



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 09-05266
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

06/14/2012

Decision

TUIDER, Robert J., Administrative Judge:

On July 16, 2008, Applicant intentionally failed to provide accurate information on his Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). On October 21, 2008, he made an intentionally false statement to an Office of Personnel Management (OPM) investigator when he lied about the reason he was terminated from employment. Personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 16, 2008, Applicant submitted his SF-86. On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guideline E (personal conduct). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it

recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On January 9, 2012, Applicant's undated response to the SOR was received at DOHA. On March 14, 2012, Department Counsel indicated she was ready to proceed on Applicant's case. On March 28, 2012, Applicant's case was assigned to me. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 15, 2012. Applicant's hearing was held as scheduled. Department Counsel offered 11 exhibits, and Applicant offered 26 exhibits. (Tr. 14, 26-27; GE 1-11; AE A-Z) There were no objections, and I admitted GE 1-11 and AE A-Z. (Tr. 14, 27, 101) The record was held open until May 22, 2012. (Tr. 102, 110-111) Five post-hearing documents were admitted without objection. (AE AA-EE) On May 24, 2012, I received the transcript.

Findings of Fact¹

Applicant admitted in his SOR response that he used cocaine in about November 2004, and he was terminated from his employment because he was positive on a drug test for the presence of cocaine in his urine. (SOR ¶¶ 1.a and 1.b; HE 3) He also admitted that he was terminated from employment in about October 2007 for a safety violation, and on or about March 2010, he was arrested and charged with communicating threats. (SOR ¶¶ 1.d and 1.e; HE 3) He denied the remaining SOR allegations. His admissions are accepted as factual findings.

Applicant is a 47-year-old supervisor of security personnel working for a defense contractor. (Tr. 15-19) He has been employed by his employer for five years. He was a truck driver in the civilian sector from 1987 to 2008. (Tr. 31) He graduated from high school in 1982. (Tr. 20) He has about 16 college credits. (Tr. 20)

Applicant served in the Army on active duty from 1983 to 1986, and he received an honorable discharge. (AE H) He left active duty as a specialist four (E-4). (Tr. 28-29, 38; AE H) From early 1987 to 2006, he served in the Army Reserve. (Tr. 29-30) His highest rank in the Army was staff sergeant (E-6). (Tr. 30, 38) He was promotable to sergeant first class (E-7). (Tr. 38) During his Army service, he received one Army Service Ribbon (ASR), one National Defense Service Medal (NDSM), two Army Achievement Medals (AAM), one Good Conduct Medal (GCM), and two Overseas Service Ribbons (OSR) (AE G, H)

Applicant was initially administratively reduced from staff sergeant to sergeant (E-5) in June 2005, and then from sergeant to private (E-1) in April 2006, for missing reserve duty. (Tr. 30-35) He was not present for reserve duty because he needed to work in his civilian job driving trucks. (Tr. 35-40) He received an other than honorable (OTH) discharge from the Army Reserve. (Tr. 32-34, 36-37) He asked the Army Discharge Review Board to upgrade his OTH to an honorable discharge. (AE I) He received a negative noncommissioned officer evaluation report (NCOER) for the period

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

May 2004 to April 2005; however, Applicant believed it was unfair because he was not present in the unit for a sufficient time for the rating chain to form such a negative perception of his performance. (Tr. 40-41; AE L)

Applicant successfully completed the Army's Basic and Advanced Noncommissioned Officer courses at the top of his class. (Tr. 21, 35-36, 41-42; AE M) He received awards for physical fitness and leadership. (Tr. 41-42; AE O, Q, R) His military occupational specialty (MOS) was medical specialist or medic (91A). He successfully completed various training courses while in the Army and in his civilian employment. (Tr. 21; AE M, P)

Applicant married in 1989, was separated from his spouse in 2003, and was divorced in 2010. (Tr. 23-24) His son is 23 years old. (Tr. 22-23) He pays his son's college tuition, student loans, and \$400 to \$500 per month for expenses. (Tr. 24-26) His annual salary is about \$55,000 per year. (Tr. 26)

Personal Conduct

In about November 2004, Applicant used cocaine at a party. (Tr. 43; SOR response) He was in the Army Reserve; however, he was unsure whether he held a security clearance at that time. (Tr. 43) He denied that he used drugs any other time while in the Army Reserve. (Tr. 43) His cocaine use was experimental and recreational. (Tr. 43) His civilian employment involved driving a truck, and his employer prohibited illegal drug use. (Tr. 44-45) Applicant was caught on his employer's random drug testing program, and terminated from his employment. (Tr. 44-46; SOR response) He did not inform his Army Reserve unit that he used cocaine "because [he] didn't think it was serious." (Tr. 46)

In about October 2007, Applicant pulled the wrong trailer out of the dock, and a forklift fell off of the dock. (Tr. 46) His employer fired Applicant for committing a safety violation. (Tr. 46, 56; SOR ¶ 1.d; SOR response)

On October 21, 2008, an OPM investigator interviewed Applicant about his November 2004 termination of employment. (GE 3 at 283-285) The summary of the OPM interview indicates Applicant said he was fired for driving too fast for weather conditions. (Tr. 48; GE 3 at 284; SOR ¶ 1.c) He denied to the OPM investigator that he had ever had a positive drug test. (Tr. 52; GE 3 at 285)²

²Applicant's SOR does not allege that he lied to the OPM investigator when he denied that he ever had a positive drug test. The facts describe several other inconsistent statements in DOHA interrogatories, to the OPM investigator, and at his hearing. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of

Applicant's July 16, 2008 SF-86 asked, "19: **Your Military Record**—Have you ever received an other than an honorable discharge from the military?" He answered "No" to this question. (SOR ¶ 1.f; GE 1) Applicant explained that he had moved, and he did not receive notification that he had received an other than honorable discharge until 2006. (Tr. 66-67) This explanation is not credible because he knew of his OTH discharge about two years before he completed his 2008 SF-86. He said he did not disclose his OTH discharge because of "an oversight." (Tr. 68)

Applicant's July 16, 2008 SF-86 asked, "22: **Your Employment Record**—Has any of the following happened to you in the last 7 years? 1. Fired from a job." (SOR ¶ 1.g; GE 1) He said he did not disclose his firings in 2004 and 2007 because of an oversight. (Tr. 68)

Applicant's July 16, 2008 SF-86 asked in section 23e whether in the last seven years he has been subjected to non-judicial punishment (NJP) under the Uniform Code of Military Justice. (GE 1) Applicant answered, "No" and failed to disclose any NJP. (Tr. 69; GE 1) He said, "Because I didn't understand this [NJP]. Like I said, I never had nothing like that happen to me. So, when you said [NJP], a reduction in rank and [NJP], I didn't understand that one." (Tr. 70) He said he did not receive a hearing. (Tr. 70-71) He just received a letter announcing that he was reduced in rank. (Tr. 71)³

Applicant failed to disclose his 12-step alcohol treatment program from 2003 to 2004 on his July 16, 2008 SF-86, and he attributed this mistake to another possible oversight. (Tr. 83-85; GE 1)

Applicant's July 16, 2008 SF-86 asked, "24: **Your Use of Illegal Drugs and Drug Activity** a. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, . . . cocaine . . . ?" Applicant answered, "No" to this question. (SOR ¶ 1.h) He said he did not know why he failed to disclose his cocaine use in 2004. (Tr. 71)

the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Consideration non-SOR allegations outlined in this decision is strictly limited to these five circumstances.

³The allegation that Applicant received NJP is not established. Applicant's Army Reserve orders indicate Applicant was administratively reduced from staff sergeant (E-6) to sergeant (E-5) and then to private (E-1) under Army Regulation (AR) 135-178, *Army National Guard and Army Reserve Enlisted Administrative Separations* (March 13, 2007). AR 135-178, paragraph 2-9(e)(5), states, for example, "When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to private E-1, in accordance with AR 600-8-19, chapter 10." AR 600-8-19, *Personnel—General Enlisted Promotions and Reductions* (April 30, 2010), Chapter 10, permits administrative reductions of enlisted personnel for misconduct or inefficiency without imposing NJP under Article 15, UCMJ. (GE 10; AE S)

Applicant's July 16, 2008 SF-86 asked, "28: **Your Financial Delinquencies**—a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?; [and] b. Are you currently delinquent on any debt(s)?" Applicant answered, "No" to both questions. (SOR ¶ 1.i) (Tr. 71-72) Applicant said he was unemployed for four to six months before he obtained his current employment; however, he was not aware that he had any delinquent debts because his debts were in one state, and he "had moved to two different states by then." (Tr. 63, 72) The SOR and his August 28, 2009 credit report only indicated six delinquent debts totaling about \$1,500 as being delinquent more than 90 days. (SOR ¶ 1.i; GE 11) In May 2012, he paid several delinquent debts. (AE T-Z)

On September 11, 2008, an OPM investigator interviewed Applicant. (GE 2 at 372-374) Applicant said he did not have any problems at any of his employments. (GE 2 at 373) He denied being employed by the employer that fired him in November 2004, and he denied living in the state where that employer is located. (GE 2 at 373) He certified the accuracy of the OPM summary on September 9, 2009. (GE 2 at 369)

On July 2, 2009, an OPM investigator interviewed Applicant. (GE 2 at 370-371) Applicant admitted that he received an OTH discharge from the Army Reserve in April 2006. (GE 2 at 370) He also disclosed his reduction in rank; however, he said it was for unsatisfactory performance and not from NJP. (GE 2 at 370-371) He certified the accuracy of the OPM summary on September 9, 2009. (GE 2 at 369)

On August 28, 2009, Applicant responded, "No" to a DOHA interrogatory that asked whether he used any illegal drugs. (Tr. 54-55; GE 5 at 393) He said he attended Alcoholics Anonymous (AA) meetings from 1987 to 1989, three times per week. (GE 5 at 392) He admitted that his response about his illegal drug use was incorrect; however, he denied that he was trying to hide his illegal drug use in 2004. (Tr. 55) He said he "probably wasn't thinking correctly." (Tr. 56)

On December 11, 2009, in response to DOHA interrogatories, Applicant said he used cocaine on an occasional basis from 2004 to 2005 and methamphetamines three times. (GE 7 at 320, 323) His date of last cocaine use was when he was caught on the urinalysis test, which resulted in the termination of his employment. (GE 7 at 320) He attended Narcotics Anonymous (NA) meetings from November 2003 to February 2004. (GE 7 at 322) He also attended daily AA meetings in August 2006. (GE 7 at 322)

In March 2010, at a local parking lot, a female made an offensive remark about Applicant's gospel music, and Applicant said he would "blow that [rebel] flag off the back of [their] van." (Tr. 58) Applicant denied threatening to blow a lieutenant's head off. (Tr. 58, 60-61) On March 21, 2010, Applicant was arrested at his current place of employment and charged with communicating threats. (Tr. 56) Applicant went to court, shook hands with the lieutenant, and the charge was dropped. (Tr. 58-60)

On March 22, 2010, Applicant affirmed the accuracy of his October 21, 2008 OPM interview summary without indicating any changes or corrections were necessary. (Tr. 50-51; GE 3 at 289) In that OPM interview summary, Applicant said he told the OPM investigator that he was fired for failure to comply with policy. (Tr. 48, 54) He

admitted that he was “being deceitful to myself” because he “was trying to get a job” when he denied that he tested positive for illegal drug use. (Tr. 52-53) He regretted not providing correct information to the OPM investigator. (Tr. 52) He is “on medication for memory loss.” (Tr. 52) He agreed with Department Counsel’s characterization that he lied to the investigator. (Tr. 53-54)

On May 29, 2010, Applicant responded to DOHA interrogatories. (GE 8) He admitted to using cocaine three times, with his most recent cocaine use being on November 20, 2004. (GE 8 at 268) He attended NA meetings from November 2003 to February 2004. (GE 8 at 269) He attended AA meetings on a daily basis in August 1996. (GE 8 at 269)

On December 13, 2010, Applicant admitted to an OPM investigator that he used cocaine, and he was terminated from his employment because he was positive on a drug test for the presence of cocaine in his system. (GE 4 at 59) He was terminated from employment in about 2007 for a safety violation. (GE 4 at 57) He said his failure to disclose information about his employment terminations on his SF-86 was unintentional. (GE 4 at 58) He also disclosed his alcohol treatment under a 12-step AA program from December 2006 to June 2007. (GE 4 at 60)

Applicant was a medic in Operation Desert Shield/Storm, and he served in a Saudi Arabian hospital and a U.S. Army combat support hospital. (Tr. 73-74, 86; AE G) He was exposed to Scud missiles and enemy shelling. (Tr. 74) He assisted in the treatment of seriously injured people. (Tr. 75) He cleaned dead bodies. (Tr. 75)

Recently, one of his friends, who was a Special Forces veteran, shot a police officer and then killed himself. (Tr. 80) Applicant has nightmares and was diagnosed with post traumatic stress disorder (PTSD) in 2009 and depression. (Tr. 76, 81; AE A, D, BB) His PTSD and other ailments may have contributed to his decision to experiment with illegal drugs. (Tr. 76; AE BB) He attends his weekly PTSD treatment appointments; he wants to reduce his daily intake of medications; and he stays positive about his treatment and future. (Tr. 78, 81-82, 88; AE BB) He has a medical disability claim pending with the Department of Veterans Affairs (VA) for among other ailments, sleep apnea, stress, fatigue, short term memory loss, and PTSD. (Tr. 94; AE A)

Applicant is a youth minister. (Tr. 91) He is active in his church. (Tr. 91) He belongs to a Christian motorcycle group. (Tr. 91-92) He takes his job seriously, and he is a professional. (Tr. 97)

Applicant’s colleagues, friends, and pastor laud his performance and character in their statements. (AE B, C, D, F, AA, DD, EE) He shows initiative, professionalism, dedication, integrity, strong leadership, excellent physical fitness, reliability, loyalty, patriotism, and diligence. *Id.* He is an asset to his church, company, and country. *Id.*

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 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.

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 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 “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), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 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).

Analysis

Personal Conduct

AG ¶ 15 expresses 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 five conditions that could raise a security concern 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(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;

(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: (1) untrustworthy or unreliable behavior . . . ; and (3) a pattern of dishonesty or rule violations . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

All five conditions apply. In November 2004, Applicant used cocaine, tested positive for cocaine on his employer's urinalysis test, and was fired for using cocaine. In October 2007, he was fired for a safety violation. In March 2010, he was arrested and charged with communication of a threat. On his July 16, 2008 SF 86, he failed to disclose: (1) his discharge from the Army with a characterization of service of OTH; (2) his firings from his employment in November 2004 and October 2007; (3) his November 2004 cocaine use; and (4) his debts currently delinquent more than 90 days. On October 21, 2008, he lied to an OPM investigator about the reason he was fired in November 2004.

AG ¶ 17 provides seven conditions that could mitigate security concerns including:

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

(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.

AG ¶¶ 17(a), 17(b), 17(d), 17(e), and 17(g) do not apply to a sufficient degree to mitigate any SOR allegations. AG ¶ 17(c) applies to the information in SOR ¶¶ 1.a, 1.b, and 1.d. The most recent event was his firing in October 2007 for a safety violation, and this conduct has a low level of culpability, as the damage was not intentional or associated with substance abuse. These three events are unlikely to recur and no longer cast doubt on Applicant's trustworthiness. AG ¶ 17(f) applies to SOR ¶¶ 1.e and 1.i. Applicant was never tried for communicating a threat, and there is insufficient credible evidence that Applicant sincerely intended bodily harm to anyone. The charge was dismissed without going to trial. Applicant's failure to disclose debts that are currently delinquent more than 90 days or delinquent more than 180 days in the previous seven years on his July 16, 2008 SF-86 is unsubstantiated. Applicant's claim that he was unaware of such debts is credible. There are only six delinquent debts alleged, and they total less than \$1,500. He moved more than once and his mail seeking payment for the debts may not have been forwarded to him. Most of his accounts are current, and he does not appear to have financial problems.

Applicant deliberately failed to disclose the following derogatory information on his July 16, 2008 SF-86: (1) his discharge from the Army with a characterization of service of OTH; (2) his firings from his employment in November 2004 and October 2007; and (3) his November 2004 cocaine use. On October 21, 2008, he deliberately lied to an OPM investigator about the true reason he was fired in November 2004 (cocaine use). He was not credible at his hearing about why he did not disclose this information (his primary explanation was "oversight"). No one misled him into thinking this information should not be reported on his SF-86. The questions are clear, and his good character evidence shows that he is an intelligent person. He did not forget about his OTH discharge, his firings, the reasons he was fired, and his cocaine use. His false statements on his SF-86 and to the OPM investigator are serious and relatively recent. Personal conduct concerns are not mitigated.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. AG ¶ 2(c). I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline E, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. He served in the Army on active duty from 1983 to 1986, and he received an honorable discharge. He joined the Army Reserve and served on active duty in Operation Desert Shield/Storm as a medic. From early 1987 to 2006, he served in the Army Reserve, and achieved the rank of staff sergeant. During his Army service, he received one ASR, one NDSM, two AAMs, one GCM, and two OSRs. He now suffers from PTSD and other ailments. He supports his son, church, community, and employer. He is a 47-year-old supervisor of security personnel working for a defense contractor, who has been successfully employed by his employer for five years. Several character statements laud his dedication, performance and character. His awards for his Army service and several certificates of appreciation, training, and commendation are important mitigation. There is no evidence of security violations. There is every indication that he is loyal to the United States and his employer.

When Applicant denied that he tested positive for illegal drug use, he conceded that he was "being deceitful to myself" because he "was trying to get a job." He regretted not providing correct information to the OPM investigator. He agreed with Department Counsel's characterization that he lied to the investigator. His admission that he lied to the OPM investigator is an important step on the road to rehabilitation. I give Applicant substantial credit for explaining and mitigating the majority of the SOR allegations, and for presenting strong evidence of his good character. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. He has not mitigated his deliberate and intentional falsification of his July 16, 2008 SF-86 or his October 21, 2008 OPM personal subject interview. He knew he should have disclosed: (1) his discharge from the Army with a characterization of service of OTH; (2) his firings from his employment in November 2004 and October 2007; (3) his November 2004 cocaine use; and (4) his firing in November 2004 for using cocaine. He deliberately chose not to disclose this derogatory information on his July 16, 2008 SF-86 and to the OPM investigator on October 21, 2008. His explanations that these omissions were due to oversight, memory loss, being forgetful, PTSD, or

depression are not credible and weigh against rehabilitation and mitigation of the personal conduct disqualifying conditions.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude personal conduct concerns are not mitigated. Eligibility for access to classified information 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 E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d to 1.e:	For Applicant
Subparagraphs 1.f to 1.h:	Against Applicant
Subparagraph 1.i:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

ROBERT J. TUIDER
Administrative Judge