



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-02712

Appearances

For Government: Richard Stevens, Esquire, Department Counsel

For Applicant: *Pro se*

March 3, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding personal conduct. She has mitigated the security concerns pertaining to drug involvement. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On September 23, 2005, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86).¹ On July 31, 2007, she submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).² On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories pertaining to her subject interview. She responded to the interrogatories on May 29, 2009.³ On another

¹ Item 11 (SF 86), dated September 23, 2005.

² Item 10 (e-QIP), dated July 31, 2007.

³ Item 12 (Applicant's Answers to Interrogatories, dated May 29, 2009).

unspecified date, DOHA issued her another set of interrogatories pertaining to the previous revocation of her security clearance by another government agency. She responded to the interrogatories on May 29, 2009.⁴ On March 15, 2010, DOHA issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline E (Personal Conduct) and Guideline H (Drug Involvement), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 19, 2010.⁵ In a sworn statement, dated March 19, 2010, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.⁶ Because her answer was incomplete and did not address each allegation, on April 13, 2010, she was informed that a more complete response was necessary.⁷ Applicant acknowledged receipt of the letter on April 20, 2010.⁸ She modified her previous response to answer each allegation, and the new response was notarized on April 21, 2010.⁹ On June 8, 2010, DOHA amended the SOR to add a subparagraph (¶ 1.e.) under the Guideline E allegations; and a new paragraph (¶ 3) alleging concerns under Guideline F (Financial Considerations).¹⁰ Applicant answered the amended SOR on June 21, 2010.¹¹ A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on November 4, 2010, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on November 10, 2010, and

⁴ Item 13 (Applicant's Answers to Interrogatories, dated May 29, 2009).

⁵ Item 3 (Receipt, dated March 19, 2010).

⁶ Item 4 (Applicant's Response to the SOR, dated March 19, 2010).

⁷ Item 5 (DOHA Letter to Applicant, dated April 13, 2010).

⁸ Item 6 (Receipt, dated April 20, 2010).

⁹ Item 7 (Applicant's Revised Response to the SOR, dated April 21, 2010).

¹⁰ Item 9 (Amendment to the SOR, dated June 8, 2010, and Applicant's Response to the Amended SOR, dated, but not notarized, June 21, 2010). The Government subsequently moved to withdraw ¶ 3.a. The Government's motion was granted. See page 12, *infra*.

¹¹ *Id.*

submitted a one-page statement on December 1, 2010. The case was assigned to me on December 15, 2010.

Findings of Fact

In her Answers to the original and amended SORs, Applicant admitted all of the factual allegations pertaining to personal conduct (¶¶ 1.a. through 1.e. of the SOR), as well as the factual allegation pertaining to financial considerations (¶ 3.a. of the SOR). Those admissions are incorporated herein as findings of fact. She did not answer the factual allegation pertaining to drug involvement (¶ 2.a. of the SOR).

Applicant is a 64-year-old employee of a defense contractor, currently serving in configuration data and document control.¹² A June 1964 high school graduate,¹³ she has been employed by the same defense contractor since August 1981.¹⁴ She has not served in the U.S. military.¹⁵ Applicant married her first husband in November 1968, and divorced him in February 1973.¹⁶ She married her second husband in April 1973, and divorced him in April 2006.¹⁷ She married her current husband in September 2006.¹⁸ Applicant has one son, who was born in July 1975.¹⁹

In June 1996, another Government agency granted her a security clearance with access to sensitive compartmented information (SCI).²⁰ In September 2006, Applicant's access was suspended as a result of information regarding her use of marijuana.²¹ On February 5, 2007, her access was revoked, citing security concerns regarding her use of marijuana and her failure to acknowledge her drug involvement in her 2005 SF 86.²² While she was informed that she could request a review of the decision, or file an appeal and request a personal appearance,²³ it is unclear if she ever exercised her rights to either process.

¹² Item 10, *supra* note 2, at 11.

¹³ *Id.* at 10.

¹⁴ *Id.* at 11

¹⁵ *Id.* at 18, 20.

¹⁶ Item 11, *supra* note 1, at 5. I note that Applicant failed to list her first marriage in her 2007 e-QIP (Item 10).

¹⁷ Item 10, *supra* note 2, at 15-16.

¹⁸ *Id.* at 14.

¹⁹ *Id.* at 18.

²⁰ Letter of Revocation, dated February 5, 2007, at 1, attached to Item 13, *supra* note 4.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2-3.

Personal Conduct and Drug Involvement

Applicant used marijuana on a variety of occasions while holding a security clearance with access to SCI granted by another Government agency.²⁴ The period and frequency of such use was variously described as unspecified frequency during 1996 to at least 2005;²⁵ seven occasions between 1996 and 2006;²⁶ and approximately ten times between January 1999 and August 2005.²⁷ She used marijuana in social settings, sharing marijuana cigarettes with friends who furnished them, and claimed it “tended to calm [her] down as she was stressed due to family problems and her divorce.”²⁸ She also noted that at the time she was with an “abusive husband.”²⁹ Applicant offered the following explanation in 2007:³⁰

Mother and Father both died in 1999 and [she] was left with a mentally retarded brother whom I had to place in a group home and take on a lot of responsibilities of the family and was under a lot of pressure and stress.

On September 23, 2005, when Applicant completed her SF 86, she responded to several questions pertaining to the use of illegal drugs or drug activity set forth in the application. The Amended SOR alleges Applicant deliberately failed to disclose information when she answered “no” in response to the following questions,³¹ to wit: § 24a:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

And § 24b:

Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while

²⁴ Item 4, *supra* note 6, at 1; Item 7, *supra* note 9, at 1-2; Item 9, *supra* note 10, at 1.

²⁵ Item 7, *supra* note 9, at 1.

²⁶ Letter of Revocation, *supra* note 20, at 1.

²⁷ Personal Subject Interview, dated October 11, 2007, at 2, attached to Item 12, *supra* note 3; Item 10, *supra* note 2, at 23-24.

²⁸ Personal Subject Interview, at 2.

²⁹ Statement, dated December 1, 2010.

³⁰ Item 10, *supra* note 2, at 24.

³¹ Item 11, *supra* note 1, at 8.

possessing a security clearance; or while in a position directly and immediately affecting the public safety?

Although she had been previously briefed on the organization's drug policy, she failed to comply with both the prohibition of drug use and the requirement that any such use be reported.³² During an interview with a security representative on October 12, 2006, Applicant stated she did not report her drug use because she did not consider it to be "habitual" and she thought she might "get into trouble."³³ During her October 2007 interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant contended she neglected to list her drug use "due to oversight."³⁴ In her response to the FORM, on December 1, 2010, Applicant claimed she "just checked the box on the form without really thinking of what [she] did."³⁵ However, in her answer to the Amended SOR, she admitted her response was deliberate.³⁶

Applicant stated she has no intentions of any further marijuana use, and claims she no longer knowingly associates with drug users. She has never tested positive in a drug screen, and has never been counseled for drug use.³⁷

Financial Considerations

There was nothing unusual about Applicant's finances until about 2004. In September 2004, due to post-surgery complications, she missed a week of work and fell behind in her payments of some accounts.³⁸ In September 2005, she reported that she had no accounts that were over 90 days delinquent.³⁹ In July 2007, she reported, once again, that she had no accounts that were over 90 days delinquent.⁴⁰ As of October 2007, she had one account with an outstanding balance of approximately \$8,000, of which \$400 was delinquent, and was current on all other accounts.⁴¹ Nevertheless, because of what Applicant characterized as an "enormous amount of debt," and after two years of struggling to keep current with her payments,⁴² on March 28, 2008,

³² Letter of Revocation, *supra* note 20, at 1.

³³ *Id.*

³⁴ Personal Subject Interview, *supra* note 27, at 2.

³⁵ Statement, *supra* note 29.

³⁶ Item 9, *supra* note 10, at 1.

³⁷ Personal Subject Interview, *supra* note 27, at 2.

³⁸ *Id.*

³⁹ Item 11, *supra* note 1, at 9.

⁴⁰ Item 10, *supra* note 2, at 26.

⁴¹ Personal Subject Interview, *supra* note 27, at 2.

⁴² Item 9, *supra* note 10, at 3.

Applicant filed a voluntary petition for bankruptcy under the provisions of Chapter 7 of the U.S. Bankruptcy Code.⁴³ She cited \$223,950 in assets and \$132,030 in liabilities.⁴⁴ Among her assets was \$139,000 in real property.⁴⁵ Among her liabilities were one \$180 medical bill and ten credit cards.⁴⁶ Applicant's liabilities were discharged on July 22, 2008.⁴⁷ Applicant eventually attributed her financial problems during that period to the results of her divorce.⁴⁸

There is no evidence indicating Applicant's finances are anything but current after her 2008 bankruptcy discharge. The Amended SOR does not allege continuing delinquencies, and there are no credit reports listing any such delinquencies. The Amended SOR merely refers to the 2008 bankruptcy. Department Counsel maintains that the Government has "lingering doubts as to whether Applicant's financial situation is truly under control." Nevertheless, in the absence of other supporting evidence, the Government moved to withdraw SOR ¶ 3.a.⁴⁹ Upon due consideration of the motion and the evidence, the motion is granted.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."⁵⁰ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁵¹

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁴³ Item 14 (Bankruptcy Petition, dated March 25, 2008), at 3.

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 5-7.

⁴⁷ Item 9, *supra* note 10, at 2.

⁴⁸ Statement, *supra* note 29.

⁴⁹ FORM, dated November 3, 2010, at 8.

⁵⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁵² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁵³

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁵⁴

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁵⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are

⁵² "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

⁵³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁴ *Egan*, 484 U.S. at 531

⁵⁵ See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement

The security concern relating to the guideline 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) 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), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), "any drug abuse (see above definition)," is potentially disqualifying. In addition, AG ¶ 25(c) may apply where there is "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." Similarly, under AG ¶ 25(g), "any illegal drug use after being granted a security clearance," may raise security concerns. Appellant used marijuana on a variety of occasions while holding a security clearance with access to SCI granted by another Government agency. As noted above, Applicant has given several different descriptions of such use as to the period and frequency. The use was variously described as unspecified frequency during 1996 to at least 2005; seven occasions between 1996 and 2006; and approximately ten times between January 1999 and August 2005. She obtained and used marijuana in social settings. She also claimed the use was motivated by the stress of family problems and her divorce. Regardless of her motivation, and the inconsistencies in the descriptions of the period and frequency of such use, her possession of marijuana violated the law and her marijuana possession and use violated organizational policy. AG ¶¶ 25(a), 25(c), and 25(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition

may be mitigated where “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.” Also, under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is “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.

Similarly, under AG ¶ 26(d), “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,” the drug involvement concerns may be mitigated.

Appellant's 10-year period of marijuana use, commenced when she was 50 years old, and continued at least until she was 59 years old – long after she could be considered an impressionable minor whose actions were unfortunate youthful indiscretions. Moreover, her motivation for using marijuana in social settings was supposedly to handle the stresses of family problems and a divorce. However, as she noted, her parents passed away three years after she started using marijuana and she continued using it until eight months before her second divorce. Her use of marijuana occurred despite her having been briefed on the organizational drug policy, and while she held a security clearance with access to SCI granted by another Government agency.

Applicant's last admitted marijuana use occurred in 2005 or 2006 – at least four years before this decision. Her inconsistent statements regarding the period and frequency of her marijuana use raise some questions, as there are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.”⁵⁶ For example, the Appeal Board has determined that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent.⁵⁷ If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of

⁵⁶ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

⁵⁷ ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997).

reform or rehabilitation.”⁵⁸ Likewise, given Applicant’s vague explanations, without specifics, it is also difficult to conclude that her marijuana use “happened under such circumstances that it is unlikely to recur.” Her actions, under the circumstances, cast doubt on Applicant’s reliability, trustworthiness, and good judgment. Her drug involvement warrants partial application of AG ¶ 26(a).

AG ¶¶ 26(b)(1), 26(b)(2), and 26(b)(3) apply for Applicant has demonstrated a “disassociation from drug-using associates;” has supposedly “changed or avoided the environment” where the marijuana was used; and she has abstained from further marijuana use since 2005 or 2006, depending on which version of the facts one accepts. AG ¶ 26(b)(4), does not apply because there is no evidence that Applicant ever signed “a statement of intent with automatic revocation of clearance for any violation.”

AG ¶ 26(d) does not apply because there is no evidence that Applicant completed a “prescribed drug treatment program.”

Guideline E, Personal Conduct

The security concern relating to the guideline 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.

⁵⁸ ISCR Case No. 02-24452 at 6, *supra* note 56. In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), 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,” is potentially disqualifying. In addition, under 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,” may raise security concerns. Similarly, under AG ¶ 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing” may raise security concerns. Applicant’s deliberate omission, concealment, and falsification of critical information pertaining to her drug use, especially while holding a security clearance with access to SCI provides sufficient evidence to examine if her omissions were deliberate falsifications or were the result of simple oversight or negligence on her part.⁵⁹

As noted above, although Applicant had been previously briefed on the organization’s drug policy, she failed to comply with both the prohibition of drug use and the requirement that any such use be reported. When offered opportunities to be candid, she furnished several different explanations for her actions. In October 2006, Applicant stated she did not report her drug use because she did not consider it to be “habitual” and she thought she might “get into trouble.” In October 2007, she contended she neglected to list her drug use “due to oversight.” In December 2010, Applicant claimed she “just checked the box on the form without really thinking of what [she] did.” However, in her answer to the Amended SOR, she admitted her “no” response to the question was deliberate. AG ¶¶ 16(a), 16(b), and 16(e) have been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct under AG ¶¶ 17(a)-(g). But in this instance, none of the mitigating conditions apply.

⁵⁹ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10390 at 8 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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 the 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.

There is some evidence in favor of mitigating Applicant's conduct. She was under stress due to family problems and because of a difficult marriage that ended in divorce. While she continued to use marijuana over a 10-year period to handle her stress, she eventually abstained from further marijuana use in 2005 or 2006, and has not used it since that time. She has also disassociated herself from other known drug users.

The disqualifying evidence under the whole-person concept is substantial. Applicant has a 10-year history of drug involvement while she held a security clearance with access to SCI. Drug use is illegal. She failed to comply with both the prohibition of drug use and the requirement that any such use be reported. When questioned about drug involvement, she lied. When offered opportunities to be candid, she furnished several different explanations for her actions. In reviewing her alternative responses, two stand out: (1) she did not report her drug use because she did not consider it to be "habitual" and she thought she might "get into trouble;" and (2), she admitted her response in her SF 86 was deliberate. Taken together, her conduct over the years vitiates any other mitigation. See AG ¶¶ 2(a)(1) through 2(a)(9).

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has failed to mitigate the personal conduct security concerns. She has mitigated the security concerns pertaining to drug involvement. The financial considerations are no longer 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	WITHDRAWN
Subparagraph 3.a:	Withdrawn

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge