DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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SSN: -----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

September 17, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct) and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on October 22, 2008. On February 26, 2010, 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 J. 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 March 11, 2010; answered it on March 26, 2010; and requested a hearing before an administrative judge. DOHA received the request on March 29, 2010. Department Counsel was ready to proceed on May 3, 2010, and the case was assigned to me on May 6, 2010. DOHA issued a notice of hearing on May 24, 2010, scheduling the hearing for June 25, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 16 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. DOHA received the transcript (Tr.) on July 1, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR except ¶¶ 1.f, 1.l, 1.n, and 1.r, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old systems engineer employed by a defense contractor since September 2007. He received a master's degree in management information systems in December 2001, and he has worked for federal contractors since September 2002. In April 2007, he was designated as a "Certified Information Systems Security Professional." (AX J.)

Applicant married in July 1993. His spouse is a U.S. Army officer on active duty. They have an 11-year-old daughter and a seven-year-old son.

Between 1979 and 1982 Applicant shoplifted various items from sporting goods stores. He estimated that he stole items worth $300 to $500. In May or June 1980, he was charged with being a minor in possession of alcohol, and he paid a small fine. (GX 9 at 2.) He stood watch for two friends in 1980 or 1981, while they stole $15-$20 from a drunken man who had passed out on a park bench. In 1981 he siphoned gasoline from other persons' vehicles about five times. He broke into a sporting goods shop in 1982 and stole items worth about $70.

In August 1985, Applicant was charged with driving while intoxicated (DWI), after he struck two pedestrians and killed one of them. The police report reflects that his blood-alcohol level was .091, which was then below the legal limit. The charges were filed on August 14, 1985, 11 days after the accident. On July 3, 1986, the charges were amended to allege reckless driving. In August 19, 1986, he pleaded "no contest" and was found guilty of reckless driving. He was fined $800, with $500 suspended, and confined for 120 days, with 30 days suspended, ordered to perform 232 hours of community service, and placed on probation until August 1989. (GX 8.)

In his response to the SOR, Applicant denied the allegation that he was arrested and charged with DWI. At the hearing, he testified that he denied the allegation because he was not arrested. He testified that he returned to the scene of the accident, identified

himself to the state trooper as the driver, accompanied the trooper to the station, and was charged with DWI several days after the accident. (Tr. 58-59.)

In November 1985, Applicant, who was then 18 years old, was charged with unlawfully being on premises where alcoholic beverages were sold, served, or consumed; possessing and consuming an alcoholic beverage; resisting arrest; and knowingly displaying and representing as his own a driver's license issued to another. He was placed on probation for 30 days and ordered to perform 80 hours of community service. In June 1988, the conviction was set aside upon completion of his probation. (GX 7.)

In 1986, Applicant and three friends, while intoxicated, forcibly robbed a man and stole about $100-$150 from him. (GX 11 at 3.) In 1987 or 1988, Applicant damaged another vehicle while attempting to park after consuming four or five beers. He left the scene without notifying the owner or the police. (GX 11 at 8.)

Applicant was cited for careless driving in July 1989, five speeding violations between September 1989 and May 1990, and a stop-sign violation in October 1990. He was cited for driving on a suspended or revoked license in March 1991, and driving an unsafe vehicle in April 1992. (GX 10.)

In 1989, Applicant was charged with domestic abuse after an altercation with a girlfriend (not his current spouse). He spent the night in jail and then paid a fine. He completed court-ordered counseling sessions. (GX 9 at 6-7; GX 11.)

Applicant tried marijuana with friends in 1980, used it 3-4 times a year from 1985 to 1991, used it once in the fall of 1997, and once in April 2004. He used cocaine 2-3 times between 1988 and 1990 and used mushrooms (psilocybin) once in 1984. (GX 5 at 2-3.)

In October 2002, Applicant executed a security clearance application (SF 86). (GX 2.) He answered "No" to question 24, asking if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He did not disclose his citation for being a minor in possession of alcohol in 1980, the DWI charge in August 1985, or his arrest in November 1985 for underage consumption of alcohol and being on premises where alcohol is sold or consumed.

On the same SF 86, Applicant answered "No" to question 27, asking if he had illegally used any controlled substance during the last seven years or since the age of 16, whichever period is shorter. He did not disclose his use of marijuana in 1997.

In April 2003, Applicant executed another SF 86. (GX 3.) Once again, he answered "No" to questions 24 and 27, and he did not disclose his alcohol-related arrests or his marijuana use in 1997.

In July 2003, Applicant presented a sworn statement to a security investigator, stating that he used marijuana in 1984 and 1985, but "did not use it more than half dozen times with friends at parties during this timeframe." He also told the investigator, "I have not used any other illegal drugs, to include marijuana, at any time in my life other than the marijuana use disclosed above." (GX 9 at 11-12.) He did not disclose his marijuana use between 1980 and 1991, his marijuana use in 1997, his cocaine use between 1988 and 1990, and his one-time use of psychedelic mushrooms.

Applicant was granted a security clearance in January 2003. He submitted an SF 86 on April 30, 2004, seeking eligibility for SCI access. (GX 4.) He recertified his application on November 23, 2004 and September 22, 2005 without changing any information in the application. He answered "No" to question 27, asking if he had ever used any controlled substance since the age of 16 or in the last seven years, whichever is shorter. He did not disclose his use of marijuana in early April 2004, shortly before he submitted his application.

In November 2004, Applicant was interviewed regarding his April 2004 application. At this interview, he did not disclose his use of marijuana in 1997 or 2004. When he was interviewed again in May 2005, he disclosed the 1997 and 2004 uses of marijuana. (GX 12 at 1-3.) He was interviewed a third time in May 22, 2006, and he disclosed that he drove his motorcycle while intoxicated two days before the interview. He admitted during this interview that he consumed eight to ten beers at a time once every two weeks and that his wife complained about his drinking because it interfered with family time. (GX 12 at 13-14.) At the hearing, he testified that his normal consumption at a social occasion period such as a football game is four to six beers over a three-hour period. He will ask his spouse to drive after consuming one beer. (Tr. 86-87.)

Applicant was denied SCI access in November 2006, because of security concerns raised by his alcohol consumption, drug involvement, and personal conduct. The denial letter specifically mentions Applicant's lack of candor on his application and during interviews. (GX 13 at 6.)

Applicant testified that he thought that the questions on the SF 86 about alcohol and drugs encompassed only the last five years. He admitted minimizing his marijuana use during his security interview in July 2003 because he was embarrassed about it. (Tr. 51.) He testified he did not know why he answered "No" to question 27 on his SF 86 in 2004, because he had already disclosed his marijuana use to the investigator during the July 2003 interview. (Tr. 67.) He admitted that he did not disclose his April 2004 use of marijuana on his application for SCI because he was afraid his application would be denied and he probably would lose his job. (Tr. 75.)

When Applicant submitted his security clearance application in October 2008, he answered "Yes" to question 23d, asking if he had ever been charged with or convicted of any offense related to alcohol or drugs, and he disclosed his DWI charge and conviction of reckless driving in May 1985. He answered "Yes" to question 24a, asking if

he had illegally used a controlled substance during the past seven years. He answered "Yes to question 24b, asking if he had ever illegally used a controlled substance while possessing a security clearance, and he disclosed his marijuana use in April 2004. Finally, he answered "Yes" to question 26b, asking if he had ever had a clearance or access authorization denied, suspended, or revoked, and he disclosed that his application for SCI access was denied. (GX 1 33-35.)

An Army colonel on active duty submitted a letter on Applicant's behalf. He has worked closely with Applicant, knows him on both a personal and professional level, has daily contact with him, and considers him a person with strong values, good character, and sound judgment. (AX B.) Applicant recently received a letter of appreciation from another Army colonel for his role in a planning conference. (AX I.) An Army lieutenant colonel, who has known Applicant for 15 years, describes him as loyal, determined, responsible, and dedicated. (AX C.) An Army major, who has known Applicant and his spouse for 14 years on a social as well as professional level, describes Applicant as upstanding, loyal, dedicated, and trustworthy. (AX D.) None of these statements indicate whether the declarant was aware of the allegations in the SOR

Applicant's supervisor rates him as a "top 10% performer" in his division. (AX E.) Applicant's performance report for October 2008 to October 2009, recites that his "demonstrated abilities and leadership qualities make him a top candidate for additional responsibilities." He is rated as a top performer who sets the example for his peers. (AX F.) His performance report for October 2007 to October 2008 rated him as a "key and valued member of the Army Program Team." (AX G.) A performance report from a previous federal employer observed that he "fully exhibits" the required competency and is progressing well in his professional development. (AX H.)

An Army lieutenant colonel on active duty, who has known Applicant and his spouse for the past four years as a neighbor, testified that he and Applicant share a love of sports and spend considerable time together on weekends. He regards Applicant as responsible, honest, a good neighbor, and a good friend. He would not hesitate to recommend Applicant for a clearance. (Tr. 42-45.) The witness was not asked and did not say whether he was aware of Applicant's record of misconduct and falsification.

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.

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 about 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 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 Applicant's numerous acts of misconduct from 1979-2006 (SOR ¶¶ 1.a-1.k); his falsification of security clearance applications in October 2002, April 2003, and April 2004 (SOR ¶¶ 1.l-1.o, 1.r, and 1.s); his false statement to a

security investigator in July 2003 (SOR ¶ 1.p); his use of marijuana in April 2004 while holding a clearance (SOR ¶ 1.q); and the denial of his application for SCI access in 2006 (SOR ¶ 1.t).

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.

The relevant disqualifying condition for falsification of a security clearance application is AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire). The relevant disqualification condition for making false statements to a security investigator is AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an investigator).

Applicant denied deliberately failing to list his alcohol-related offenses on his October 2002 application, his April 2003 application, and his April 2004 application, but he admitted deliberately failing to disclose his marijuana use in 1997 on those applications and he admitted deliberately failing to disclose his marijuana use in April 2004 on his 2004 application. 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 explained his failures to disclose his alcohol-related arrests by claiming he believed the questions encompassed only a five-year period preceding the applications. At the time he completed the applications, he was a well-educated, mature adult. The questions pertaining to alcohol- or drug-related arrests clearly ask, "Have you ever been charged or convicted . . . ?" He was embarrassed by his past misconduct and concerned that full disclosure would result in denial of his applications. I find his explanation for not disclosing his alcohol-related arrests and drug involvement on his security clearance applications implausible and not credible. *See* ISCR Case No. 08-05637 at 3 (App. Bd. Sep. 9, 2010) (an applicant's education and experience are part of the entirety-of-the-record evaluation to determine whether an omission of relevant information on a security clearance application was deliberate). Based on Applicant's admissions and all the evidence I conclude that the allegations in SOR ¶¶ 1.l-1.o, 1.r, and 1.s are supported by substantial evidence. I conclude that AG ¶ 16(a) is raised by the evidence.

Applicant admitted that he deliberately minimized his drug involvement when he submitted his sworn statement to an investigator in July 2003. His admission and the corroborating evidence are sufficient to raise AG ¶ 16(b).

The misconduct alleged in SOR ¶¶ 1.a-1.k and 1.q is established by Applicant's admissions and the evidence outlined above. However, SOR ¶ 1.t, alleging the denial of SCI access by another agency, does not allege any conduct by Applicant. It alleges only an ancillary action by another agency. Accordingly, I resolve SOR ¶ 1.t in Applicant's favor.

Applicant's record of misconduct raises the following disqualifying conditions under this guideline:

> 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;
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> 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.

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 or during a security interview 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's efforts to

correct his omissions and misleading answers were neither prompt nor entirely in good faith. He did not disclose his 1997 marijuana use when he was interviewed in July 2003 and November 2004. He did not disclose his 2004 marijuana use when he submitted his application for SCI access. He did not fully disclose his marijuana use until May 2005, more than a year after submitting his application for SCI access and almost two years after the July 2003 security interview.

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). Many of Applicant's offenses were arguably minor. His reckless driving conviction was a misdemeanor, but involved a fatality. He was a mature, well-educated adult when he used marijuana in April 2004. He was employed by a defense contractor, married to an Army officer, and the father of two children. He lived in a military environment and held a security clearance. His use of marijuana while holding a clearance and his multiple falsifications while applying for clearances were serious breaches of trust. His misconduct was frequent and did not occur under unique circumstances.

Applicant's admissions and the evidence presented at the hearing establish that he last used marijuana in April 2004 and last drove a vehicle after excessive alcohol consumption in May 2006, raising the question whether his history of misconduct is mitigated by the passage of time. The second prong of AG ¶ 17(c) ("so much time has passed") focuses on whether the conduct was recent. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. *See* ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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 reform or rehabilitation." *Id.*

Applicant's testimony and the evidence submitted by several senior military officers who are his social friends and professional associates suggest that he has matured, moderated his alcohol consumption, and become a dedicated and productive member of the defense community. At the hearing, he was remorseful about his misconduct and drug involvement, but he denied intentionally concealing his relevant information, insisting that he did not read the questions carefully. As noted above, I found his explanation for omitting relevant information implausible and not credible. His hearing testimony demonstrated that he still does not fully appreciate the need for absolute candor in matters of national security.

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) (citations omitted). I

have considered Applicant's intentional omissions during his November 2004 interview for the limited purpose of evaluating the evidence of mitigation. I have considered Applicant's lack of candor at the hearing for the limited purpose of determining whether he has "demonstrated successful rehabilitation." I conclude that AG ¶ 17(c) is established for the conduct alleged in SOR ¶¶ 1.a-1.k, and 1.q, but it is not established for the falsifications alleged in SOR ¶¶ 1.l-1.p, 1.r, and 1.s.

Security concerns raised by personal conduct also 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 has acknowledged his irresponsible use of drugs and alcohol. He has moderated his alcohol consumption and developed a new circle of friends within the military community. After the denial of his application for SCI access, he finally realized the repercussions of his behavior. I am satisfied that his irresponsible acts of misconduct, except for the falsifications, are unlikely to recur. For these reasons, as well as the reasons set out in the above discussion of AG ¶ 17(c), I conclude that AG ¶ 17(d) is established for the conduct alleged in SOR ¶¶ 1.a-1.k and 1.q, but not for the conduct alleged in SOR ¶ 1.l-1.p and 1.r-1.s.

Finally, security concerns under this guideline may be mitigated if "(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." AG ¶ 17(e). This mitigating condition is established because Applicant disclosed his alcohol-related arrests and drug use in his most recent security clearance application and was candid about it at the hearing, thereby reducing his vulnerability to exploitation, manipulation, or duress.

Guideline J, Criminal Conduct

The SOR cross-alleges the falsifications alleged in SOR ¶¶ 1.l-1.p, 1.r, and 1.s as criminal conduct. The concern under this guideline is: "Criminal activity creates doubt about a person'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 ¶ 30. The relevant disqualifying conditions under this guideline include "a single serious crime or multiple lesser offenses" and "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted." AG ¶¶ 31(a) and (c).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the Government of the United States. A deliberately false answer on a security clearance application or in a statement to a security investigator is a serious crime within the meaning of Guideline J. Applicant's intentional omissions of relevant and material information from his multiple

security clearance applications and in his sworn statement of July 2003 raise the disqualifying conditions in AG ¶ 31(a) and (c), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated by evidence that "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." AG ¶ 32(a). Security concerns also may be mitigated if "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." AG ¶ 32(d). For the reasons set out in the above discussion of AG ¶ 17(c), I conclude that AG ¶¶ 32(a) and 32(d) are not established.

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 J 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, well-educated, articulate adult who is carrying the burden of his irresponsible behavior as a teenager and young adult. During the past four years, he appears to have turned the corner on his personal behavior and conducted himself as a responsible adult. However, his long record of deception raises grave doubts about his trustworthiness and reliability. At the hearing, he still had not fully come to terms with his pattern of deception, and he continued to rationalize his falsifications and offer dissembling explanations for them.

After weighing the disqualifying and mitigating conditions under Guidelines E and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his personal conduct and criminal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his 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.k:	For Applicant
Subparagraphs 1.l-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge