



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04753
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 5, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On November 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant enumerating security concerns arising under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a June 24, 2010, response, Applicant admitted all but one allegation raised under both Guideline G and Guideline H, and admitted the singular allegation raised under Guideline E. He also requested a hearing before a DOHA administrative judge. DOHA assigned the case to another administrative judge on February 1, 2011. The parties agreed to a hearing date of April 19, 2011, and a notice to that effect was issued on March 4, 2011. For caseload considerations, the case was transferred to me on April 12, 2011.

I convened the hearing as scheduled. Applicant gave testimony and presented four documents for consideration, which were accepted without objection as exhibits

(Exs.) A-D. Department Counsel offered 20 documents, which were admitted as exhibits (Exs.) 1-20 without objection. The parties were given until May 4, 2011, to submit any additional documents for consideration. The transcript (Tr.) of the proceeding was received on April 27, 2011. A final document was submitted by Applicant and forwarded by Department Counsel without objection on May 10, 2011. It was accepted as Ex. E and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating the security concerns raised. Clearance is denied.

Findings of Fact

Applicant is a 36-year-old inspector who has worked for the same defense contractor for over 14 years. He earned a high school diploma and has attended some college. He is currently engaged to be married.

Beginning at about the age of 15, Applicant started abusing alcohol. When he was about 20 or 21, in 1995, he started using marijuana with varying frequency, usually two to three times a week, until he quit in February 2007.¹ During this time period, he bought the drug on some occasions and occasionally went to work under its effects.² He used and purchased hallucinogenic mushrooms and tried LSD a “few times” between 1995 and 1999.³ He used, but never bought, cocaine about five times between about 2000 and, at the latest, February 2007.⁴ Between 1999 and 2004, he used ephedrine.⁵

In March 1999, when he was 24 years old, Applicant completed a security clearance application (SCA) on which he denied using illegal drugs since the age of 16 or in the preceding seven years. He was granted a security clearance about six months later.⁶ He now admits that the omission was intentional and notes that he is “ashamed” of his volitional failure not to disclose his drug use.⁷

During his years of alcohol and drug abuse, Applicant was found guilty of operating a vehicle while impaired by alcohol (DUI) following an April 1999 arrest during a highway stop. After a December 2000 incident, he was found guilty of driving under

¹ Tr. 43. Near the end of his marijuana use, Applicant used the drug daily. Tr. 44.

² Elsewhere, Applicant noted that he used marijuana on work breaks while working on a night shift. He believes these incidents occurred before he was granted a security clearance. Tr. 47.

³ Tr. 46.

⁴ Tr. 44.

⁵ At the time, ephedra was a common ingredient in over-the-counter dieting, exercise, and energy products. Applicant stated that he used it for energy, noting that it “was like drinking five cups of coffee at once.” He stopped using ephedra products by the time they were removed from over-the-counter sale. Tr. 45-46.

⁶ Tr. 47.

⁷ Tr. 30.

the influence of alcohol (DUI), while other charges, including one for marijuana possession, were dismissed. As a result, his driver's license was revoked. A resultant referral to local family services in January 2001 consisted of about two consultations and a diagnosis of alcohol abuse.⁸ A year later, between March 2002 and June 2002, Applicant voluntarily received two or three treatments for alcohol and substance abuse for a condition diagnosed as alcohol abuse and cannabis abuse. At the time, he did not believe he had a problem, but he pursued counseling in order to have his driver's license reinstated.⁹

Between 2005 and 2007, as Applicant moved into his 30s, he enjoyed his bachelorhood and local sports. During this time, his drinking increased significantly. By 2007, he was drinking everyday. He once arrived at work hung over and was told to go home. In February 2007, Applicant was charged for multiple driving infractions plus driving while intoxicated (DWI), a breath test violation, and possession of marijuana. For the first time, Applicant realized that he needed help to quit drugs and change his life. He truly wanted to get appropriate help for his problems.¹⁰ Aside from the professional repercussions, Applicant understood that any subsequent DUI/DWIs would be treated as a felony offense, would lead to imprisonment for at least one year, and include permanent loss of his driving privilege.¹¹

Consequently, Applicant pursued rigorous treatment between about March 2007 and January 2008 in a recognized chemical dependency outpatient program for a condition identified as polysubstance dependence (alcohol, cocaine, and cannabis).¹² This weekly program included some participation in Alcoholics Anonymous (AA) and cessation of drug and alcohol use during the program. Applicant was ultimately found guilty of the DWI, was fined, his driver's license suspended, and he was placed on probation for the 2007 offense. At the time of his January 2008 discharge from the outpatient program, he was given a "questionable prognosis." The certified alcohol and substance abuse counselor – trainee (CASAC-T) later noted in November 2009 that, "at the time of discharge, [Applicant's] prognosis was questionable due to his lack of sober

⁸ Tr. 17.

⁹ Tr. 18.

¹⁰ Tr. 48.

¹¹ See, e.g., Tr. 58. The hearing was conducted near Applicant's hometown. Notice is taken that Applicant lives in an area significantly under-served by public transportation and cab service.

¹² Although Applicant initially sought treatment on his own initiative, the court later ordered that he complete the program. Tr. 20.

support.”¹³ This conclusion was based, at least in part, on Applicant’s decision not to continue with AA.¹⁴ In January 2009, he completed his probationary period early.¹⁵

Applicant has not used drugs or consumed alcohol to excess since February 2007.¹⁶ He resumed moderate use of alcohol about two years ago. He limits his alcohol consumption to beer. He will have a few beers (about three) on the weekends he chooses to imbibe. These weekends usually center on sporting events which are particularly popular in his region and often involve beer consumption.¹⁷ He will not operate a vehicle if he consumes any beer.¹⁸ If he consumes any beer, he will either use a designated driver, stay where he is, or otherwise have made advanced plans so that his “driving situation [is] all taken care of if [he is] going to be” drinking it outside of his home.¹⁹ He consciously monitors the amount and frequency of his beer consumption.²⁰ He cannot risk losing his driver’s license and going to prison, nor does he want to jeopardize his upcoming nuptials and job.

During the investigation related to Applicant’s security clearance renewal, a report was requested from Applicant’s 2007-2008 substance abuse counselor. In 2009, the counselor wrote: “On January 28th of this year [Applicant] was re-evaluated . . . in order to facilitate the reinstatement of his driver’s license. Based on the findings at that time, including collateral contact information, [Applicant] was found to be not in need of additional treatment.”²¹ Applicant noted that he still does not attend AA, but that he now has a support system and has since entered into a mature relationship with a woman who is now his fiancée. His fiancée does not use drugs and seldom consumes alcohol.²² She is supportive of his attempts to remain drug-free and to drink

¹³ Ex. 4, Interrogatories, at 9 (CASAC-T letter, dated Nov. 5, 2009). I take notice of the following: For the requirements for being designated a CASAC in the state at issue, see [REFERENCE TO STATE REDACTED]. The state at issue notes that a CASAC-T “will not authorize [one] to be considered a Qualified Health Professional for any purposes.” [REFERENCE TO STATE REDACTED].

¹⁴ Tr. 21. Feeling his alcohol use was not a dependency, but a transient condition based on his unbridled use of alcohol on those occasions when alcohol was consumed (abuse or binge drinking), Applicant did not find the milieu AA offered to be compatible with his needs. See, e.g., Tr. 21-22.

¹⁵ Tr. 19, 49.

¹⁶ Tr. 23.

¹⁷ Tr. 55. Applicant noted the type of sports and seasons in his depiction of his region. Note: the transcript text uses the word “county,” rather than “country” in describing his region.

¹⁸ Tr. 50, 56. Applicant noted that he will not drive even if he has only had one beer.

¹⁹ Tr. 57.

²⁰ Tr. 51.

²¹ Ex. 4, *supra*, note 13.

²² Tr. 25.

responsibly.²³ Due to their relationship, their plans to wed, and his need to remain financially stable in order to both build a life with his fiancée and a home for them as a family, Applicant feels his current situation provides a stable, supportive environment.²⁴ This is compounded by his desire and financial need to keep his present job.²⁵ He no longer socializes with those who use drugs or frequents places where drugs are used.²⁶ He has made new friends “with a better base of people that have . . . families, they have homes, and they’re respectable people in the community.”²⁷ He does not hide his past drug and alcohol issues; he makes it clear to others that he is trying to live a cleaner life and do better for himself.²⁸ Applicant’s driver’s license has been reinstated.

In describing his past use of alcohol, Applicant stated that he was an alcohol abuser, not alcohol dependant.²⁹ He keeps this in mind at all times and consistently keeps his alcohol consumption within certain parameters.³⁰ Also, Applicant submitted a signed statement of intent not to use drugs in the future, violation of which would lead to automatic revocation of any security clearance granted.³¹

At work, Applicant’s manager is aware that Applicant had “some personal difficulties in his life that” initiated this process.³² He indicated his full support of Applicant in overcoming his personal issues and maintaining his security clearance. Since quitting drugs in 2007, receiving counseling in 2007-2008, and learning to moderate his alcohol consumption, Applicant has received excellent work-related performance reviews. He received appraisal scores of 5, 5.3, and 5.5 out of 6 in the past three years, and received at least one pay increase.³³ He is currently noted at work for his focus, organization, interpersonal skills, cooperation, efficiency, and leadership as a primary inspector.³⁴

²³ *Id.*

²⁴ Tr. 22-23. “That’s what’s driving me for everything. . . . I wouldn’t have a relationship if I was still [doing drugs and drinking every night].”

²⁵ Tr. 24.

²⁶ Tr. 24.

²⁷ *Id.*

²⁸ Tr. 25, 31.

²⁹ *See, e.g.*, Tr. 28.

³⁰ Tr. 28-29.

³¹ Tr. 29; Ex. E (Statement of May 10, 2011).

³² Ex. A (Letter, dated Apr. 15, 2011).

³³ Exs. B-D (Performance reviews, Nov. 2008–Dec. 2011)

³⁴ *Id.*

During the hearing, I took notice of the fact that the availability of the drug ephedrine (ephedra) did not become restricted until after Applicant stopped using the component drug.³⁵ In 2006, as part of the reauthorization of the USA PATRIOT Act, the US Code was amended restricting the sale and distribution of drugs containing ephedrine.³⁶

In addition, I take notice that the DSM-IV (2000) defines polysubstance dependence as a diagnosis given for a behavioral pattern exhibited by an individual who has been using a minimum of three psychoactive substances within a 12-month period without the use of one outweighing the other. These substances do not include caffeine or nicotine. There is currently no independent diagnostic label under the DSM for polysubstance abuse, only dependence.

Finally, during the hearing, I expressed my concern that neither party had introduced any evidence as to what a CASAC-T was in the state at issue.³⁷ To the extent that a state agency regulates the practice of CASACs, CASAC-Ts, and other substance abuse workers, reference was made to official state government documents regarding the qualifications and authority of a CASAC-T in the state at issue.³⁸ A CASAC-T may be counted toward the staffing requirements of a certified chemical dependence program, but is not considered a qualified medical provider.³⁹ As a trainee, he or she is not the equivalent of a fully licensed clinical social worker.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

³⁵ Tr. 46, 64-65.

³⁶ See 21 U.S.C. 830, as revised by the President on Mar. 6, 2006.

³⁷ Tr. 36-37.

³⁸ See note 13, *supra*.

³⁹ *Id.*

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁴⁰ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁴¹

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴³

Based upon consideration of the evidence, Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

⁴⁰ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴² *Id.*

⁴³ *Id.*

Analysis

Guideline G – Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.⁴⁴ In this case, Applicant admits he has received multiple DUI/DWIs, that he consumed alcohol to excess on numerous occasions, and was once asked to leave the work place while suffering from a hangover. Such facts are sufficient to raise Alcohol Consumption Disqualifying Condition (AC DC) AG ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent), AG ¶ 22(b) (alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent), AG ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent), and AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).⁴⁵ Consequently, the burden shifts to Applicant to mitigate related security concerns.

After his February 2007 arrest, Applicant acknowledged he had a problem with alcohol and chemical substances. He immediately ceased all alcohol and drug use, including cocaine and marijuana. With those drugs no longer an issue, he obviated continued application of the then-applicable polysubstance dependence diagnosis, and was found “not to be in need of additional treatment.”

As for alcohol, the sole remaining substance of issue he currently uses, Applicant acknowledges that he had been an alcohol abuser, but that he now moderates his use appropriately. Since resuming alcohol use about two years ago, he has consumed it in moderation. He has not imbibed alcohol to excess in nearly four-and-a-half years. Moreover, he will never drive after using any alcohol. Underlying his now responsible use of alcohol is his clear understanding that he will lose his driver's license and go to jail if he again abuses alcohol in conjunction with his driving privilege, and that he will jeopardize both his career and his engagement if he again lets alcohol control his life. Now, with his family and fiancée actively involved, he has a network in place to help him control his drinking within acceptable social parameters. Given his successful transition to moderation, his acquisition of a support network, and his understanding of the dire consequences of again abusing alcohol, I find that AC DC Mitigating Conditions AG ¶ 23(a) (so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur

⁴⁴ AG ¶ 21.

⁴⁵ There is insufficient evidence establishing that a CASAC-T is a qualified medical professional or the equivalent of a licensed clinical social worker so as to raise AG ¶¶ 22(d)-22(e).

or does not cast doubt on individual's current reliability, trustworthiness, or good judgement) and AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)) apply.

Applicant is no longer receiving treatment or pursuing counseling, obviating AG ¶ 23(c) (the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress).

Applicant underwent and successfully completed all requirements of the counseling program that culminated in a 2008 diagnosis of polysubstance dependence. While his diagnosis was not negative, he was given a "questionable" prognosis due to his lack of a sobriety support system. No independent diagnosis, however, was rendered with regard to just his alcohol use, only its use in conjunction with other substances (cocaine and cannabis), which he no longer uses. Since that time, he has adopted his family and fiancée as a sobriety support system, learned to drink in moderation, and will not drive if he consumes so much as one beer. Upon reevaluation in 2009, he was found not to be in need of further treatment. Such facts substantially raise AG ¶ 23(d) (the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meeting with [AA] or a similar organization and has received a favorable prognosis by a duly qualified or a licensed clinical social worker who is a staff member of a recognized treatment program).

Applicant acknowledges his past abuse of alcohol and how that abuse was, for a period of time, linked with drug abuse. He quit drugs and successfully went without alcohol during his counseling period, demonstrating his ability to control his drinking and helping to show his diagnosed dependence on the substances was not uncontrollable. He has consumed alcohol in moderation with a support system in place for nearly four-and-a-half years. That system includes not only caring individuals, but a plan that dispels any concerns about his driving after alcohol use in the future. Given the fact he would lose his driver's license, go to jail, and end his marital prospects should he ever again abuse alcohol, Applicant has an exceptionally high motivation to keep his alcohol use within acceptable social parameters.

Guideline H - 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.⁴⁶ "Drugs" are defined as mood and behavior altering substances,

⁴⁶ AG ¶ 24.

and include 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 inhalants and other substances.⁴⁷ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.⁴⁸

Applicant used and bought hallucinogenic mushrooms and tried LSD a couple of times between 1995 and 1999. Applicant admitted he used, and occasionally purchased, marijuana from about 1990 until February 2007, after being granted a security clearance in 1999. He also used, but never bought, cocaine about five times between about 2000 and 2007 while maintaining a security clearance. Such facts are sufficient to raise Drug Involvement Disqualifying Condition AG ¶ 25(a) (any drug abuse), AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia), and AG ¶ 25(g) (any illegal drug use after being granted a security clearance).⁴⁹ His use of ephedra, however, occurred while it was commonly available for unrestricted public purchase and consumption, and there is no suggestion he either abused it excessively or used it for a prohibited purpose. Therefore, that drug use is not amenable to application under Guideline H. Regardless, given the disqualifying conditions otherwise raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant made the decision to quit using drugs after he was arrested in February 2007. In 2009, it was determined he was not in need of additional treatment for polysubstance dependence. Since becoming drug free, he has changed his life, excelled at work, gotten engaged, moderated his use of alcohol, and become diligent at work. He has taken responsibility for his past illegal drug use and was candid in his portrayal of it. To demonstrate his commitment to remaining drug free, he also signed a statement of intent with automatic revocation of clearance for any future drug use. Therefore, Drug Involvement Mitigating Conditions (DI MC) AG ¶ 25(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), AG ¶ 26(b)(3) (an appropriate period of abstinence), and AG ¶ 26(b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) apply.

In addition, Applicant has changed his circle of friends. He no longer socializes with those who use drugs or frequents places where drugs are used, preferring instead to socialize with “a better base of people.” Consequently, DI MC AG ¶ 26 (b)(1)

⁴⁷ *Id.* at ¶ 24(a)(1-2).

⁴⁸ *Id.* at ¶ 24(b).

⁴⁹ Assuming that a diagnosis of polysubstance dependence is the equivalent of a diagnosis of drug abuse or drug dependence, there is insufficient evidence establishing that a CASAC-T is a qualified medical professional or the equivalent of a licensed clinical social worker so as to raise AG ¶¶ 25(d)-25(e)

(disassociation from drug-using associates and contacts) and AG ¶ 26 (b)(2) (changing or avoiding the environment where drugs were used) also apply.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “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.”⁵⁰ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.⁵¹ In March 1999, when he was 24 years old, Applicant completed a SCA on which he denied using illegal drugs since the age of 16 or in the preceding seven years. He admits that the omission was intentional and notes that he is ashamed of his volitional failure not to disclose his drug use. Although the incident occurred over a decade ago, this admission is sufficient to raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) applies. With a PC DC raised, the burden shifts to Applicant to mitigate the security concerns.

There is no evidence that Applicant immediately disclosed complete facts about his past marijuana use in sufficient time to raise Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(a) (the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts).

Applicant admits that he purposefully misled investigators when he failed to disclose his past drug use on his 1999 SCA. At the time, Applicant was 24 years old. Considerably older today, over 12 years later, he is contrite about his omission. That Applicant of 1999 is not the same Applicant that appeared in 2011. Since 1999, he gave up drugs in February 2007, completed counseling, no longer associates with those who use drugs, and has matured considerably. He was found to no longer be in need of additional treatment. He does not hide his past drug use. Applicant demonstrated genuine candor in his testimony and takes full responsibility for his misleading answer on the 1999 SCA. Consequently, PC MC AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment), AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress), and AG ¶ 17(g) (association with persons involved in criminal activity has

⁵⁰ AG ¶ 15.

⁵¹ *Id.*

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) apply. None of the other PC MCs apply.

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 an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a credible and forthright 36-year-old inspector who has worked for the same defense contractor for over 14 years. He is a high school graduate who has attended some post-secondary courses. After years without focus, experiments with various drugs, problems with alcohol abuse, and long-term use of marijuana, he decided to turn his life around in February 2007. He completed a counseling program that helped him face his abuse of multiple substances. He quit drugs and learned to comport his consumption of alcohol within acceptable social parameters. He maintains a support system consisting of his family, his manager, and his soon-to-be wife. He is no longer considered to be in need of additional treatment. Applicant's professional life has improved and he is excelling at work. His employer now describes him as a leader among peers. Applicant will not risk losing his lucrative career, fiancée, or driving privilege by again abusing alcohol or recklessly driving. Given these facts, and in light of a thorough consideration of the "whole person" factors, I have no concerns that Applicant will again abuse alcohol.

Also at issue are the personal conduct concerns raised by Applicant's falsification on his 1999 SCA. At the time, Applicant was a young man in his early 20s. He demonstrated immaturity in concealing his drug use, a problem that would continue until his early 30s. Although his use of mushrooms and cocaine was already in the past, he made the mature decision to quit marijuana and eschew those who use drugs after his February 2007 arrest. At the hearing, his expressions of contrition over his falsification, which occurred over a dozen years ago, were highly credible and genuine. The evidence shows that he has been open about his drug use since he finally accepted his substance abuse problems in 2007. It also reveals that he has been forthcoming during this investigative process. Given his contrition, the length of time at issue, and his forthcoming nature with regard to his past drug use, I find that personal conduct security concerns are mitigated.

Applicant started using illegal drugs in about 1990. When he was granted a security clearance in 1999, he continued to abuse drugs even though he knew their use was illegal and antithetical to the standards expected of one maintaining a security

clearance. His abuse of illegal drugs during this time period remains a significant security concern. This is particularly true in terms of the duration of his drug use, and the number of years he abused drugs while holding a security clearance. In light of these factors, a period of less than five years is insufficient to demonstrate that he has both the commitment to remain drug free – and the ability to do so. Having only quit drugs in February 2007, the potential for future drug abuse while maintaining a security clearance remains a valid concern. As previously noted, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. Clearance is denied.

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 G:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a - 2.i:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a - 3.b:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge