received the next highest rating. (AX D-7 through D-19). He has received bonuses and pay raises commensurate with his performance. (AX D-20 through D-29) He also has received numerous commendations, letters of appreciation, and certificates of achievement. (AX D-1 through D-5.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline E, Personal Conduct

The SOR alleges that Applicant used marijuana with varying frequency from 1985 until April 2003 (¶ 1.a), used cocaine once in 1987 and with varying frequency between 1992 and April 2003 (¶ 1.b), was arrested in 1992 for possession of marijuana and pleaded guilty (¶ 1.c), and continued to use marijuana and cocaine after he was granted a security clearance (¶ 1.e). It also alleges he falsified a security clearance application in 1996 by intentionally failing to fully disclose the extent of his marijuana and cocaine use (¶ 1.d), falsified a security clearance application in April 2002 by failing to disclose his marijuana and cocaine use during the preceding seven years and failing to disclose that he used marijuana and cocaine while in possession of a security clearance (¶¶ 1.f and 1.g), and falsified a sworn statement in October 2003 by denying any drug involvement during the previous seven years or while in possession of a security clearance. (¶ 1.i) It further alleges he was arrested for DUI and possession of marijuana in January 2003 and was convicted (¶ 1.h), and that his eligibility for access to SCI was revoked in May 2004. (¶ 1.j) Finally, it alleges he falsified a security clearance application in December 2008 and provided false responses to interrogatories in July 2009 by failing to disclose the full extent of his illegal drug use. (¶ 1.k and 1.l.)²

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

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.

² SOR ¶ 1.l mistakenly alleged that Applicant disclosed use of cocaine and marijuana between December 2001 and April 2008. The SOR was corrected by substituting "April 2003" for "April 2008." (Tr. 18-19.)

The relevant disqualifying condition for the alleged falsifications of security clearance applications is 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.

Applicant admitted falsifying his security clearance applications in 1996 (SOR ¶ 1.d) and 2002 (SOR ¶ 1.f). He denied falsifying his 2008 application (SOR ¶ 1.k).

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant's explanation for not disclosing the full extent of his drug use while possessing a clearance was that he overlooked the word "ever" and believed the seven-year cutoff also applied to question 24b. In considering the plausibility and credibility of his explanation, I have considered that his 2008 application was his third, and that he had responded to substantially the same question at least twice before. I have also considered that the word "ever" is underscored, giving it greater prominence than the surrounding text.

I have also considered his failure to disclose his treatment for depression and his failure to disclose that his SCI access was revoked in 1994. These two omissions were not alleged in the SOR and may not be used as an independent basis for denying a clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's failure to disclose his treatment for depression and the revocation of his SCI eligibility for the limited purposes of determining the credibility of his explanation for not disclosing the full extent of his drug use in response to question 24b, and for evaluating the mitigating evidence presented by Applicant.

Finally, I have considered that Applicant's interview in November 2003 regarding his omissions from his applications, and the revocation of his SCI access in May 2004 on several grounds, including falsification of previous applications, put him on notice that any future application would be carefully scrutinized for accuracy and completeness. After considering all of Applicant's omissions from his 2008 application and his explanations, I have concluded that Applicant's failure to fully disclose the

extent of his drug involvement was not an inadvertent oversight, but part of a deliberate effort to minimize the disclosure of derogatory information. I find that his deliberate omissions from his 2008 security clearance application were a continuation of his pattern of concealing unfavorable information. Based on all the evidence, I conclude that AG ¶ 16(a) is raised by his omissions from his security clearance applications in 1996, 2002, and 2008.

Applicant admitted deliberate falsification in his sworn statement in October 2003 (SOR ¶ 1.i), but he denied deliberately failing to disclose the full extent of his illegal drug use in his response to DOHA interrogatories in July 2009. He denied this allegation and explained that he did not disclose his drug use before December 2001 because the interrogatories were based on his security clearance application, which limited the disclosure period to the last seven years.

The relevant disqualifying condition for the alleged false responses to DOHA interrogatories is AG ¶ 16(b): “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.” Contrary to the allegation in SOR ¶ 1.i, the interrogatories did not ask about the extent of his drug use. The relevant question asked him to state the dates, amounts, types of drugs, and circumstances of his last use of each type of drug. Applicant accurately provided the information about his “last use,” and then gratuitously added information about the duration of his drug use during the last seven years. I conclude the evidence does not establish falsification of material facts in his response to the DOHA interrogatories of July 2009. I conclude that AG ¶ 16(b) is raised by Applicant’s false sworn statement in October 2003, but it is not raised by his response to DOHA interrogatories. I resolve SOR ¶ 1.i in his favor.

The following disqualifying conditions are relevant to the allegations of drug and alcohol abuse, including use of drugs while possessing a security clearance (SOR ¶¶ 1.a-1.c, 1.e, and 1.h):

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that

the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's admissions of drug and alcohol abuse, corroborated by the Government's evidence, are sufficient to raise AG ¶¶ 16(c)-(e). Applicant admitted the allegation in SOR ¶ 1.j, alleging that his SCI eligibility was revoked in May 2004. However, this allegation does not allege any disqualifying conduct; it merely recites the consequences of disqualifying conduct. As such, it duplicates the specific allegations under this guideline and should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 16(a)-(e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns raised by false or misleading answers on a security clearance application, in response to interrogatories, or in a sworn statement may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). Applicant made no effort to correct his 1996 and 2002 applications and his October 2003 sworn statement until he was confronted with the evidence. He made no effort to correct the omissions from his 2008 application. Based on this record, I conclude AG ¶ 17(a) is not established.

Security concerns raised by personal conduct may be mitigated if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 17(c). Applicant's drug and alcohol abuse was serious and frequent. However, his last alcohol-related offense was in January 2003, and his last drug use was in April 2003. His substance abuse was a product of his dysfunctional marriage, which terminated sometime before 2006. On the other hand, his falsifications were serious, frequent, recent, and did not occur under circumstances making them unlikely to recur. I conclude AG ¶ 17(c) is established for the drug and alcohol abuse alleged in SOR ¶¶ 1.a-1.c, 1.e, and 1.h; but it is not established for the falsifications alleged in SOR ¶¶ 1.d, 1.f, 1.g, and 1.i.

Security concerns raised by personal conduct may be mitigated if "the individual has acknowledged the behavior and obtained counseling to change the behavior or

taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(d). Applicant completed the court-ordered substance abuse treatment, received a “fair to good” prognosis, terminated his drug-infected marriage, and has not abused alcohol since January 2003 or used illegal drugs since April 2003. I conclude AG ¶ 17(d) is established for the drug and alcohol abuse alleged in SOR ¶¶ 1.a-1.c, 1.e, and 1.h, but not for the falsifications alleged in SOR ¶¶ 1.d, 1.f, 1.g, and 1.i.

Finally, security concerns under this guideline may be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). This mitigating condition is not established, because Applicant has continued to be less than candid about his record of drug and alcohol abuse.

Guideline H, Drug Involvement

The concern under this guideline is as follows: “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. Guideline H encompasses “drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).” AG ¶ 24(a)(1).

The evidence raises the following disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

Security concerns under this guideline may be mitigated if “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.” AG ¶ 26(a). For the reasons set out above in my discussion of AG ¶ 17(c), I conclude this mitigating condition is established.

Security concerns also may be mitigated by “a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an

appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶ 26(b). For the reasons set out above in my discussion of AG ¶¶ 17(c) and (d), I conclude that AG ¶ 26(b)(1)-(3) are established.

Security concerns also may be mitigated by “satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.” AG ¶ 26(d). This mitigating condition is partially established by Applicant’s completion of the substance abuse program in September 2003, a favorable prognosis from a licensed clinical social worker, and abstinence from illegal drugs since April 2003. It is not clear whether he fully completed the aftercare requirements.

Whole-Person Concept

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

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

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

Applicant is a mature, intelligent, well-educated adult. He was articulate and sincere at the hearing. He appears to have escaped from his chaotic past and put his personal life in order. He has established himself as a talented, hard-working employee, and he has earned the respect of his supervisors, coworkers, and community members. Unfortunately, he has not overcome his pattern of minimizing and concealing derogatory information during the security clearance process.

After weighing the disqualifying and mitigating conditions under Guidelines E and H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on drug involvement, but he has

not mitigated the security concerns based on his falsifications during the security clearance process. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge