DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-00079
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/24/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on September 18, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on July 13, 2011, detailing security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement, and Guideline E, personal conduct, that provided the basis for its preliminary decision to deny him a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on August 2, 2011. He answered the SOR on August 19, 2011. On behalf of the Government, Department Counsel requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on December 1, 2011. I received the case assignment on December 12, 2011. DOHA issued a Notice of Hearing on December 30, 2011, and I convened the hearing as scheduled on January 25, 2012. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on February 2, 2011. I held the record open until February 8, 2012, for Applicant to submit additional matters. Applicant timely submitted AE A through AE J, without objection. The record closed on February 8, 2012.

Procedural Rulings

Amendment to the SOR

The Government amended allegation 3.a of the SOR on November 21, 2011 on the grounds that the allegation, as originally written, was not proper because it did not identify the question or the document Applicant improperly answered. In the amended SOR, new allegation 3.e alleges that Applicant falsified material facts in his response to DOHA's interrogatories signed on September 18, 2009. As written, the amended SOR contains several errors, which are clerical in nature, not substantive. A careful reading of this pleading reflects that the Government intended to amend allegation 3.a and not add a new allegation 3.e. Thus, paragraph e is changed to paragraph a. The revised allegation clearly outlines questions and answers on his E-QIP, which he signed on September 18, 2009, and not his October 2010 responses to interrogatories. The reference in the first two lines of revised paragraph 3.a to Applicant's "Response to DOHA's Interrogatories Concerning Illegal Drugs" is deleted and replaced with "e-QIP".[1]

Notice

Since it is not clear when Applicant received the hearing notice, I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (Tr. 12)

Motion rulings

At the hearing, Department Counsel advised that the Government was withdrawing SOR allegations 3.b and 3.c. (Tr. 11) Based on Department Counsel's proffer and Applicant's denial of any knowledge of the facts in these allegations in his answer, these allegations are stricken from the record.

During the course of the hearing, Applicant's testimony revealed that he received alcohol treatment in 2001, not the late 1990s as alleged in the SOR. Department

[1]Government's Amendment to the Statement of Reasons, p.2.

Counsel moved to correct the SOR to conform with Applicant's testimony. The Government's motion was granted. (Tr. 42)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.f, 2.a-2.g, and 3.a of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 3.b and 3.c of the SOR. These allegations are stricken from the record. He provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 56 years old, works as a facilities plumber, pipe fitter, and welder for a Department of Defense contractor. He began his current employment in October 2009. His supervisors and co-workers describe him as a trustworthy, reliable and dependable worker. They praise his work skills and integrity. He knows his job and works well with others. He provides guidance to others and is always available to resolve emergency issues. They have high regard for him and recommend him for a security clearance.[2]

Applicant completed high school and received training in sheet metal and welding at trade schools. He has worked as a pipe fitter, welder and plumber for many years. Just prior to accepting his current position, he attended truck driving school. He is also a certified motorcycle mechanic technician.[3]

Applicant married his first wife in 1983, and they divorced in 2002. From this marriage, he has a daughter, who is 23 years old, and a son, who is 21 years old. His children live independently. He married again in April 2008. His current wife suffers form multiple sclerosis and diabetes. She is now disabled from working. She recently broke her hip, and requires home help. He employs a caregiver twice a week and pays for this service by working overtime.[4]

Applicant began drinking alcoholic beverages regularly after his eighteenth birthday. He usually drank beer after work, and he consumed alcohol on special occasions. He drank regularly until the 1980s, when he and his first wife decided to "grow up and stop drinking". After a day of tubing and drinking with friends on a river in 1977, the police arrested Applicant for driving under the influence (DUI), resisting arrest, and a motor vehicle violation. The prosecutor changed the charge to obstructing the

[2]GE 1; AE A - AE J; Tr. 20, 32.

[3]GE 1; Tr. 21, 53.

[4]GE 1; Tr. 20-21.

police to which Applicant pled guilty. The court fined him and placed him on six months probation, which he completed.[5]

The police stopped Applicant for speeding in September 1979. The police also charged him with DUI. Applicant denied drinking and driving on this date. The court found the police officer lacked probable cause for the DUI arrest and dismissed this charge. The court fined him for speeding, which he paid.[6]

During the 1970s, Applicant also used illegal drugs. He tried LSD once in 1974. He did not like how this drug affected him and never used it again. He smoked marijuana on a regular basis until 1979. He used cocaine regularly until November 1979, when the police arrested and charged him with possession of cocaine with the intent to sell. Before this arrest, Applicant had purchased a small of cocaine for his and a friend's use. After his friend left Applicant's house with his share of the cocaine, the police busted into Applicant's house and arrested him. He pled guilty to a class two felony. The court sentenced him to 30 days in jail, but suspended his sentence for good behavior. The court placed him on three years probation, which he completed, and dismissed the remaining four charges of the indictment. Applicant stopped using drugs after this arrest and conviction.[7]

In 1994, Applicant's mother died. He "took her death hard," and relieved his pain by drinking alcohol. The police arrested him one evening for a traffic violation, then charged him with DUI. The court found him guilty, sentenced him to 30 days in jail, and placed him on probation. The court also suspended his driving privileges for six months. After this arrest, he decided to curb his drinking and began attending Alcoholics Anonymous (AA). He remained sober for seven years. When Applicant and his first wife separated in 2001, Applicant again consumed alcohol to excess. One evening, the police stopped him for a speeding violation. They directed him to perform a field sobriety test, which he passed. Later, the police conducted a breathalyzer test, which he failed.[8] The court found him guilty, sentenced him to 30 days in jail, and placed him on three years probation. The court also ordered that he attend alcohol counseling. He complied with the terms of his sentence.[9]

Applicant enrolled in an alcohol treatment program in 2001, which he described as self-help groups. He completed his program a year later. The intake interviewer told

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[5]GE 2; GE 3; Tr. 21, 37-39.

[6]GE 2; GE 3.

[7]GE 2; GE 3; GE 4; GE 5; Tr. 49-51.

[8]At court, he learned that the police did not properly calibrate the breathalyzer machine. His attorney failed to challenge this, as other attorneys did. His attorney never asked Applicant for payment of his services after the court appearance. Tr. 22-24.

[9]GE 1; Tr. 24-25.

him that he was an alcoholic. He has never been diagnosed as an alcohol abuser or alcohol dependent by a medical professional or licensed social worker, and the record does not contain any records showing such a diagnosis. Since completing this program, Applicant has not attended AA or enrolled in any other alcohol counseling program. He resumed drinking in 2005. He occasionally consumes a cocktail after work and two to three alcoholic drinks on the weekend. He does not drive, if he has been drinking alcohol. His past experiences taught him that he should not drink alcohol and drive. He acknowledged being intoxicated after a successful elk hunt in December 2010, but denied any subsequent intoxication.[10]

In 2005, Applicant sustained a back injury. Although he did not have medical insurance, he sought medical treatment. His doctor prescribed 40 Percocet pills to be taken four times a day for 10 days for his pain. At the end of this time, he continued to have pain in his back. His doctor declined to give him additional medication without an office visit. He lacked funds to pay for another office visit. When he mentioned his continued pain to his brother, his brother gave him 20 Percocet bills that he had. Applicant consumed these pills over the next few days. His pain subsided. He has not used Percocet or another prescription drug since 2005. If he has muscle pain, he takes over-the-counter Iuprofen.[11]

In May 2008, Applicant attended a party, where others smoked marijuana. He smoked the marijuana. Because it was much stronger than the marijuana he smoked in the past, he did not like it and decided not to smoke marijuana again. Three weeks after he smoked this marijuana, he failed a drug test at his job and was fired. He reported both incidents on his e-QIP.[12]

Applicant does not smoke marijuana or use any other illegal drug. He does not associate with individuals involved with drug use. If he attends a party, which he seldom does, and observes illegal drugs, he removes himself from the situation.[13]

Applicant did not receive a mailed citation for a dog license violation, so he was arrested. He resolved this matter.[14]

When he completed his e-QIP in September 2009, Applicant answered "yes" to the following questions in Section 22: Police Record:

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[10]GE 3; GE 4; Tr. 24-26, 41-46.

[11]GE 1; GE 3; Tr. 27.

[12]GE 1; GE 3; Tr. 26, 36-37.

[13]GE 4; Tr. 64-65.

[14]Tr. 44.

b. Have you been arrested by any police officer, sheriff, marshal, or any type of law enforcement officer? and

. . .

e. Have you EVER been charged with any offense(s) related to alcohol or drugs?

He then listed his 2001 DUI and 2009 dog license incident, but not his earlier DUI arrests or felony drug conviction in 1980. Applicant explained that he was told to answer truthfully; that he had little time to complete his e-QIP; and that he thought he only needed to list criminal matters which occurred in the last seven to ten years. Because he was not sure what type of clearance he would receive, he listed everything in the last ten years. He recognized at the hearing that the seven-to-ten-year time frame related only to his answer to question b, not both questions. He acknowledged that he did not read the questions carefully, but denies intentionally hiding information from the Government. His completed e-QIP reflects that Applicant listed his 2001 DUI, his 2009 dog license arrest, his 2008 marijuana use, his 2005 Percocet use, and his 2006 job loss.[15]

Policies

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

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. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a 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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

[15]GE 1; Tr. 30, 33-35.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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 an 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.

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).

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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."

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

> (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;
>
> (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;
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> (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has been arrested and charged with DUI four times, with the last arrest occurring in 2001. He consumed alcohol on these occasions to excess and acknowledged that he regularly consumed alcohol until the early 1980s. At the present time, he consumes alcohol. Although an interviewer for an alcohol counseling course told him that he was an alcoholic, the record contains no medical report by a qualified medical professional or a licensed social worker diagnosing him as alcohol dependent or as an alcohol abuser. AG ¶¶ 22(d) and 22(e) are not raised. The Government established its case under AG ¶¶ 22(a) and 22(c).

The Alcohol Consumption guideline includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through 23(d), and the following are potentially applicable:

(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 or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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); and

(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 meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

As a young adult, Applicant regularly consumed alcohol to the point of intoxication. His alcohol consumption resulted in one DUI arrest in 1977, which the prosecutor changed to obstructing the police. The police stopped him for speeding in 1979 and then charged him with DUI. The court dismissed the DUI charge for lack of probable cause, which supports his contention that he did not drive while intoxicated. In the 1980s, he and his first wife decided to change their youthful drinking habits and did.

After his mother died in 1994, Applicant started drinking to excess. This conduct resulted in a DUI arrest and conviction, then a decision by Applicant to again change his drinking patterns. On his own initiative, he attended Alcoholics Anonymous (AA). For

nearly seven years, Applicant did not drink alcohol. When he and his wife separated 2001, he again turned to alcohol to ease his emotional pain. This decision resulted in his last DUI, more than 10 years ago. While he attended an alcohol counseling program as directed by the courts and remained abstinent from alcohol for a time, he returned to drinking in 2005. He limits his drinking to one cocktail at home and never drives after he has consumed alcohol. He current use of alcohol is responsible. Likewise, it does not impact his work performance, as indicated by his references. An individual is not required to abstain from consuming alcohol to hold a security clearance. Applicant recognizes that excessive alcohol consumption creates problems for him. He chooses not to create these problems for himself. He has mitigated the Government's security concerns about his alcohol consumption.

Guideline H, Drug Involvement

AG ¶ 24 describes the disqualifying conditions that could raise security concerns:

> Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.
>
> (a) Drugs are defined as mood and behavior altering substances, and include:
>
> > (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
> >
> > (2) inhalants and other similar substances;
>
> (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern. I have considered all the disqualifying conditions, and the following are potentially applicable:

> (a) any drug abuse (see above definition);
>
> (b) testing positive for illegal drug use;
>
> (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program.

Applicant smoked marijuana and used cocaine regularly until 1980. During this time, he used LSD once. To use these drugs, Applicant had to possess them. He also purchased marijuana and cocaine for his use and the use of others. There is no evidence he sold drugs for profit. Since 1980, he smoked marijuana on one occasion, and used Percocet without a prescription once. He has never been diagnosed as a drug abuser or drug dependent, thus, AG ¶¶ 25(d) and 25 (e) are not raised. He tested positive for marijuana in 2008. The Government established its case under AG ¶¶ 25(a), 25(b), and 25(c).

The Drug Involvement guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 26(a) through 26(d), and the following are potentially applicable:

(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,

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

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

Applicant experimented with LSD once in 1974. He did not like its effect and has not used it since. He used cocaine regularly for several years in the late 1970s, but stopped his use of cocaine after his arrest in November 1979. Because he used these two drugs more than 30 years ago, his past use of these drugs does not raise a security concern. AG ¶ 26(a) applies to SOR allegations 2.d through 2.g.

Throughout the 1970s, he smoked marijuana regularly, then stopped smoking it after his arrest in 1979. He did not smoke marijuana for more than 28 years. While at a party in May 2008, he smoked it again, but did not like its effect. He found the marijuana much stronger than in the past. He has not smoked marijuana in the last four years, a reasonable period of abstinence. He credibly testified that he has no intent to smoke marijuana or use any other illegal drug in the future. While he has not signed a statement of intent about his future drug use, his testimony made it clear that he does not use illegal drugs and has no intent to do so in the future. He does not associate with drug users on a daily or weekly or monthly basis. Should he be at a party where he observes others smoking marijuana, he removes himself from the situation. Association with individuals involved in criminal activity is not part of his lifestyle. He spends most of his time at work or at home with his wife. AG ¶ 26(b) applies to his marijuana use.

Applicant sustained a back injury in 2005. He sought medical treatment and the treating physician prescribed a 10-day supply of Percocet to relieve his back pain. At the end of 10 days, he still experienced back pain. He attempted to get additional medication from the doctor, but the doctor would not prescribe additional pills unless Applicant returned to the doctor's office for a follow-up examination. He did not have insurance and did not have the money to pay for another office visit. He complained about his pain to his brother, who gave him an additional 20 pills for his back pain. After he finished these pills, his pain subsided, and he did not need any additional medication. This is the only time he used prescription drugs without a prescription. His abuse of Percocet was limited, and he ceased its use more than six years ago. AG ¶ 26(c) applies to SOR allegation 2.c.

The evidence shows excessive drug use by Applicant in the 1970s and a much more limited use of illegal drugs in 2005 and 2008. On the surface, these factors give the appearance of a long history of drug use. However, the facts in this case also show that Applicant abstained from any illegal drug use for 25 years. His one-time use of Percocet to relieve back pain, when he lacked sufficient funds for a visit to the doctor, does not reflect an underlying drug abuse problem. His decision to smoke marijuana in 2008 after many years of abstinence showed poor judgment, but it is not evidence of a prolonged history of drug use. Twenty-five years without using illegal drugs is a long time, and reflects a pattern of drug abstinence, not drug use. In weighing all the evidence of record regarding his drug use, past and present, I find that he has mitigated the Government's security concerns about his past drug use under Guideline H.

Guideline E, 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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

(g) association with persons involved in criminal activity.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his September 2009 e-QIP, when he failed to list all his arrests for DUI and his one drug arrest in 1979. In his response to the SOR and at the hearing, he denied that he intentionally falsified his answers to these questions. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.[16]

Applicant was instructed to answer the questions on his e-QIP truthfully, but he was given little other advice or guidance on completing his security clearance application. He had little time to complete this lengthy document. After reading the questions and instructions in Section 22, Applicant listed a 2001 DUI arrest, and a 2009 arrest related to a dog license. His misinterpreted the instructions on the length of time he should go back. He thought he needed to only list arrests no further back than 10 years, not those which occurred 30 years ago. His misunderstanding of the scope of his response on his e-QIP does not equate to intentional falsification, because the seven-to-ten year time applied to his answer to question b, but not to his answer to question e, making it easy for him to confuse his answer. Not only did Applicant list his 2001 DUI arrest and his 2009 arrest, he also listed his use of Percocet without a prescription, his one time use of marijuana in 2008 and his 2008 job loss. Without the disclosure of these potentially detrimental events to the grant of a security clearance to Applicant, the Government would not have known about this conduct of Applicant. A review of the record and testimony indicates that Applicant provided honest and clear information within the time period he believed relevant. The Government has not established intentional falsification by Applicant under Guideline E.

[16] *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

When he smoked marijuana at a party in 2008, Applicant associated with individuals involved in criminal activity. Attending a social event where marijuana is smoked indicates an association with individuals involved in criminal activity as marijuana is an illegal drug. The Government has established its case under AG ¶ 16(g).

The Personal Conduct guideline includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following are potentially applicable:

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

Applicant does not regularly or routinely associate with individuals who are involved in criminal activities. His friends are not involved in criminal activity nor is he. If he attends a party where he observes the use of marijuana, he removes himself from the marijuana users. Since he seldom attends parties, there is little doubt about his trustworthiness, reliability, judgment, or willingness to comply with rules and regulations. He has mitigated the Government's security concerns under Guideline E.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the

evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant clearly misused and abused alcohol and drugs in the 1970s. His felony conviction in 1980 for drug possession was a wake-up call to him. He stopped all drug use for 25 years. He reduced his alcohol consumption until his mother's death in 1994. When he was arrested for DUI in 1994, he realized that he needed to change his behavior towards alcohol and did not drink for a number of years. The end of his marriage created another emotional trauma which led to drinking and his last DUI more than 10 years ago. He learned the negative consequences of his alcohol consumption from these incidents and made decisions to change his attitude and behavior towards alcohol. His current alcohol consumption is responsible, as he limits the amount of alcohol he consumes and does not drive if he has been drinking alcohol. His more recent experimentation with marijuana occurred almost four years ago, and will not occur again, as he did not like the effect of the marijuana. Drug use is not a part of his life. His managers and co-workers think highly of his work skills and work ethic. He is dependable and reliable at work, and he takes care of his disabled wife. His current limited consumption of alcohol does not interfere with his job performance. After reviewing all the evidence of record and the testimony, I find that Applicant would protect the interests of the Government.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol consumption, drug involvement and personal conduct under Guidelines G, H, and E.

Formal Findings

Formal findings for 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge