



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



In the matter of:

)	
)	ISCR Case No. 10-10821
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

January 10, 2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant failed to rebut or mitigate security concerns under Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, and Guideline E, Personal Conduct. Her eligibility for a security clearance is denied.

Statement of Case

Applicant completed several requests for consideration for security clearances. On August 7, 1997, she completed a security clearance application (SF-86). On April 13, 2001, she completed another SF-86, which she recertified on July 5, 2001. On June 21, 2002, she completed still another SF-86. On July 29, 2008, Applicant completed an electronic questionnaire for investigations processing (e-QIP), and on June 11, 2010, she completed an SF-86 in response to a questionnaire for national security positions. On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption; Guideline H, Drug Involvement; and Guideline E, Personal Conduct. DOHA acted 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 for SORs issued after September 1, 2006.

Applicant answered the SOR and included five attachments on May 10, 2011. However, DOHA did not consider her answer to be complete because she did not indicate whether she wished to have a hearing or a decision on the written record without a hearing. On May 31, 2011, DOHA requested that Applicant file a complete response to the SOR. On June 8, 2011, Applicant again responded to the SOR, declined a hearing, and requested a decision on the written record.

The Government compiled its File of Relevant Material (FORM) on July 11, 2011. The FORM contained documents identified as Items 1 through 19. On July 14, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 27, 2011. She did not submit any information or file any objections within the required time. On September 20, 2011, the case was assigned to me for a decision.

Procedural Matters

Under ¶ E.3.1.13 of DOD Directive 5220.6, Department Counsel offered eight amendments to the SOR. The amendments were included in the FORM, which Applicant received on July 27, 2011. The eight amendments to the SOR follow:

1: In subparagraph 2.j., replace “1996” with “1997.”¹

2: Strike subparagraph 3.a. in its entirety and replace with the following:

“You used marijuana in about 1999 and 2001, after being granted a Department of Defense Security Clearance in about 1997.”

3. Add subparagraph 3.c. to state the following:

“You falsified material facts on a Security Clearance Application, executed by you under date August 12, 1997, in response to **‘Question 19. Your Medical Record** In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?’ You answered ‘No’ and deliberately failed to disclose that you received mental health counseling in 1996 with psychiatrist [name deleted].”

4. Add subparagraph 3.d. to state the following:

¹ This amendment appears to correct a typographical error, since the record establishes, and Applicant does not dispute, that she first received a security clearance in 1997. (Item 7; Item 9.)

“You falsified material facts on a Security Clearance Application, executed by you under date August 12, 1997, in response to ‘**Question 27. Your Use of Illegal Drugs and Drug Activity – Illegal Use of Drugs** Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?’ You answered ‘No’ and deliberately failed to disclose that you have used marijuana about three times prior to this application.”

5. Add subparagraph 3.e. to state the following:

“You falsified material facts on a Security Clearance Application, executed by you under date March 16, 2001², in response to ‘**Question 19. Your Medical Record** In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?’ You answered ‘No’ and deliberately failed to disclose that you received mental health counseling in 1996 with psychiatrist [name omitted] and in 1998 with counselor [name omitted].”

6. Add subparagraph 3.f. to state the following:

“You falsified material facts on a Security Clearance Application, executed by you under date March 16, 2001 in response to ‘**Question 27. Your Use of Illegal Drugs and Drug Activity – Illegal Use of Drugs** Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD,PCP, etc), or prescription drugs?’ You answered ‘No’ and deliberately failed to disclose that you had used marijuana approximately four to five times prior to this application.”

7. Add subparagraph 3.g. to state the following:

“You falsified material facts on a Security Clearance Application, executed by you under date March 16, 2001, in response to ‘**Question 28. Your Use of Illegal Drugs and Drug Activity – Use in Sensitive Positions**

² The date cited for the execution of the document is incorrect in proposed amendment 3.e. and in the amendments identified as 3.f. and 3.g. Applicant signed this security clearance application on April 13, 2001, and she recertified the document on July 5, 2001.

Have you EVER illegally used a controlled substance will employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?' You answered 'No' and deliberately failed to disclose that you had used marijuana in 1999 after receiving a Department of Defense security clearance in about 1997."

8. Add subparagraph 3.h. to state the following:

"You falsified material facts on a Security Clearance Application, executed by you under date October 22, 2002, in response to '**Question 19. Your Medical Record** In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?' You answered 'No' and deliberately failed to disclose that you received mental health counseling in 1996 with psychiatrist [name omitted] and in 1998 with counselor [name omitted]."

Department Counsel requested that to avoid further delay, Applicant provide admissions or denials to the additional allegations in the amendment to the SOR in her response to the FORM. Department Counsel further requested that if Applicant did not provide answers for any or all of the additional allegations that the administrative judge treat Applicant's silence as denials of the additional allegations. As noted earlier, Applicant did not provide a response to the FORM. Accordingly, I interpret her silence in response to the eight amendments to the SOR as specified in the FORM as denials of those allegations.

Findings of Fact

The amended SOR contains five allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 1.a. through 1.e.); eleven allegations of disqualifying conduct under Guideline H, Drug Involvement (SOR ¶¶ 2.a. through 2. k.); and eight allegations of disqualifying conduct under Guideline E, Personal Conduct (¶¶ 3.a. through 3.h.). In her Answer to the SOR, Applicant admitted five Guideline G allegations, eleven Guideline H allegations, and two Guideline E allegations. She did not respond to the eight amendments to the SOR as specified in the FORM.³ Applicant's admissions are entered as findings of fact. (Item 1; Item 3; Item 4.)

Applicant is 33 years old and the mother of a six-year-old daughter. She married for the first time in 1997. She and her first husband divorced in 1999. In 2003, Applicant married again. She and her second husband divorced in 2007. (Item 9.)

³ Applicant did not respond to an amendment which changed a date in SOR ¶ 1.j. from 1996 to 1997. Additionally, she did not respond to amended SOR ¶¶ 3.a., 3.c., 3.d., 3.e., 3.f., 3.g., and 3.h. I interpret Applicant's silence in response to those allegations as denials.

Applicant enlisted in the U.S. military in December 1996, when she was 18 years old. She served on active duty for four years and received an honorable discharge in 2000. She was first awarded a security clearance and a higher level of access in 1997. (Item 9.)

After leaving military service, Applicant earned a Bachelor of Science degree in Information Technology and a Master of Science degree in Computer Information Systems. She is currently employed as a support engineer and instructor. She has worked for her present employer, a government contractor, since October 2002. (Item 10.)

In May 1996, when she was 17 years old, Applicant underwent several months of mental-health counseling for “deeply emotional family issues, specifying sexual abuse encounters.” She has continued to receive mental-health counseling periodically throughout her adult life. In 1998, while in military service, she sought mental-health counseling for her earlier family issues as well as new concerns about divorce and a relationship with a coworker. From 2003 through 2008, Applicant received treatment at a mental-health facility from a psychologist and a licensed clinical social worker. The mental-health professionals at the treatment facility diagnosed Applicant with depression, borderline personality disorder, post traumatic stress disorder (PTSD), anxiety issues, and substance abuse. From October 2006 to October 2008, Applicant also saw a psychiatrist, who diagnosed Applicant with bipolar disorder. From 2008 until May 2011, Applicant was treated by a licensed clinical social worker, who diagnosed her with bipolar disorder and PTSD. (Item 5; Item 11; Item 12; Item 13; Item 14; Item 17.)

Applicant began to drink alcohol in about 1992, when she was 14 years old. For the next 16 years, until at least September 2008, Applicant consumed alcohol at times to excess and to the point of intoxication. Between the ages of 19 to 21, while serving in the military, Applicant was drinking alcohol five nights a week. She drank alcohol twice a week from ages 21 through 24. While Applicant stopped drinking during her pregnancy and through the birth of her daughter in 2005, she resumed drinking nightly to the point of intoxication between 2006 and September 2008. (Item 11; Item 12; Item 13; Item 15.)

Applicant and her first husband share joint custody of their daughter. In an interview with an authorized investigator, Applicant stated that she never consumed alcohol when she had custody and care of her daughter. However, when she was not with her daughter, she would consume ten beers once or twice a week with her friends. (Item 12.)

On January 26, 2008, Applicant met friends and spent the evening drinking with them at two bars. In an interview with an authorized investigator in October 2008, Applicant estimated that she probably drank 13 beers and 4 shots of liquor that

evening.⁴ At 2:00 a.m. the next morning, Applicant was arrested when driving 85 miles an hour in a 45 mile-an-hour zone. Her blood alcohol level was .11. Applicant was charged with (1) driving vehicle on highway at speed exceeding limit, (2) driving, attempting to drive vehicle under the influence, (3) driving, attempting to drive vehicle under the influence per se, and (4) driving, attempting to drive vehicle while impaired by alcohol. Applicant pled guilty to Counts (1) and (3). She was placed on probation before judgment, fined, awarded supervised probation, ordered to abstain from alcohol and drugs, and ordered to enroll and complete treatment. Counts (2) and (4) were *nolle prosequi*. (Item 12 at 3-4; Item 13 at 10; Item 18.)

Applicant enrolled in an alcohol-treatment program in March 2008. During her treatment she drank beer before coming to her group therapy, and she admitted excessive drinking on weekends. A licensed clinical psychologist concluded that Applicant's symptoms warranted a diagnosis of alcohol dependence. Applicant told her therapist that she did not have a desire to stop drinking and did not consider alcohol to be a problem for her. She was unsuccessfully discharged from the alcohol treatment program in July 2008. (Item 15.)

In an interview with an authorized investigator in 2008, Applicant stated that her mental-health issues caused her to consume alcohol to excess. She explained that, every two months or so, her bipolar disorder gave rise to a sense of not caring. She stated that her sense of not caring was not the consequence of depression but of an awareness that "things are spiraling out of control." Applicant stated that during these periods, she felt very emotional and did not want to get out of bed. She also characterized her moods as very low. She also reported suicidal feelings when she was in this state of mind in the past. (Item 12.)

Applicant entered another treatment program in August 2008 and received treatment until April 2009. In August 2008, a licensed social worker diagnosed Applicant, in part, as alcohol dependent. (Item 14.)

From September 2008 until April 2009, Applicant received additional treatment from a state certified substance abuse treatment facility. This provider evaluated Applicant and diagnosed her, in part, with alcohol dependence. In her answer to the SOR, and in a statement in response to DOHA interrogatories, Applicant asserted that she has not consumed alcohol since September 2008. (Item 5; Item 12; Item 16.)

In addition to her problems with alcohol consumption, Applicant also has a history of illegal drug use. She admitted marijuana use in 1995, 1997, 1999, 2001, and September 2008. She failed to list her marijuana use on the security clearance application she executed in 1997. In a personal subject interview in October 2008, Applicant stated that she smoked marijuana twice in 1995, when she was 17, and once

⁴ In a declaration dated August 10, 2010, Applicant stated she drank six beers and six shots of liquor that evening. (Item 13 at 10.)

in 1997, when she was 19.⁵ In an August 2010 declaration made to a special investigator with the Office of Personnel Management (OPM), Applicant admitted that she used marijuana once in 1999 and once 2001 after being granted a security clearance and special access in 1997. Her failure to list her marijuana use resulted in the revocation of her higher level of access by another government agency in 2001. In 2003, Applicant stated she would never use illegal drugs again because she did not want to lose her security clearance. In 2004, she was again awarded a security clearance and a higher level of access. (Item 5; Item 7; Item 11; Item 12; Item 13 at 6.)

Applicant purchased and used cocaine, crack, and mushrooms in July 2008. She tested positive for cocaine in July 2008 during a random urinalysis. As a consequence of her positive test for cocaine use and her use of crack, mushrooms, and marijuana while on probation, she was charged with violation of probation in July 2008. After initially denying cocaine use, Applicant pled guilty to the probation violation. Her probation was continued and the charge was dismissed. (Item 5; Item 12; Item 13; Item 19.)

In September 2008, Applicant was evaluated at a licensed substance abuse and mental-health counseling center. She was diagnosed with alcohol dependence and cocaine abuse, and she received treatment for these diagnosed conditions from September 2008 to at least April 2009. Her treatment therapist reported that she participated actively in the substance abuse program. He concluded that she had provided evidence that she had abstained from substance abuse. (Item 16.)

During her work assignments in the military and as a government contractor, Applicant completed security clearance applications in August 1997, April 2001, June 2002, July 2008, and June 2010. (Item 6; Item 7; Item 8; Item 9; Item 10.)

Question 19 on the security clearance application Applicant executed in August 1997 requested information about an applicant's medical record and asked: "In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?" Applicant answered "No" to Question 19 and failed to disclose that she had received mental-health counseling in 1996 from a psychiatrist. In a 2003 statement to an authorized investigator, Applicant stated she did not mention mental-health counseling she had received in previous security interviews because she was ashamed to be in counseling and afraid that her security clearance might be affected if these counseling experiences were revealed. (Item 6; Item 11.)

Question 27 on the security clearance application Applicant executed in August 1997 requested information on an applicant's illegal drug use and asked: "Since the age

⁵ On April 13, 2009, in response to DOHA interrogatories, Applicant confirmed the accuracy of the information in the investigator's report. (Item 12 at 11-12.)

of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant answered "No" and failed to disclose that she had used marijuana about three times before executing her 1997 security clearance application. (Item 6.)

Question 19 on the security clearance application Applicant executed in April 2001 and recertified in July 2001 requested information on an applicant's medical record and asked: "In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health condition?" Applicant answered "No" and failed to disclose that she had received mental-health counseling in 1996 from a psychiatrist and in 1998 from a mental-health counselor during her military service. (Item 7.)

Question 27 on the security clearance application executed by Applicant in April 2001 and recertified in July 2001 requested information about an applicant's illegal drug use and asked: "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant answered "No" and failed to disclose that she had used marijuana four to five times before executing her 2001 security clearance application. (Item 7.)

Question 28 on the security clearance application executed by Applicant in April 2001 and recertified in July 2001 requested information about an applicant's drug use while holding a sensitive position and asked: "Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly affecting the public safety?" Applicant answered "No" and failed to disclose that she had used marijuana in 1999 after receiving a Department of Defense security clearance in about 1997. (Item 7.)

Question 19 on the security clearance application executed by Applicant in June 2002 requested information about an applicant's medical record and asked: "In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?" Applicant answered "No" and failed to disclose that she had received mental-health counseling in 1996 from a psychiatrist and in 1998 from a mental health counselor while she was serving in the military. (Item 8.)

Applicant provided letters of character reference from her facility security officer, a second-level manager who reviews her work, and a coworker who was once her supervisor. In their letters, these three individuals praised Applicant's professionalism,

work ethic, and trustworthiness. Additionally, Applicant's mental-health therapist, a licensed clinical social worker, provided a letter dated May 5, 2011, describing Applicant's treatment gains and progress. The therapist stated that she and a psychiatrist were treating Applicant for bipolar disorder. The therapist stated that Applicant "also works an active substance abuse recovery program . . . attends 12 steps regularly, has a good working alliance with her AA [Alcoholics Anonymous] sponsor [,] and has a home group." The therapist did not provide a prognosis related to Applicant's ability to avoid alcohol dependence in the future. (Item 5.)

Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant then bears the burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines 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.

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 in 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 the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, “[e]xcessive 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.”

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that Guideline G disqualifying conditions at ¶¶ 22(a), 22(c), and 22(e) apply in Applicant’s case. AG ¶ 22(a) reads: “alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” AG ¶ 22(c) reads: “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.” AG ¶ 22(e) reads: “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment center.”

In 2008, Applicant was arrested and pled guilty to driving vehicle on highway at speed exceeding limit and driving, attempting to drive vehicle under the influence per se. Applicant began to drink alcohol in about 1992, when she was 14 years old. For the next 16 years, until at least September 2008, Applicant consumed alcohol at times to excess and to the point of intoxication. Between the ages of 19 to 21, while serving in

the military, Applicant was drinking alcohol five nights a week. She drank alcohol twice a week from ages 21 through 24. While Applicant stopped drinking during her pregnancy and through the birth of her daughter in 2005, she resumed drinking nightly to the point of intoxication between 2006 and September 2008. She attributed her excessive alcohol consumption, in part, to her mental health issues.

From March 2008 to July 2008, Applicant was treated for alcohol dependence. When in treatment, she continued to consume alcohol. She discontinued treatment in July 2008. From August 2008 until April 2009 and from September 2008 until April 2009, Applicant received treatment from a licensed clinical social worker and a substance abuse treatment center. In both of these forms of treatment, Applicant was diagnosed as alcohol dependent. These facts raise security concerns under AG ¶¶ 22(a), 22(c), and 22(e).

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if “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.” The disqualifying conduct could also be mitigated under AG ¶ 23(b) if “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).” If “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress,” then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23 (d) if “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.”

Applicant is now 33 years old. She asserts that she has not consumed alcohol since September 2008. Her managers and colleagues at work report that she is a hard-working and valued employee. Her therapist reports that she has made progress in her treatment and attends aftercare activities intended to encourage and support sobriety. The therapist did not provide a prognosis.

Applicant’s excessive use of alcohol began in 1992, when she was 14 years old, and continued until at least 2008. While she stopped drinking alcohol during her pregnancy and claimed she did not drink alcohol when caring for her young child, she resumed consuming alcohol to excess after the child was born and when she had no child-care responsibilities. She attributed her excessive alcohol consumption in part to anxiety arising from her mental state. She continued to consume alcohol while participating in an alcohol rehabilitation program. Applicant’s excessive use of alcohol

was frequent and happened under circumstances that could recur, thereby raising concerns about her reliability. I conclude, therefore, that AG ¶ 23(a) does not apply to the facts of Applicant's case.

Applicant's current treatment progress and efforts to manage her alcohol dependence through AA and other aftercare activities are laudable. However, it is not clear from the record that Applicant has established and maintained a pattern of abstinence. I conclude that AG ¶ 23(b) applies in part in mitigation to the facts of Applicant's case.

Applicant has worked for her employer for several years. She is participating in a counseling program and is making satisfactory progress. In 2008, she was unsatisfactorily discharged from an alcohol-treatment program when she continued to consume alcohol while in treatment. She enrolled in another program, however, and followed the prescribed treatment norms. I conclude that AG ¶ 23(c) applies in part to the facts of Applicant's case.

Applicant's current treatment therapist, a licensed clinical social worker, is treating Applicant for bipolar disorder, a mental condition that in the past impacted Applicant's consumption of alcohol. The therapist described Applicant's progress in the treatment of her bipolar disorder, but she did not provide a prognosis related to Applicant's alcohol dependence. I conclude that AG ¶ 23(d) does not apply in this case.

Guideline H, Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24(a) defines drugs as "mood and behavior altering substances." The definition of drugs includes "(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." AG ¶ 24(b) defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

The evidence establishes that Applicant used marijuana, at various times, from 1995 until March 2008. Moreover, she used marijuana in 1999 and 2001, after being granted special program access in 1997. Additionally, Applicant purchased and used cocaine, crack, and mushrooms in July 2008. She tested positive for cocaine in July 2008 during a random urinalysis.

In September 2008, Applicant was evaluated at a licensed substance abuse and mental-health counseling center. She was diagnosed with alcohol dependence and cocaine abuse, and she received treatment for these diagnosed conditions from September 2008 to at least April 2009. This behavior casts doubt on her reliability,

trustworthiness, and good judgment. It also raises security concerns about her ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant's illegal drug use, her positive test for cocaine use; her purchase and use of cocaine, crack, and mushrooms, her evaluation of cocaine abuse, and her use of marijuana after being granted a security clearance raise security concerns under AG ¶¶ 25(a), 25(b), 25(c), 25(e), and 25(g). AG ¶ 25(a) reads: "any drug abuse [as defined at AG ¶ 24(b)]." AG 25(b) reads: "testing positive for illegal drug use." AG ¶ 25(c) reads: "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." AG 25(e) reads: "evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program." AG ¶ 25(g) reads: "any illegal drug use after being granted a security clearance."

Three Guideline H mitigating conditions might apply to the facts of Applicant's case. If Applicant's drug use "happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on [her] current reliability, trustworthiness, or good judgment," then AG ¶ 26(a) might be applicable in mitigation. If Applicant demonstrated an "intent not to abuse any drugs in the future by (1) disassociation from drug-using associates and contacts, (2) changing or avoiding the environment where drugs were used, (3) abstaining from drug use for an appropriate period, or (4) signing a statement of intent with the automatic revocation of her security clearance for any violation," then AG ¶ 26(b) might be applicable. If Applicant provided evidence of "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," then AG 26(d) might be applicable.

In 2001, Applicant's clearance was revoked because in 1999 and 2001 she had used marijuana while entrusted with a clearance. In 2003, Applicant stated she would never use illegal drugs again because she did not want to lose her security clearance. In 2004, she was again awarded a security clearance and a higher level of access. In 2008, while holding a security clearance, Applicant purchased and used cocaine, crack and mushrooms, and she also used marijuana. Applicant's drug use continued over many years, even after she claimed she would discontinue her drug use. Her past illegal drug use continues to cast doubt on her current reliability, trustworthiness, and good judgment. Moreover, while her therapist provided a letter conveying his opinion of her participation in drug rehabilitation, he did not provide a prognosis. Applicant provided no information to demonstrate her intent not to abuse drugs in the future. She failed to provide documentation establishing that she had abstained from drug use for an appropriate period or that she had disassociated from those with whom she had used drugs in the past. She failed to demonstrate that she had changed her conduct to avoid environments where drugs are used. She did not provide a signed statement of her intent not to abuse drugs in the future, with automatic revocation of her security clearance for any violation.

Applicant's illegal drug use occurred periodically over a period of 11 years. Insufficient time has elapsed to demonstrate whether she will abstain from illegal drug use in the future. I conclude that AG ¶ 26(a), AG ¶ 26(b), and AG ¶ 26(d) do not apply in mitigation to the facts of Applicant's case.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

Applicant used marijuana in 1999 and 2001 after being granted a security clearance in 1997. Additionally, she falsified material facts about her medical treatment and her use of illegal drugs on the security clearance applications she executed in 1997, 2001, and 2002. Applicant's personal conduct raises security concerns under AG ¶ 16(a), AG ¶ 16(d)(3), and AG ¶ 16(e)(1). AG ¶ 16(a) reads: "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."

AG ¶ 16(d)(3) reads: "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."

AG ¶ 16(e)(1) reads: "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. . . ."

In her answer to the SOR, Applicant admitted that her special access was denied in 2001 because she used marijuana while holding a security clearance and because she failed to report her drug use on the security clearance application she executed in 1997. She also admitted that she had used cocaine, crack, mushrooms, and marijuana after she was granted a security clearance in 2004.

Applicant did not answer the six personal conduct allegations in the amended SOR, and I interpret her silence as denials of those allegations.

DOHA's Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Several Guideline mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "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 process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "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," then AG ¶ 17(c) might apply.

Additionally, AG ¶ 17(d) might apply in mitigation if "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 occur." AG ¶ 17(e) might apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant is a mature adult who has, in the course of her employment in the military and as a government contractor, completed several security clearance applications. She knew, or should have known, of the importance of telling the truth to the Government when seeking a security clearance. When she completed her security clearance applications in 1997, 2001, and 2002, she answered "No" to Question 19, which asked if, in the last seven years, she had consulted with a mental-health

professional (psychiatrist, psychologist, counselor, etc.) or with another health care provider about a mental health related condition. The record reveals that Applicant received treatment from a psychiatrist in 1996 and from a mental-health counselor in 1998.

I have reviewed the evidence in this case carefully to determine if there is direct or circumstantial evidence that might reveal Applicant's state of mind when she answered Question 19. In her 2003 interview with an authorized investigator, Applicant stated that she did not discuss her mental-health counseling in previous personal security interviews because she was ashamed to be in counseling and feared that her security clearance might be jeopardized if she revealed her counseling sessions.

When Applicant completed her security clearance application in 1997, she responded "No" when asked if she had previously used illegal drugs, even though she had used marijuana approximately three times. In her 2003 interview with an authorized investigator, which she certified as correct and true, she admitted using marijuana in 1996, 1999, and 2001. In an October 2008 interview with an authorized investigator, which she adopted as an accurate interview, Applicant admitted smoking marijuana twice in 1995, when she was 17, once in 1997, when she was 19, and once in 2001, when she was 23.

Applicant received a security clearance in 1997. When she completed her security clearance application in April 2001, Applicant again responded "No" when asked if she had used illegal drugs and did not disclose that she had used marijuana four to five times prior to completing the application. She also answered "No" when asked if she had ever used illegal drugs while possessing a security clearance, even though she had used marijuana in 1999, after receiving a security clearance in 1997.

Applicant made no good-faith efforts to correct the falsifications in her security clearance applications before being confronted with the facts. She did not claim that the falsifications occurred as a result of improper or inadequate advice of authorized personnel. Her falsifications were neither minor nor infrequent. Instead, they appear to constitute a pattern and cast doubt on Applicant's reliability, trustworthiness, and good judgment.

Applicant has received counseling and treatment for her mental-health issues, but it is not clear from the record that these treatments have alleviated the factors that caused Applicant's pattern of dishonesty and rule violations. Moreover, Applicant's falsifications of her medical treatments and her illegal drug use made her vulnerable to exploitation, manipulation, and duress. Applicant provided no assurances that she has taken steps to reduce or eliminate those vulnerabilities.

After thoroughly reviewing the evidence, I conclude that Applicant used marijuana in 1999 and 2001 after being granted a security clearance in 1997. I also conclude that her falsifications of her security clearance applications in 1997, 2001 and

2002, as alleged in the amended SOR, were deliberate. Accordingly, none of the Guideline E mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances raised by the evidence. Applicant is valued at her work and respected as competent and hardworking. She has sought help for her mental-health issues, and this is laudable. After being diagnosed as alcohol dependent, she has participated in AA and other aftercare activities.

Applicant used marijuana in 1995 and 1996. She also used marijuana in 1999 and 2001, after she was granted a security clearance in 1997. When she executed her security clearance applications in 1997 and 2001, Applicant was not forthcoming about her illegal drug use. Additionally, she did not reveal her mental health treatments on her 1997, 2001, and 2002 security clearance applications. She told an authorized investigator that she did not report her mental-health treatments because she feared that telling the truth about them would jeopardize her security clearance. Applicant's lack of candor raises serious security concerns about her reliability, trustworthiness, and judgment.

Applicant requested a decision on the written record. She did not file objections or provide additional information in response to the FORM. Moreover, Applicant failed to meet her burden of persuasion in mitigating the Government's security concerns under the alcohol consumption, drug involvement, and personal conduct adjudicative guidelines. Overall, the evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.e.:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.k.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a - 3.h.:	Against 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.

Joan Caton Anthony
Administrative Judge