



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



In the matter of:

)	
)	ISCR Case No. 10-10892
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written 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. His eligibility for a security clearance is denied.

Statement of Case

Applicant completed several requests for consideration for security clearances. On January 29, 1992, he completed a Department of Defense (DOD) National Agency Questionnaire (NAQ). On February 18, 1999, he completed a security clearance application (SF-86). On May 25, 1999, he completed another SF-86. On June 9, 2004, he completed a third SF-86. On March 16, 2010, Applicant completed and signed an electronic questionnaire for investigations processing (e-QIP). On June 20, 2012, the DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption; Guideline H, Drug Involvement; and Guideline E, Personal Conduct. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6,

Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on July 28, 2012. He declined a hearing, and requested a decision on the written record. In his Answer to the SOR, Applicant responded specifically to each allegation under Guideline G. However, he did not respond specifically to the allegations under Guidelines H and E. At my request, Department Counsel contacted Applicant and asked him to respond specifically to each allegation under Guideline H and Guideline E. Applicant complied on February 13, 2013, and his amended answer to the SOR is entered in the record as Hearing Exhibit (HE) I.

The Government compiled its File of Relevant Material (FORM) on December 5, 2012. The FORM contained documents identified as Items 1 through 15. On December 5, 2012, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on December 19, 2012. His response was due on January 18, 2013. He timely submitted one document containing additional information, but he did not file any objections. On January 30, 2013, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and admitted it to the record without objection.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 1.a. through 1.h.); three allegations of disqualifying conduct under Guideline H, Drug Involvement (SOR ¶¶ 2.a. through 2. c.); and five allegations of disqualifying conduct under Guideline E, Personal Conduct (¶¶ 3.a. through 3.e.). In his amended Answer to the SOR, Applicant admitted all allegations under the three guidelines. Applicant's admissions are entered as findings of fact. (Item 1; Item 3; Item 4; HE I.)

Applicant is 49 years old and a high school graduate. He married for the first time in March 1986. He and his first wife divorced in June 1996. Applicant married for a second time in July 1998. He and his second wife divorced in January 2000. Applicant married for a third time in April 2005. According to Applicant's treatment notes in the record, his third wife is a cocaine user. Applicant has two adult sons from his first marriage. (Item 4; Item 5; Item 12.)

Applicant has worked for his present employer, a government contractor, or its predecessor, for approximately 27 years. His current position title is Manager III Supply Chain Management. He was first granted a security clearance in 1992. In about 1998 or 1999 and again in 2005, Applicant's security clearance was renewed. (Item 4; Item 5.)

Applicant has a history of substance abuse. He used marijuana on multiple occasions between 1979 and 1985. Between January 2000 and June 2007, he used cocaine one or two times a week. From December 2007 until May 2008, he used cocaine daily. From 2003 until at least November 2008, he consumed alcohol to excess or to the point of intoxication. Applicant's cocaine and alcohol abuse are alleged at SOR ¶¶ 1.f. and 2.a. (Item 9; Item 12; Item 13.)

On June 5, 1992, Applicant provided a signed, sworn statement to an authorized investigator. In the statement, Applicant reported that his first use of alcohol occurred when he was in the seventh grade. In February 1983, Applicant was charged with Driving Under the Influence (DUI). He pled no contest to the charge, was fined approximately \$200, and his license was suspended for 30 days. Applicant's 1983 DUI is alleged at SOR ¶ 1.h. In January 1985, Applicant was again charged with DUI. He pled no contest to the charge, was fined approximately \$200, and his license was suspended for 30 days. Applicant's 1985 DUI is alleged at SOR ¶ 1.g. (Item 5; Item 9.)

In his June 1992 signed, sworn statement, Applicant told the investigator that he drank three to four beers a weekend from 1985 until 1992. Applicant also stated he had no future intention to drink alcohol. (Item 9.)

In a statement to an authorized investigator in July 2010, Applicant stated that his heaviest alcohol consumption occurred between 2000 and 2007. During those years, he drank about three times a week, consuming each time eight or nine beers along with two shots of tequila. (Item 13.)

In 2004 and 2005, Applicant provided affidavits to authorized investigators in which he stated that he "didn't really start drinking until [his] first marriage in 1996." By 2003, he stated, his marital problems had increased, and he was drinking a pint of hard liquor every night. In December 2003, he enrolled in a detoxification program because he was experiencing nausea and tremors that he could not manage himself. In the detoxification program, Applicant was treated with medication. He did not receive counseling. Applicant told the investigator that he did not have a problem with alcohol, and, since his treatment, he no longer drank alcohol. Applicant's detoxification treatment is alleged at SOR ¶ 1.e. (Item 10; Item 11.)

On a day in July 2008, Applicant reported for work at 8:00 am. His coworkers smelled alcohol on his breath and reported him to his supervisor. His supervisor directed him to the employee assistance program (EAP). In July and August 2008, Applicant attended an alcohol treatment program, where he was diagnosed with alcohol dependence and cocaine dependence, in early partial remission. He was discharged from this program for non-cooperation. Applicant's diagnoses and discharge for non-cooperation are alleged at SOR 1.a. His cocaine dependence diagnosis is also alleged at SOR ¶ 2.b. (Item 12.)

From November 2008 to January 2009, Applicant attended alcohol treatment at a recognized alcohol treatment program. He was diagnosed with alcohol dependence in

early partial remission and with cocaine dependence in sustained full remission. He was discharged from the treatment program with the recommendation that he begin aftercare. Applicant's diagnoses, treatment, and discharge are alleged at SOR ¶ 1.b. His diagnosis of cocaine dependence is also alleged at SOR ¶ 2.b. (Item 12.)

Concurrently, Applicant participated in therapeutic counseling with a licensed social worker from December 2008 to February 2009. The licensed social worker diagnosed Applicant as alcohol dependent. Applicant's treatment and diagnosis are alleged at SOR ¶ 1.d. (Item 15.)

From February 2009 to March 2010, Applicant attended aftercare services provided by a recognized alcohol treatment program. While Applicant was initially active and responsible in the aftercare program, his attendance decreased over time. Eventually, he reported that his work schedule was "too hectic" for him to continue to participate in aftercare and Alcoholics Anonymous. His therapist concluded:

These behaviors could be 'triggers for relapse' if not appropriately addressed. [Applicant] had completed only '15' sessions of Aftercare when he contacted his agency and indicated he was no longer going to be able to continue to attend Aftercare[,] despite encouragement by staff that he continue. Prognosis is guarded. (Item 12.)

Applicant's participation in aftercare, his decision to discontinue aftercare, and the effect of that decision upon his prognosis are alleged at SOR ¶ 1.c. (Item 12.)

After he was granted a renewal of his security clearance in 1998 or 1999, and in 2005, Applicant used illegal drugs on multiple occasions. The SOR alleges at ¶ 2.c. that Applicant used illegal drugs while holding a DOD security clearance. (Item 4; Item 5.)

During his work assignments as a government contractor, Applicant completed security clearance applications in January 1992, February and May 1999, June 2004, and March 2010. (Item 4; Item 5; Item 6; Item 7; Item 8.)

Applicant completed a National Agency Questionnaire (NAC) on January 29, 1992. Question 20a on the NAC asked the following:

Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), of cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), even one-time or on an experimental basis, except as prescribed by a licensed physician?

Applicant responded "yes" to Question 20a and listed a one-time use of marijuana in the fall of 1979. He failed to report that he had used marijuana on multiple occasions between 1979 and at least 1985. The SOR alleges at ¶ 3.a. that Applicant's omission of his marijuana use between 1979 and 1985 was deliberate. (Item 1; Item 8.)

In June 2004, Applicant completed a security clearance application (SF-86). Question 27 on the SF-86 asked the following:

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” to Question 27. He did not list his cocaine use beginning in 2000 and which continued throughout 2004. The SOR alleges at ¶ 3.b. that Applicant’s omission of his cocaine use was deliberate. (Item 1; Item 5.)

Question 28 on the SF-86 that Applicant completed in June 2004 also asked the following: “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 and immediately affecting public safety?” Applicant answered “No” to Question 28 and did not list his cocaine use while possessing a security clearance. The SOR alleges at ¶ 3.c. that Applicant’s failure to list his cocaine use while holding a security clearance was deliberate. (Item 1; Item 5.)

In March 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). Question 23a on the e-QIP asks the following:

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs (including painkillers)?

Applicant answered “No” to Question 23a. He failed to list his cocaine use on multiple occasions between 2000 and 2008. The SOR alleges at ¶ 3.d. that Applicant’s failure to list his cocaine use was deliberate. (Item 1; Item 4.)

Question 23b on the e-QIP Applicant completed in March 2010 asks the following: “Have you EVER used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?” Applicant answered “No” to Question 23b and failed to list his cocaine use while possessing a DOD security clearance. The SOR alleges at ¶ 3.e. that Applicant’s failure to list his cocaine use while holding a security clearance was deliberate. (Item 1; Item 4.)

In a one-page response to the FORM, Applicant stated that while he was embarrassed by the decisions he made in the past, he was now making positive decisions as the result of counseling and was proud of his present life. He denied he was ever a threat to national security. He considered himself to be a good person and was proud to work as a government contractor. (Item A.)

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, an 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

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.” AG ¶ 21.

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that Guideline G disqualifying conditions at ¶¶ 22(a), 22(b), 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(b) reads: “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” AG ¶ 22(c) 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.”

Applicant has a long history of alcohol involvement. In 1983 and 1985, he was arrested and charged with DUI. In both cases, he pled no contest, his driver’s license was suspended, and he was fined. From 2003 until 2008, Applicant consumed alcohol to excess or to the point of intoxication. In 2003, he self-referred to a detoxification center when he was unable to manage the nausea and tremors that resulted from his

excessive use of alcohol. In July 2008, he came to work smelling of alcohol. His coworkers reported him to his supervisor, who referred him to the company's EAP. Applicant attended an alcohol treatment program, where he was diagnosed as alcohol dependent. Additionally, he sought additional counseling, and he was diagnosed as alcohol dependent by a licensed clinical social worker. Applicant's history of alcohol involvement raises the Guideline G disqualifying conditions identified at AG ¶¶ 22(a), 22(b), 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 49 years old. His excessive use of alcohol began in the 1980s and continued until at least 2008. He has been diagnosed as alcohol dependent, was discharged from one alcohol treatment program for non-cooperation, completed another program, and was recommended for aftercare. From February 2009 until March 2010, he participated in aftercare services, but failed to comply with the program's aftercare recommendations. Noting this, his therapist provided a guarded prognosis. Applicant's excessive use of alcohol was habitual over a period of many years and happened under circumstances that could recur, thereby raising concerns about his reliability. I conclude, therefore, that AG ¶ 23(a) does not apply to the facts of Applicant's case.

It is not clear from the record that Applicant has acknowledged his alcohol dependence and has established and maintained a pattern of abstinence. I conclude that AG ¶ 23(b) does not apply to the facts of Applicant's case.

Applicant has worked for his employer for approximately 27 years. He was initially referred to a treatment program by his employer. Because he failed to follow aftercare recommendations, however, his therapist provided a guarded prognosis. Moreover, it is not clear from the record that he is making satisfactory progress toward sobriety. I conclude that AG ¶ 23(c) and AG ¶ 23(d) do 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 record establishes that Applicant used marijuana, at various times, from 1979 to 1985. Between January 2000 and June 2007, he used cocaine one or two times a week. From December 2007 until May 2008, he used cocaine daily. In July 2008, he was diagnosed with cocaine dependence in early partial remission at a recognized drug treatment facility. In November 2008, he was diagnosed with cocaine dependence in sustained remission. Applicant was first granted a security clearance in 1992. His clearance was renewed in 1998 or 1999 and again in 2005. Applicant used illegal drugs while holding a security clearance.

Applicant's behavior casts doubt on his reliability, trustworthiness, and good judgment. It also raises security concerns about his ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant's illegal drug use and his use of cocaine after being granted a security clearance raise security concerns under AG ¶¶ 25(a), 25(e), and 25(g). AG ¶ 25(a) reads: "any drug abuse [as defined at AG ¶ 24(b)]." 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 [his] 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 his 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.

Applicant used cocaine one or two times a week from 2000 until 2007. From December 2007 until May 2008, he used cocaine daily. His drug use was sustained and habitual. He was twice diagnosed with cocaine dependence. His drug use occurred while he held a DOD security clearance.

Applicant's past illegal drug use continues to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant provided no information to demonstrate his intent not to abuse drugs in the future. He failed to provide documentation establishing that he had abstained from drug use for an appropriate period or that he had disassociated from those with whom he had used drugs in the past. He failed to demonstrate that he had changed his conduct to avoid environments where drugs are used. He did not provide a signed statement of his intent not to abuse drugs in the future, with automatic revocation of his security clearance for any violation.

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

Guideline E, 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 completed a NAC in 1992, an SF-86 in 2004, and an e-QIP in 2010. When he completed the NAC, he admitted a one-time use of marijuana in 1997. He did not disclose his marijuana use between 1979 and at least 1985. When he completed his SF-86 in 2004 and his e-QIP in 2010, he failed to disclose his cocaine use and his use of cocaine while holding a security clearance. 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 his answer to the SOR, Applicant admitted that he failed to accurately report his marijuana use on the NAC he executed in 1992. He also admitted that he falsified his answers on his 2004 SF-86 and his 2010 e-QIP by failing to report his illegal use of cocaine and his use of cocaine while holding a security clearance.

Several Guideline E 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 his employment as a government contractor, completed several security clearance applications. He knew, or should have known, of the importance of telling the truth to the Government when seeking a security clearance. He also knew that his drug use was substantial and would raise security concerns, especially when it became known that he used illegal drugs while holding a security clearance.

Applicant made no good-faith efforts to correct the falsifications in his NAC, SF-86, and e-QIP before being confronted with the facts. He did not claim that the falsifications occurred as a result of improper or inadequate advice of authorized personnel. His 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 for his alcohol-related behavior, 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 his illegal drug use made him vulnerable to exploitation, manipulation, and duress. Applicant provided no assurances that he has taken steps to reduce or eliminate those vulnerabilities.

After thoroughly reviewing the documentary evidence in this case, I conclude that Applicant used cocaine from 2000 until 2008 after being granted a security clearance. I also conclude that his falsifications in his 1992 NAC, his 2004 SF-86, and his 2010 e-QIP 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 written record in this case. Applicant has worked for his present employer for almost 27 years. Applicant's alcohol and drug use over many years raises serious concerns about his trustworthiness and reliability.

When he executed his security clearance applications in 1992, 2004, and 2010, Applicant was not forthcoming about his illegal drug use. Because the Government did not know about Applicant's drug use, it trusted him with a security clearance. Applicant then continued his drug use while entrusted with a security clearance. Applicant's lack of candor raises serious security concerns about his reliability, trustworthiness, and judgment.

Applicant failed to meet his burden of persuasion in mitigating the security concerns under the alcohol consumption, drug involvement, and personal conduct adjudicative guidelines. Overall, the record evidence in this case 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.h.:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.c.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a - 3.e.:	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