DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-00818
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: Barry M. Sax, Esquire

September 6, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused methamphetamine to the point of medically diagnosed addiction while holding a Department of Energy security clearance in 2002. Within a year of completing substance abuse treatment, he abused cocaine on several occasions between September 2003 and May 2004. Applicant deliberately omitted his then recent abuse of cocaine when he applied for his first Department of Defense clearance in September 2004. While he disclosed the cocaine abuse when he reapplied for a security clearance in September 2009, Applicant has not been candid about the September 2004 falsification. The drug involvement and personal conduct security concerns are not fully mitigated. Clearance denied.

Statement of the Case

On April 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct), which 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on May 31, 2011, and he requested a hearing if the information submitted with his Answer was insufficient for a favorable determination. On June 20, 2011, Applicant requested an expedited hearing because his contract with his employer was scheduled to terminate as of July 31, 2011, due to his lack of a security clearance. On June 27, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for July 26, 2011.

I convened the hearing as scheduled. Nine Government exhibits (GE 1-9) and 28 Applicant exhibits (AE A-BB) were admitted without objection. Applicant and four witnesses testified on his behalf, as reflected in a transcript (Tr.) received on August 4, 2011.

Rulings on Procedure

At the hearing, the Government moved to strike "about once every two weeks" from SOR allegation 1.e concerning the extent of Applicant's cocaine abuse from about October 2003 through May 2004. The SOR was amended without objection.

Summary of SOR Allegations

The SOR alleged under Guideline H, Drug Involvement, that Applicant used illegal drugs, including LSD, marijuana, and hallucinogenic mushrooms, from about 1975 to 1985 (SOR 1.a); that he used and purchased crystal methamphetamine from February to December 2002 while holding a security clearance (SOR 1.b), and his clearance was revoked in 2002 for using illegal drugs at work (SOR 1.f); that he received treatment for diagnosed methamphetamine addiction from November 2002 to January 2003 (SOR 1.c, 1.d); and that he used cocaine about once every two weeks from October 2003 through May 2004 (SOR 1.e). Under Guideline E, Personal Conduct, Applicant was alleged to have failed to resolve two open warrants issued around September 2004 (SOR 2.a) and December 2004 (SOR 2.b) for motor vehicle citations. He allegedly also falsified a September 2004 security clearance application by not disclosing his use of cocaine (SOR 2.c), including while he possessed a security clearance (SOR 2.d).

Applicant admitted the drug abuse and treatment for methamphetamine addiction with the exception of the extent of the cocaine abuse alleged in SOR 1.e. He explained that he had been too vague regarding his relapses into cocaine abuse in 2003 and 2004, and he denied that his abuse of that drug was frequent, continual, or chronic. Applicant denied the Guideline E allegations in that he had resolved the warrants, the last one four or five years ago. As for the alleged omission of cocaine use from his security clearance application, Applicant denied it was deliberate ("The omission of the isolated use of

cocaine once in September 2003 and 3 more times between Feb. 15th and May 2004 was an unconscious error, not deliberate. . . .").

Findings of Fact

Applicant's admissions to the illegal drug abuse, including while he had a security clearance, to treatment for methamphetamine addiction, and to revocation of his security clearance in December 2002 because of drug abuse, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 59-year-old physicist with a doctorate degree. (GEs 1, 2.) Since June 1, 2009, he has been employed as a member of the technical staff at a university-affiliated research laboratory primarily engaged in defense contract work. He requires a Secret security clearance for his duties. (GE 1; Tr. 83.)

Applicant came to the United States for college in 1972. While in undergraduate school from September 1972 to May 1975 (GE 1), Applicant smoked cannabis, 1.5 joints per weekend at times, until May 1975. (GE 5; AE M; Tr. 59.) In September 1976, he began graduate studies, and he eventually earned his Ph.D. degree in December 1981. (GE 1.) From August 1977 to late 1981, Applicant used cannabis, cocaine, and an illegal hallucinogen (hallucinogenic mushrooms or psilocybin) at random parties, about three or four times a year.[1] (GEs 5, 9; AE M; Tr. 59-60.) In July 1982, he married his spouse, whom he met in 1978 while in college. (GEs 1, 5.) They had a son in 1983 and a daughter in 1986. (GE 1; Tr. 108.) Applicant worked on a U.S. air base for a university. (GE. 5.) In January 1986, he became a naturalized U.S. citizen. (GEs 1, 2.)

In February 1987, Applicant began employment at a national laboratory involved in projects for the Department of Energy. He was granted a "Q" clearance for his duties. (GEs 1, 2, 5.) His family became integrated in their new community, where they bought a home in March 1987. (GE 1.) Applicant coached youth soccer for several years. (AEs H, U, V.)

In the mid-1990s, Applicant began dealing with family issues involving his father. His older brother, who had been estranged from their father, began involving himself in their father's affairs. Applicant traveled abroad in October 1999 and again in June 2000 to arrange for surgery and aftercare for his father, to help with repairs on the home, and to deal with his father's tenants, only to have his brother take control when he left. On his death in September 2000, Applicant's father left an estate worth between $4 and $6 million. Applicant's brother illegally withdrew funds from their father's account and sold off assets from the estate. Applicant and his sisters sued him. Applicant traveled abroad twice

[1]Applicant gave 1983 as an estimated date for his last use of cannabis, cocaine, and hallucinogenic mushrooms. (GE 5.) At his hearing, he indicated that he stopped this drug abuse when he finished college in 1981. (Tr. 60) While in treatment in 2002, he told clinicians that he had experimented with marijuana, LSD, and cocaine in college but had not used those drugs since. (GE. 9.) I accept his testimony that he stopped this drug use in 1981. The discrepancy in the record concerning the type of hallucinogen he abused (LSD or hallucinogenic mushrooms (psilocybin)) is not significant in light of the absence of any recurrence since the early 1980s.

in relation to this lawsuit, in August 2003 and in October 2006, before his brother died in May 2007. In May 2009, one of Applicant's sisters took over as executor of their father's estate. (GEs 1, 6.)

At work in the United States, Applicant made several seminal contributions in his field of expertise. (AE W.) He won national recognition in 1996 (AEs F, X, Y), and his inventions were eventually patented in June 2001 (AE X) and in July 2004. (AE Z.) By the early 2000s, the stress of dealing with his brother, and long hours at work, had led to emotional distance between him and his spouse. (Tr. 109-10.) Around early 2002, Applicant became sexually involved with a woman, who was a methamphetamine addict ("I was an easy target for a drug user in [city omitted] who—a young lady paraded herself and then came to talk to me and I was—I was, at the time, under a lot of stress and just at the time it felt good and I started."). (Tr. 61.) She traded sex for cash, which she used to buy drugs. In February 2002, Applicant began using crystal methamphetamine with her, for the first month once a week, and then three times a week. Around May 2002, Applicant and the woman terminated their relationship. Applicant began purchasing methamphetamine from a drug dealer. By July 2002, he was abusing the drug on a daily basis. He realized he was addicted, but he needed it to feel "normal." Around November 2002, his spouse confronted him about his drug abuse after she found a vile of methamphetamine in his jacket. (GE 9; Tr. 62, 111-12.) Applicant admitted that he had used methamphetamine, but he did not reveal that he had sexual relations with another woman. Applicant continued to abuse the drug "compulsively," almost every day until December 2002, when he was suspected of abusing drugs at work after he left a straw for snorting methamphetamine on a lab table. (Tr. 92.) He was tested for cause and admitted to his employer that he had used methamphetamine while holding a Q clearance. His employer placed him on probation, suspended his Q clearance, and required that he seek treatment for his drug abuse.[2] (GEs 1, 2, 7, 8, 9; AE S.)

From December 9, 2002 to January 6, 2003, Applicant received inpatient treatment and was diagnosed by a staff physician with amphetamine dependence and depression. He was in "tremendous denial" of his addiction problem on admission, and had trouble staying focused on his recovery. He tested positive for methamphetamine in a December 11, 2002 drug screen, although a December 18, 2002 drug screen was negative for the drug. As of December 21, 2002, Applicant continued to question his treatment for addiction because he believed his drug abuse was due to the stress in his life, including his marriage. At discharge, he showed "some" progress on most of his treatment goals, including family issues. Many issues had been unresolved concerning his relationship with

[2]Applicant indicated on his 2009 e-QIP that his Q clearance was revoked "following [his] decision to confess to using drugs at work so that [he] could seek help." (GE 1.) On direct examination, he testified similarly that the government revoked his security clearance in 2002 because he had come forward about his drug use and he asked for leave to pursue rehabilitation. (Tr. 76.) However, according to his treatment records, his employer mandated his rehabilitation after he had left drug paraphernalia on a table for experiments at work. (GE 9.) It was not until cross-examination that Applicant acknowledged that a technician found "one of the snorting straws," and that he had been told by his supervisors that he should come forward or face stiff consequences, to include termination. (Tr. 92-93.) Even so, Applicant asserted that the laboratory had no way of knowing that the straw was for snorting methamphetamine ("that was simply a straw"). He testified that the technician assumed it was for methamphetamine use. (Tr. 93-94.)

his spouse, who lacked her own understanding of addiction (i.e., she believed his drug problem was "a blip on the radar screen" that would be fixed on his discharge so they did not need to inform their teenage children about his treatment). Applicant made good progress in agreeing to follow up with recommended aftercare. He was given a fair prognosis, provided he attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) on a regular basis and obtain a sponsor, attend a continuing care program twice a week, participate in individual or couples therapy, and take a prescribed anti-depressant. (GE 9.)

Following his discharge from the treatment program, Applicant returned to his job at the laboratory. He received stress counseling with a therapist once a week until September 2003 and drug counseling with a different therapist until October 2003. (GEs 5, 7, 8.) Applicant also attended AA meetings until about 2006, two to four times per week through October 2003 and then once or twice per week with declining frequency. (GE 5; AE O.) Applicant felt "marginalized" by his manager at the laboratory, and on one occasion in September 2003, he "met one of the bad actors" from his past in the downtown area and abused cocaine with him. (Tr. 68.)

In October 2003, Applicant resigned from his job at the laboratory for a "head-hunter mediated offer" from a defense contractor, to work on a project starting in November 2003. Applicant found an apartment in his new locale while his spouse remained behind in their previous area because their daughter had not yet graduated from high school. (Tr. 68, 112.) Temporarily separated from his immediate family, and still having relationship problems with his wife, Applicant used cocaine "a number of times" between October 2003 and May 2004 while continuing to attend AA. (GE 1.) He began frequenting bars and purchased cocaine from a bouncer on about five occasions between February 15, 2004 and May 2004. (GEs 5, 7.) Applicant has not used any illegal drug since his immediate family joined him around May 2004, and he does not intend to use any illegal drug in the future. (Tr. 78.)

On September 8, 2004, Applicant completed an Electronic Personnel Security Questionnaire (SF 86) for a Secret clearance. He responded affirmatively to whether he had used any illegal drugs in the last seven years, and to whether he had ever illegally used a controlled substance while possessing a security clearance. He indicated that he had used "amphetamines" weekly to daily between March 2002 and December 2002. About whether he had used the drug in a sensitive position, he disclosed weekly use of amphetamines during that same period. Applicant did not list any involvement with cocaine. (GE 2.) He testified that he weighed his abuse of methamphetamine to his cocaine "relapses," which he considered to be part of his rehabilitation and not part of his drug use. (Tr. 77, 97-99.) However, he also attributed the omission to self-denial and "selective memory loss" ("I ran to AA and it was like it never happened, in my mind."). (Tr. 94-99.)

On February 7, 2005, Applicant executed an affidavit for an investigator for the Office of Personnel Management (OPM) in which he discussed his use of methamphetamine. He did not mention his more recent involvement with cocaine. (GE 8.)

In July 2005, Applicant was laid off from his job with the defense contractor, apparently before any decision on his security clearance eligibility. He was unemployed until June 2009, when he started his present employment. Over the almost four years that he was out of work, Applicant dealt with his father's estate, which remains unresolved. (GE 1.) Some of Applicant's financial accounts became delinquent during that time. His mortgage payment, college tuition for his children, and funding the lawsuit against his older brother took priority. In October 2008, the IRS filed a $22,665.26 tax lien against him at his then address (Tr. 102-03) for unpaid federal taxes for tax year 2003. He had not filed a return for that year or for 2004, for which he and his spouse are jointly culpable. (Tr. 101, 115.) Applicant also owed back property taxes of $6,681.20. He paid his delinquent property taxes in December 2009. The federal tax lien was withdrawn on January 29, 2010, after he paid the IRS a reassessed amount of $9,900 on January 20, 2010. (GE 4.)

On September 8, 2009, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for a Secret clearance with his current employer.[3] Applicant responded "Yes" to all the illegal drug inquiries in section 23 of the form. He disclosed that he used cocaine from about October 2003 to May 2004: "I had a drug use relapse during which I used cocaine a number of times and battled the addiction by attending Alcoholics Anonymous." He also listed his abuse of methamphetamine between February 2002 and December 2002, two to three times a week initially and then by the summer almost every day. Concerning his finances, Applicant indicated that some accounts had been placed for collection, but he responded "No" to 26.c, "Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?," to 26.d, "Have you had a lien placed against your property for failing to pay taxes or other debts?," and to 26.p, "Are you currently delinquent on any Federal debt?" (GE 1.) Applicant, who had yet to resolve the $22,665.26 federal tax lien, could not or would not give a reasonable, consistent explanation for why he responded "No" to questions 26.c, 26.d, and 26.p.[4] He initially testified that the lien was filed after September 2009. (Tr. 100-01) He then indicated that the lien was filed earlier, around 2006, but claimed he had no knowledge of it. (Tr. 101-02.) He later claimed that he "didn't realize the question," and that the forms are "very long." (Tr. 104.) His inconsistent explanations are insufficient to rebut the presumption of delivery of the lien notice issued in October 2008, at the address where he was living. Concerning his failure to disclose that he owed back taxes, Applicant responded, "Because even though I had failed to file my taxes in a—I had a net positive return to myself. The Government had made assumptions about my income when I was not working . . . about what I owed and they charged me for it. I had a net positive. In fact, the Government still owes me $12,000 for 2005." (Tr. 104.)

On November 9, 2009, Applicant was interviewed by an OPM investigator, in part about his illegal drug use and his financial issues. Applicant told the investigator that he

[3] Applicant certified the accuracy of the information electronically on September 8, 2009, but certified the form by his signature on October 5, 2009. (GE 1.)

[4] While the Government did not allege falsification of his September 2009 e-QIP concerning his omission of the tax debt and lien, the information is relevant to assessing his overall credibility on the issue of whether he concealed his cocaine abuse from the Government in September 2004.

had used crystal methamphetamine while holding a security clearance in 2002 on a daily basis. He indicated that he notified his employer of his drug use in November 2002, and was admitted to an inpatient treatment program. As for his abuse of cocaine, Applicant described his use as once every two weeks from November 2003 to May 2004. He indicated that he purchased cocaine from employees at nightclubs that he frequented. Applicant also acknowledged to the investigator that he had not filed his federal or state income tax returns during the 2003 to 2004 period because of his drug use and family conflicts. While he filed his returns in 2005, the IRS filed liens against him for amounts owed of $1,069 and $22,665. He appealed the second lien as a miscalculation of his debt. (GE 7.)

In June 2010, Applicant was provided the opportunity to review the investigator's report of his interview. He averred that he had previously overstated the frequency of his amphetamine and cocaine abuse. He described his abuse of amphetamine as "a crescendo that went from bi-weekly to daily." Applicant described his abuse of cocaine as "a series of relapses common with drug addicts as they quit." He denied any cocaine use after the incident in September 2003 until February 15, 2004, when he bought a quarter gram of cocaine from a bar bouncer. He explained that he went back one month later for more cocaine, and there were three more instances of similar purchases separated by about two weeks until May 2004.[5] He claimed in June 2010, and in his answer to the SOR, that he flushed the cocaine the last time without using any. (GE 5.) However, he testified at his hearing that he last used cocaine in May 2004. (Tr. 77.) There is no evidence of any subsequent illegal drug involvement or of any current association with illicit substance abusers, however.

As of July 2011, Applicant had not told his spouse of his extramarital affair. She believes he was partying with some "losers" in the downtown area when he abused methamphetamine. As to why he has not been candid with his spouse about the affair, Applicant testified he was told by his counselors "to spare her that pain." (Tr. 64.) Available treatment records do not confirm that advice. Instead, they reveal that Applicant did not want his spouse to know the circumstances of his introduction to methamphetamine. (GE 9.) Applicant indicates that he would tell his spouse about the other woman if he is in a situation where he should tell her. (Tr. 64.) Applicant and his spouse have a good relationship now. (AE B; Tr. 64, 82, 113.) According to Applicant, they have agreed that some things are better left untold. (Tr. 65.)

As of the issuance of the SOR in mid-April 2011, Applicant had no outstanding warrants against him. Previous warrants for failure to pay traffic fines had been resolved, albeit through late payment. (AE Q; Tr. 75.)

Applicant's present supervisors fully support his application for a security clearance based on their interactions with him in the workplace. None has any knowledge about

[5]The Government accepted Applicant's denial of cocaine abuse once every two weeks from October 2003 to May 2004. (Tr. 95.)

Applicant's past illegal drug use.[6] (Tr. 31-32, 125, 127, 131-33, 136.) His immediate supervisor, who has known Applicant since the late 1980s through their work in the same area of technology, was instrumental in hiring Applicant for his present position. In addition to bringing technical capability and knowledge to the job, Applicant has shown himself to work well with others in the group. (AE C; Tr. 27-29.) This supervisor rated Applicant's performance as excellent in 2010. (AE AA.) He believes Applicant's problems are financial (foreign assets and tax records). (Tr. 31-32.) Applicant's group leader, who has held a security clearance since 1979 (Tr. 121), also developed a professional relationship with Applicant before June 2009, through annual professional meetings they attended since 1987. In addition to making valuable technical contributions, Applicant has been generous in sharing his knowledge with less experienced staff members. (AE D; Tr. 122-23.) He understands Applicant's problems to be in the nature of foreign family issues and an alcohol problem that Applicant resolved. (Tr. 125, 127.) A coworker, who has been with Applicant's present employer since October 2010 after over 20 years with another defense contractor, interacted with Applicant from 1995 to 2000 at collaborative meetings between his engineers and scientists at the energy lab. Applicant handled sensitive proprietary information belonging to this coworker's then employer "with complete confidentiality and integrity." (AE. D; Tr. 130.) He has a social relationship with Applicant as well, yet knows only that Applicant had a speeding ticket at one time and an IRS issue. (Tr. 132.)

Applicant's former coworkers, who still work at the national laboratory, attest to Applicant being reliable and diligent with respect to carrying out his security responsibilities when they worked together from the late 1980s to 2003. (AEs G, H.) Applicant also has the support of a lieutenant colonel with a doctorate degree, who currently serves as a branch chief at a U.S. military laboratory. This officer interned for ten months at the energy laboratory as a junior researcher more than ten years ago. He credits Applicant with developing his fundamental skills, and he recommends that Applicant be granted a security clearance. While they did not work on any classified programs together, he observed Applicant "handle official information with integrity while representing the experimental results and predictions with honesty." (AE I.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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,

[6]Applicant testified that he wanted to explain himself to his supervisors, but they did not want to hear about it. (Tr. 57-58, 84, 134.) He claimed that he disclosed "everything" to his facility security officer (FSO), however. (Tr. 57, 83-84, 134.) Applicant provided no corroborating evidence to confirm the FSO's knowledge, although if his FSO saw the October 2009 SF 86, then he would know about Applicant's drug involvement.

these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 that the applicant may deliberately or inadvertently fail to 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

Drug Involvement

The security concern for drug involvement is set out in AG ¶ 24:

> 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.

Under AG ¶ 24(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.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." As for the potentially disqualifying conditions, AG ¶ 25(a), "any drug abuse," applies because of Applicant's abuse of marijuana and hallucinogenic mushrooms from 1975 to 1983, his methamphetamine abuse from February 2002 to December 2002, and his cocaine abuse between September 2003 and May 2004. AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia," applies in that he purchased methamphetamine and cocaine. Furthermore, AG ¶ 25(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence," applies because he was diagnosed with amphetamine dependence by a staff physician at the medical center where he received inpatient rehabilitation from December 2002 to January 2003. AG ¶ 25(g), "any illegal drug use after being granted a security clearance," is implicated because he abused methamphetamine while he held a Q clearance for the Department of Energy.

The circumstances of Applicant's illegal drug abuse show extremely poor judgment on his part. Applicant's involvement with marijuana and hallucinogenic substances is attributed to youthful indiscretion, but his abuse of illegal drugs was not confined to college. He became involved with methamphetamine while in an adulterous affair and while holding a position of trust with the U.S. government. Despite completing a 28-day inpatient program, aftercare counseling, and attending AA, he accepted an offer of cocaine in September 2003. Then, after he relocated for a new job, he sought out, bought, and used cocaine on several occasions between February and May 2004. Since his last abuse of an illegal drug (cocaine) was in May 2004, Applicant satisfies AG ¶ 26(a) in that "the behavior happened so long ago."[7] That being said, given his diagnosed dependency, and his history of abusing illegal drugs to cope with family and work stress, the passage of time in and of itself is insufficient to mitigate the drug involvement concerns. There must be evidence of a change to a drug-free lifestyle and support for his recovery to guarantee against future relapse.

Under AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," can be shown by (1), "disassociation from drug-using associates and contacts;" (2), "changing or avoiding the environment where drugs were used;" (3), "an appropriate period of abstinence," or (4), "a signed statement of intent with automatic revocation of clearance for any violation." There is no evidence that Applicant has associated with any illegal drug users since May 2004. In June 2009, he and his spouse moved across the country. Although applicable, AG ¶ 26(b)(1) and ¶ 26(b)(2) are not controlling in mitigation because

[7]AG ¶ 26(a) applies when "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."

Applicant sought out cocaine in a new area after he moved in November 2003 for a previous job. But when considered with his seven years of abstention, and intent not to use any illegal drug in the future, AG ¶ 26(b) applies.

AG ¶ 26(d), "satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional," applies only in limited part. Applicant completed a 28-day inpatient program in January 2003. However, his prognosis at discharge was assessed only as fair, and dependent on compliance with aftercare requirements, including counseling and AA or NA with a sponsor. Applicant apparently completed the aftercare counseling, although he provided no records of his sessions or of his clinical prognosis after those sessions. He presented evidence of AA meetings attended only in 2003. Even if I accept his testimony that he went to AA for a couple of years, until 2006, there is no evidence that he had a sponsor in AA or about the extent of his commitment to the AA program. At his discharge from the inpatient rehabilitation program in January 2003, Applicant was in denial of the severity of his addiction. While he has acknowledged the compulsive nature of his methamphetamine abuse, he continues to see himself as the victim ("an easy target") of a woman who paraded herself before him. He sees his involvement with cocaine as medical relapses that "just happen," rather than as the criminal behavior that it is. He persisted in claiming that he came forward about his illegal drug involvement to his previous employer, when, in fact, he admitted to abusing methamphetamine only after a coworker had found his drug paraphernalia at work. His testimony that it was just a straw and the laboratory could prove nothing against him is further evidence of minimization undermining his reform. He has failed to fully mitigate the serious drug involvement concerns. Even though he has remained drug free for the past seven years, I cannot be certain that he will avoid illicit drugs if faced with a stressful life circumstance in the future.

Personal Conduct

The security concern about personal conduct is set out in Guideline E, AG ¶ 15:

> 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.

Concerning the arrest warrants alleged in SOR 2.a and 2.b, Applicant does not deny that he was cited for motor vehicle violations and that he had not paid the fines on time. This conduct is contemplated within AG ¶ 16(d):

> (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:
>
> (3) a pattern of dishonesty or rule violations.

However, Applicant presented evidence showing that he had resolved any outstanding warrants well before the SOR was issued. AG ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability," applies in that the evidence does not establish that Applicant had open warrants against him as alleged in the SOR.

Yet personal conduct concerns arise because Applicant concealed his cocaine abuse from the Department of Defense when he applied for a security clearance in September 2004. Even if it was explained to Applicant that drug relapses were a common occurrence in the struggle to overcome addiction, Applicant clearly knew that he had used the cocaine. He cannot consistently claim that he weighed his methamphetamine abuse against his cocaine abuse ("I weighed drug-use vs. relapse behavior in an unconscious rationalization on my part.") and at the same time claim selective memory loss. The drug inquiry is unambiguous in asking whether he used any illegal drugs within the preceding seven years. Furthermore, when given the opportunity to set forth the details of his illegal drug involvement in a February 2005 affidavit, Applicant did not mention any relapses. Instead, he gave the impression that his drug use ended in December 2002 ("I decided to attend a detox program for twenty-eight days in a hospital in [location omitted]. I was there from December 2002 into January 2003. After that medical treatment I had one year of follow-up counseling. I feel the treatment worked and I am now drug free."). (GE 8.) His silence about his cocaine abuse in the February 2005 affidavit, which he has not explained, tends to substantiate the intentional nature of his SF 86 omission as to question 27. Concerning SOR 2.c, the Government established its case for application of 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.

However, because Applicant's Q clearance was revoked in December 2002 for abusing methamphetamine at work, he no longer had a security clearance when he used cocaine in September 2003 and in 2004. Applicant did not falsify his response to question 28, when he disclosed only that he used amphetamines while possessing a security clearance. So SOR 2.d was not proven.

Applicant has the burden of mitigating the personal conduct concerns raised by his omission of his cocaine abuse from question 27 on the 2004 questionnaire. Certainly, it is to Applicant's credit that he disclosed his abuse of cocaine on his 2009 e-QIP. However, this effort to correct the record, five years later, cannot reasonably establish AG ¶ 17(a),

"the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." With due consideration to the position of Applicant's counsel that "prompt" may be at the first opportunity irrespective of the passage of time, Applicant could have revealed his cocaine abuse in his February 2005 affidavit, and he did not do so.

Applicant's concealment of his cocaine abuse in 2004 is likewise not mitigated under AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," largely because of persistent doubts for his personal judgment, reliability, and trustworthiness. Although not specifically alleged in the SOR, Applicant responded falsely on his 2009 e-QIP to questions 26.c concerning failure to pay Federal taxes or to file a tax return when required by law, 26.d about any liens filed for failure to pay any taxes or other debts, and 26.p regarding any outstanding federal debt. As of his 2009 e-QIP, the IRS had an outstanding tax lien of $22,665.26 against him which he did not resolve until January 2010. Applicant may well have been justified in disputing the assessed amount, but he knew that he had not filed timely tax returns for 2003 and 2004, and that the IRS had a lien against him for back taxes that he had not paid.

Moreover, as discussed under Guideline H, Applicant asserted that he self-reported his drug problem to his previous employer, but the evidence shows that he was confronted by his employer after a coworker found his drug paraphernalia at the workplace. His overall credibility is undermined by his lack of candor on this issue.

Applicant has also not been forthcoming about his drug abuse to his present coworkers. While he maintains that he was thwarted by his coworkers in his efforts to inform them, the three coworkers who testified on Applicant's behalf had a different understanding about the Government's concerns. Applicant's immediate supervisor testified that the issues were financial (foreign assets and taxes). (Tr. 31-32.) Applicant's group leader testified that Applicant had foreign family issues (Tr. 125) and a drinking problem. (Tr. 127.) Another coworker, who has a social relationship with Applicant, testified Applicant informed him of a speeding ticket and an IRS issue. (Tr. 132.) Applicant revealed something about his past to his coworkers, so it was not as if he had no opportunity to inform them. More significantly, Applicant has not told his spouse about his extramarital affair. Even if he acted on clinical advice to spare her that pain, it creates a vulnerability to exploitation, manipulation, or duress.[8]

As long as Applicant is unwilling to admit the deliberate omission of his cocaine abuse from his 2004 SF 86, I cannot apply AG ¶ 17(d), "the individual has acknowledged

[8] The ongoing concealment of the affair from his spouse is conduct that could have been alleged under Guideline E, AG ¶ 16(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.

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." The personal conduct concerns are only partially 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[9]

Applicant has earned the respect of those coworkers in his current position for his dedication, ethical behavior, and technical expertise. The evidence of Applicant's value to his employer is undisputed, but it is not enough to overcome the drug involvement and personal conduct concerns, which when taken as a whole, show very poor judgment, untrustworthiness, and unreliability on Applicant's part in different areas of his life over the past decade. While he has candidly acknowledged his past addiction to methamphetamine and his failure to file his tax returns on time, he continues to see himself as a victim: of a woman who paraded herself before him when he was in a most vulnerable state; of a supervisor who "marginalized" him; and of the IRS who assessed a tax liability in excess of what he owed. He has yet to fully mitigate the drug involvement and personal conduct concerns for the reasons already noted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

[9] The factors under AG ¶ 2(a) are as follows:

> (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.

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge