



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 09-03870
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

January 11, 2011

Decision

TUIDER, Robert J., Administrative Judge:

Applicant successfully mitigated drug involvement and related personal conduct concerns, but was unable to mitigate personal conduct falsification and related criminal conduct concerns. Clearance is denied.

Statement of the Case

On March 2, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines E (personal conduct), H (drug abuse), and J (criminal conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 4, 2010, and DOHA received his answer on May 7, 2010. Department Counsel was prepared to proceed on July 20, 2010. The case

was previously assigned to another administrative judge on July 27, 2010, and was reassigned to me on August 6, 2010. DOHA issued a notice of hearing on September 7, 2010, scheduling the case for September 28, 2010. The hearing was convened as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant did not offer any exhibits, but did testify on his own behalf. DOHA received the hearing transcript (Tr.) on October 6, 2010. I held the record open until October 12, 2010, to afford Applicant the opportunity to submit additional evidence. Applicant submitted Applicant Exhibits (AE) A through E, which were received without objection. DOHA received the hearing transcript (Tr.) on October 6, 2010. The record closed on October 12, 2010.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a. and 2.a. and denied SOR ¶¶ 1.b., 2.b., 2.c., and 3.a. His admissions are accepted as findings of fact.

Applicant is a 24-year-old field engineer, who has been employed by a defense contractor since January 2009. He is a first-time applicant for a security clearance. Successfully vetting for a security clearance is a condition of his continued employment. He testified that he held an interim secret clearance from March 2009 to March 2010, which was revoked as a result of these proceedings. (GE 1, Tr. 12-15.)

Applicant's parents are career U.S. Army personnel. His mother retired from the Army in February 2007 as a first sergeant (pay grade E-7) and his father is currently serving on active duty as an Army warrant officer (pay grade W-3). Applicant understands that his father will be deployed to Iraq before he retires from the Army. (Tr. 16-17, 21.)

Applicant graduated from high school in June 2005. He attended a community college and a four-year college and has earned 41 credit hours. He intends to pursue his degree when he has more discretionary free time. (GE 1, Tr. 15-19.) Applicant married in August 2010. His wife is attending a university majoring in political science. They do not have any children. (Tr. 19-21.)

Personal Conduct

The SOR alleged two separate incidents under this concern. The first incident occurred in November 2008 and the second incident occurred in March 2009. Summarized they are:

In November 2008, at age 22, Applicant was arrested and charged with (1) DUI (2) DUI with BAC of .08 or more, (3) possession of drug paraphernalia, and (4) possession of an open liquor container. The case was dismissed. Applicant has very little memory of this arrest. He testified that he had been drinking and passed out in the back seat of his car when he was approached by the police. When the police searched

his car, they found drug paraphernalia and an open container. Applicant testified that his co-workers from a convenience store were smoking marijuana in his car. (Tr. 23-26.) Since then, Applicant has disassociated himself from his former friends, and is working at his current job. This arrest left a significant impression on Applicant. He expressed sincere remorse and regret that he had allowed himself to get into such a situation. Applicant's consumption of alcohol since his arrest has been very moderate. (SOR Response, Tr. 23-26, 38-39, GE 2, GE 3.)

Applicant provided false information when he completed his March 2009 e-QIP when queried about past drug use. When asked whether he illegally used drugs in the last seven years or since the age of 16, he answered "no," when in fact he had used drugs, discussed *infra*. Applicant denied falsifying his e-QIP with "malicious intent." (SOR Response.) He explained:

Well – I mean – the whole purpose or what I had originally thought when I was advised when filling out my SF86, which wasn't much, it was initially an SF86 from what I thought of was just a form to get me inside the door in terms of a clearance and I thought any adverse information that was on there would – I'd be denied on the spot and therefore, out of a job. And it wasn't until much later when I realized how significant an SF86 really is because – I mean – honestly you're swearing that this is who you are and what you've done. And nobody explained that to me. I mean – to me it seemed like an arbitrary form. (Tr. 27.)

In addition to claiming that he did not receive proper advice on how to complete his e-QIP, Applicant was concerned that he would not get the job if he told the truth about his past drug use. During his Office of Personnel Management (OPM) interview in April 2009, Applicant further stated that his misrepresentation on his e-QIP was deliberate, but denied his misrepresentation was done maliciously. (Tr. 28-32.)

Drug Involvement

Applicant admitted using marijuana three times – twice while in high school in 2003 and once with his friends from the convenience store in 2008. He "was dissatisfied with the effects of marijuana as it was nauseating and counterintuitive to the goals in my life." He stated that each time he used marijuana, he was under peer pressure to try it. He no longer associates with anyone who uses "illegal and legal intoxicating substances."¹ (SOR Response.)

The allegation under SOR ¶ 2.b. of this concern is cross-alleged under personal conduct, SOR ¶ 1.a. The facts regarding this allegation discussed *supra* are incorporated under this concern. Applicant added that, "I deny to the best of my

¹ Applicant's testimony differs from his SOR Response regarding past marijuana use. In his SOR Response, he stated he used marijuana two times in high school in 2003 and one time with his co-workers from the convenience store in 2008. He testified that he used marijuana one time in high school and two times with his co-workers from the convenience store. He did not deviate from the total number of times he used marijuana. (Tr. 32-33, 38.)

knowledge that I was under the influence of an illegal substance when I was arrested (in November 2008).” (SOR Response.) Applicant has not used marijuana since 2008. (Tr. 32.)

Lastly, Applicant allowed his co-workers from the convenience store to smoke marijuana in his vehicle. He explained:

I allowed my co-workers to smoke marijuana inside my car for the fear of someone seeing them outside, peer pressure from my co-workers, and as a means to isolate their bad behavior away from myself. At the time, I thought this was the best decision, but have since realized how stupid such behavior was.

Applicant again reiterated that he has since disassociated himself from these individuals. (SOR Response, Tr. 32-34.)

Criminal Conduct

The sole allegation under this concern cross-alleges SOR ¶ 1.b. (March 2009 e-QIP falsification) under SOR ¶ 3.a., and alleges Applicant’s falsification is a felony under 18 USC § 1001. Applicant stated that he “did not understand the vast implications placed on [his] character by omitting data, nor was it my intent to hide anything.” He reiterated that he feared he would not be granted a security clearance “for having any negative information on [his] form.” (SOR Response.)

Character evidence

Applicant submitted four reference letters and a signed statement of intent with automatic revocation of clearance for any drug violation. His reference letters were from his father, his wife, his mother-in-law, and a work supervisor. All references vouched for Applicant’s good character and supported him for a security clearance. (AE A through E.)

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.” *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 an Applicant’s 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 adjudicative guidelines. 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 protect or 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 "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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. 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.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Conclusions

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are raised under Guidelines E (personal conduct), H (drug involvement), and J (criminal conduct) with respect to the allegations set forth in the SOR.

Personal Conduct

AG ¶ 15 articulates the security concern pertaining to personal conduct:

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

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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.

Applicant failed to disclose his past marijuana use. Such disclosure was clearly required under the e-QIP instructions. Furthermore, his conduct surrounding his November 2008 arrest involving drugs, drug paraphernalia, and alcohol identifies concerns regarding Applicant's judgment and willingness to comply with rules and regulations. AG ¶¶ 16(a) and 16(c) both apply.²

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

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

² Deliberate and materially false answers on a security clearance application may violate 18 U.S.C. § 1001. The Supreme Court defined "materiality" in *United States v. Gaudin*, 515 U.S. 506, 512 (1995) as a statement having a "natural tendency to influence, or [be] capable of influencing, the decision making body to which it is addressed." See also *United States v. McLaughlin*, 386 F.3d 547, 553 (3d Cir. 2004). If Applicant had provided accurate answers on his security clearance application, his accurate answers are capable of influencing the government to deny his security clearance. His drug involvement is sufficiently serious to potentially jeopardize approval of his security clearance. Making a false statement under 18 U.S.C. § 1001 is a serious crime, a felony (the maximum potential sentence includes confinement for five years and a \$10,000 fine).

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

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

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

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

With regard to Applicant's November 2008 arrest, Applicant was 22 years old and relatively young at the time. He expressed considerable regret and remorse over this arrest. It has been two years since any similar episodes involving drugs or alcohol, he has disassociated himself from the individuals who were with him at the time of the arrest, he rarely drinks, and he is now married requiring him to show a greater sense of responsibility. AGs 17(c), 17(e), and 17(g) fully apply.

I am unable to reach a similar conclusion with regard to the falsification concerns as a result of Applicant's failure to list his past marijuana use. Applicant explained that he did not receive sufficient guidance when completing his March 2009 e-QIP, that he believed if he answered the question truthfully, he would have been ineligible for the job, and added that his misrepresentation may have been deliberate, but was not done maliciously. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose his past marijuana use. Numerous factors weighed in my analysis to reach that conclusion, including Applicant's age, his level of education, his employment history, his motive to cover up his conduct, and overall lack of credibility as it pertained to falsification concerns. The truth is constant and had Applicant provided accurate and complete answers on his e-QIP, he would not be in a position of trying to explain them today. He knew or should have known of the importance of providing accurate answers

and nevertheless failed to provide information that was material to making an informed security decision. None of the mitigating conditions apply to the falsification concern.

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

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 ¶ 25 describes eight drug involvement-related conditions that could raise a security concern and may be disqualifying. Two drug involvement disqualifying conditions could raise a security concern and may be disqualifying in this particular case: "(a) any drug abuse,"³ and "(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant's alcohol- and drug-related November 2008 arrest and marijuana use three times⁴ warrant application of AGs ¶¶ 25(a) and 25(c). When arrested, Applicant was severely inebriated and had an open container and drug paraphernalia in his car. Although he was not convicted of any offense stemming from this arrest, his culpability is quite serious.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

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

³AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

⁴AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

- (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.

(4) a signed statement of intent with automatic revocation of clearance for any violation.

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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.

Concerning AG ¶ 26(a), 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 record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. 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.”⁵

AGs ¶¶ 26(a) and 26(b) apply. Applicant has submitted a signed statement of intent with automatic revocation of clearance for any drug violation and it has been over two years since Applicant's last marijuana use or drug involvement in 2008. At the time,

⁵ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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 change 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.

he was 22 years old and relatively young. He has completely disassociated himself from his former convenience store co-workers. He no longer works at the convenience store and has a responsible job. Applicant appears sincere in his commitment to remain drug-free.

Guideline J, Criminal Conduct

Under AG ¶ 30, the Government's concern is as follows:

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.

The Government established its case under Guideline J by showing that Applicant falsified his e-QIP. I find, as discussed above under Guideline E, that Applicant deliberately falsified material facts on his e-QIP that he signed in March 2009. The falsification of his e-QIP is material, serves to undermine the security clearance adjudication process, and is a violation of 18 U.S.C. § 1001, a felony.⁶

AG ¶ 31. Conditions that could raise a security concern and may be disqualifying include:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

⁶ It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *Egan*, 484 U.S. at 527 (discussing 18 U.S.C. § 1001.)

Of the criminal conduct disqualifying conditions listed *supra*, two are applicable: ¶ 31(a): “a single serious crime or multiple lesser offenses;” and ¶ 31(c) “allegation or admission of criminal conduct regardless of whether the person was formally charged, formally prosecuted or convicted.”

Applicant’s recent falsification brings to the forefront the criminal conduct concerns raised by his past behavior. I am required to consider Applicant’s overall questionable behavior when evaluating the seriousness of the conduct alleged in the SOR to determine factors such as the extent to which his behavior is recent; the likelihood of recurrence; Applicant’s explanations concerning the circumstances of the incidents alleged; and his rehabilitation.⁷

AG ¶ 32. Conditions that could potentially mitigate security concerns include:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

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

Under the totality of the circumstances, I find Applicant’s criminal behavior is recent and not isolated. Considering the nature and seriousness of his misconduct, I find his favorable information insufficient to mitigate Guideline J security concerns. His behavior raises questions about his ability and willingness to follow the law, and ultimately, to protect classified information. His recent falsification and lack of candor weigh against a finding of rehabilitation and positive behavioral changes. I find that none of the mitigating conditions apply.

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):

⁷ ISCR Case No. 04-09959 at 3 (App. Bd. May 19, 2006).

(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.

The comments in the Analysis section of this decision are incorporated in the whole-person concept. Applicant receives credit for service as a Government contractor. He has shown maturity and resolve to remain drug and alcohol free. Applicant also submitted evidence of good character.

Applicant's deliberate failure to disclose information on his security clearance application is serious, recent, and not mitigated. His falsification of his March 2009 e-QIP is the sole remaining unmitigated concern. Accordingly, I have serious questions about his current ability or willingness to comply with laws, rules and regulations. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, he has mitigated security concerns pertaining to personal conduct related to drugs and alcohol and mitigated security concerns pertaining to drug abuse. He has not mitigated security concerns pertaining to personal conduct related to falsification and corresponding criminal conduct concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors" and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the guidelines. Applicant has failed to mitigate or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information

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.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a. – 2.c.:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a.:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge