



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-03692
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

11/27/2013

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement), G (Alcohol Consumption), and E (Personal Conduct). Applicant mitigated the Guideline H concerns, but he has not mitigated the concerns under Guidelines G and E. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 8, 2010. On May 23, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G, H, and E. 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on July 5, 2013, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 31, 2013, and the case was assigned to me on August 9, 2013. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on August 20, 2013, scheduling the hearing for September 19, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection.<sup>1</sup> DOHA received the transcript (Tr.) on September 27, 2013. My decision was delayed by the furlough of administrative judges from October 1 to October 11, 2013, due to the failure of Congress to timely appropriate funds for fiscal year 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations in the SOR. However, he denied intentionally falsifying his responses to DOHA interrogatories, as alleged in SOR ¶ 3.a. I have treated his answer to SOR ¶ 3.a as a denial. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 30-year-old communications technician employed by a defense contractor since June 2003. He received a security clearance in May 2006. (GX 1 at 34.) He did not complete high school, but he obtained his general educational development (GED) certificate in December 1999.

Applicant has never married, and he has no children. He has been in a committed relationship with his fiancée for about four years. (Tr. 56.)

When Applicant was about 13 years old, his parents divorced. He first lived with his father and then moved back and forth between his parents. He blamed his mother's infidelity for the marital breakup. (Tr. 55.) He began using marijuana in 1999, when he was 17 years old. (Tr. 59.) He used marijuana about once a day, but sometimes would only use it once a week. (Tr. 60.) He usually obtained his marijuana from family members or friends. (Tr. 61.) In his answer to the SOR, he admitted purchasing and using marijuana from 1999 to July 2010. (Answer at 1-2.)

In December 2001, Applicant's car was stopped by police because he was playing his radio too loud. The policeman searched his car and found a bottle of rum and a bag of marijuana. Applicant was charged with underage possession of alcohol, possession of marijuana, and violation of a noise ordinance. He was convicted of all the charges in February 2002 and fined. He was required to attend Alcohol Safety Action Program (ASAP) classes and attend drug and alcohol education classes. (GX 3 at 8, 20-21.) He tested positive for marijuana while attending ASAP classes. (Answer at 5-6.)

Applicant submitted a security clearance application in February 2004, in which he disclosed that he had been charged with illegal possession of alcohol and

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<sup>1</sup> AX A through K were attached to Applicants answer to the SOR. They were reoffered at the hearing and admitted without objection.

possession of marijuana in December 2001. He also disclosed that he used marijuana from January 1999 to December 2001. (GX 2 at 4.)

In May 2005, Applicant was charged with public intoxication. He admitted this charge in his response to the SOR, but there are no court documents reflecting it. (Answer at 8.)

In June 2005, Applicant was charged with an open container violation. He was convicted, fined \$50, and required to pay \$91 in court costs. (GX 4 at 9; GX 5.)

In July 2007, Applicant was charged with carrying a concealed weapon (1<sup>st</sup> offense) and possession of marijuana. (GX 6.) The police observed a suspected drug transaction, followed Applicant's car, and stopped him. A drug dog alerted, the police searched his car, and they found a bag of marijuana and a loaded handgun in a backpack. (GX 6.) Applicant had completed a concealed weapon training course but had not obtained a concealed weapon permit. (GX 3 at 16-17.) He hired an attorney, pleaded no contest to the marijuana offense and was fined \$300. He pleaded not guilty to the concealed weapon charge, was convicted, and was fined \$125 and put on unsupervised probation for two years. (GX 3 at 8; GX 6; Tr. 79-81.)

In February 2008, Applicant was charged with driving while intoxicated (DWI) and driving with a suspended or revoked license. In June 2008, he pleaded guilty to both charges. For the DWI, he was sentenced to 365 days in jail, with 345 days suspended, and fined \$500. He was allowed to serve his jail time on weekends. He was placed on unsupervised probation for two years, his driver's license was suspended for 12 months, and he was required to attend ASAP. For driving on a suspended or revoked license, he was sentenced to 60 days in jail (suspended) and fined \$300. (GX 7.) When he failed to pay the ASAP fee on time, he was jailed for seven continuous days. After completing ten weeks of ASAP, Applicant was court-ordered to obtain individual counseling. (GX 3 at 7.)

In June 2008, Applicant was charged with driving on a suspended or revoked license. He pleaded no contest and was convicted. He was sentenced to ten days in jail (suspended) and fined \$100. (GX 8.)

In November 2008, pursuant to the June 2008 court order requiring individual counseling, Applicant was evaluated and diagnosed with alcohol dependency and cannabis abuse. He was evaluated by a staff member of a substance abuse and behavioral consulting firm, but the medical qualifications of the person making the diagnosis are not reflected in the record. He began a substance abuse treatment program on December 9, 2008, and he tested positive for marijuana at the beginning of the program. He tested negative for marijuana and cocaine on December 23, 2008. He tested positive for marijuana and negative for cocaine on January 14, 2009. He completed the treatment program on March 11, 2009. (AX H.) The report from the substance abuse and behavioral consulting firm was accepted by the ASAP supervisor.

In July 2010, The ASAP determined that Applicant had completed all the court requirements. His file was closed as "successful." (AX K.)

Applicant failed to notify his employer of his DWI arrest, as required. On his SCA, he indicated that his clearance was revoked for failing to notify his employer of his arrest. (GX 1 at 35.) However, at the hearing, the parties stipulated that his clearance was revoked for "lack of jurisdiction" when he was laid off because of a lack of work. (Tr. 99-100.)

In May 2009, Applicant was charged with having an improper or fictitious registration, title, or license plate. He was convicted, sentenced to 30 days in jail, with 20 days suspended, fined \$100, and placed on unsupervised probation for 12 months. (GX 9.)

In June 2011, Applicant was charged with public intoxication. In his answer to the SOR, Applicant stated that he fell asleep in the back seat of a vehicle after having "a few drinks." The driver was involved in an accident, became involved in an argument with the other driver, and was arrested. The arresting officer cited Applicant for public intoxication. He paid a \$25 fine without appearing in court. (Answer at 7-8; GX 10; Tr. 88-89.)

During a personal subject interview (PSI) in October 2010, Appellant stated that he last used marijuana in July 2010. He told the investigator he used marijuana regularly from 2000 to 2001, stopped using it after his December 2001 arrest, and resumed using it from 2003 to 2004, when he stopped using it due to his frequent travel. He told the investigator that he resumed using marijuana regularly, about once a week, from 2006 to July 2010, when he stopped using it because his fiancée disapproved of it. (GX 3 at 8.) He also told the investigator that he drinks no more than five or six beers at social occasions with friends once or twice a month. (GX 3 at 9.)

In response to DOHA interrogatories on October 22, 2012, Applicant stated that he last purchased and used marijuana in the spring of 2009. At the hearing, he testified consistently with the PSI, and he admitted the inconsistency between his answers during the PSI and in response to interrogatories. (Tr. 50.) He testified that he answered the interrogatory to the best of his memory but did not intend to provide misleading information. (Tr. 50-53.) Contrary to his admission during the PSI that he used marijuana about once a week from 2006 to July 2010, he testified that his use of marijuana in July 2010 was a one-time relapse after completing his drug treatment program. He explained that he had just been laid off from his job and was "just having a bad day." (Tr. 71.)

In January 2013, Applicant was evaluated again by the same substance abuse and behavioral consulting firm that evaluated him in June 2008. He was diagnosed with alcohol abuse in remission and cannabis abuse in remission. The qualifications of the counselor who evaluated and diagnosed him are listed as "MS [master of science] Addictions Counseling." The report states, "Since [Applicant] successfully completed

substance abuse treatment and has not had any new substance related charges as well as not having used marijuana for four years, there is no substance abuse treatment being recommended.” (AX G.) Applicant testified that the four-year period of abstinence mentioned in the evaluation was the result of him trying to give the evaluator “a right number.” He also testified that he told the evaluator about the June 2011 arrest for public intoxication, but he could not explain why it was not mentioned in the evaluation. He surmised that the report was not written by his “actual counselor” but by someone else on the staff. (Tr. 74-75.)

Applicant testified that he still consumes alcohol on weekends, usually consuming two to four beers. He stated that he no longer drinks to the point of intoxication. (Tr. 90.) His rehabilitation treatment taught him that “you are who you hang out with,” and he decided to stop associating with his former friends. He stopped using marijuana because his fiancée demanded that he make a choice between using marijuana and staying with her. (Tr. 92-95.)

In response to the SOR, Applicant submitted a statement of intent, reciting that he will never use illegal drugs or abuse alcohol again, and he will not be “around or involved with anyone who uses illegal drugs or abuses alcohol.” He agreed to automatic revocation of his security clearance for any illegal drug use or alcohol abuse. (AX I.) In June 2013, he voluntarily submitted a urine specimen to be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine. All results were negative. (AX J.) He voluntarily submitted another urine specimen for drug testing in July 2013, and again the results were negative. (AX M.)

A close friend of Applicant, who served in the U.S. Navy for 12 years and has held a security clearance since his Navy service, testified that during the past ten years, he has watched Applicant “grow from a boy to a well-mannered, well-behaved man.” (Tr. 26-27.) In a written statement, the witness said that Applicant has become “somewhat of a brother” and a man of honor, integrity, and dedication. (AX A.)

A coworker for the past six years testified that he was aware of Applicant’s past but that he trusts him on a personal and professional level. He believes that Applicant has changed, and he has no reservations about working with Applicant or about Applicant having a clearance. (Tr. 34-36.) In a written statement, the witness described Applicant as a “highly professional, trustworthy individual.” He stated that Applicant has dealt with sensitive information on the job and is “always very respectful of privacy, classified information, rules and restrictions.” (AX F.)

Another coworker who has known Applicant for 22 months submitted a statement describing him as someone who “exemplifies professionalism, a great work ethic, and high moral standards.” He stated that Applicant is self-motivated and performs his duties with a great deal of pride. (AX C.)

Applicant’s immediate supervisor, a retired Navy chief petty officer, testified that he has no reservations about Applicant holding a clearance, because he is one of his

most dependable workers. (Tr. 44-45.) He submitted a written statement, stating that Applicant is very dependable, respectful, and honest. He stated that Applicant “has worked on hundreds of jobs dealing with sensitive information and he has always completed them without a hitch.” (AX E.)

The Navy project manager who is Applicant’s sponsor for a clearance submitted a statement describing Applicant as extremely reliable and hard working. He noted that Applicant never takes shortcuts, pays attention to details, and remains calm in stressful situations. (AX D.)

Applicant’s performance appraisal dated August 22, 2013, rated him as “on target” in all performance components. The appraisal form provides for four performance ratings: above target, target, marginal, and unacceptable. The appraisal also evaluated Applicant’s performance trend as “constant.” The appraisal form provides for three trend ratings: improving, constant, and slipping. (AX L.)

The mother of Applicant’s fiancée submitted a statement describing Applicant as an upright, honest, and outstanding individual. She believes that Applicant is totally committed to his job, his coworkers, and his supervisors. She is aware of Applicant’s past and believes that he has learned from his mistakes. (AX B.)

### **Policies**

“[N]o 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 applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline H, Drug Involvement**

The SOR alleges that Applicant purchased and used marijuana from about 1999 to July 2010 (SOR ¶¶ 1.a and 1.b); used marijuana while holding a security clearance from about December 2005 to July 2008 (SOR ¶ 1.c); tested positive for marijuana while undergoing substance abuse treatment from November 2008 to March 2009 (SOR ¶ 1.d); was convicted of possession of marijuana and carrying a concealed weapon in July 2007 (SOR ¶ 1.e); tested positive for marijuana while attending ASAP in 2002 (SOR ¶ 1.f); and was convicted of possession of marijuana and unlawful use or possession of alcohol in December 2001 (SOR ¶ 1.g).

The concern under this guideline 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.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, 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).”

Applicant’s admissions in his security clearance application, responses to interrogatories, and at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

AG 25(e): evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

Applicant’s drug dependence was not alleged in the SOR, and it may not be considered as an independent basis for denying his application for a security clearance. However, it may be considered may be considered to assess Applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether Applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered it only for these limited purposes.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b): a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation; and



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.

The first prong of AG ¶ 26(a) (“happened so long ago”) focuses on whether the drug involvement was recent. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

I conclude that AG ¶ 26(a) is established. The evidence shows that Applicant has abstained from using marijuana since July 2010, which is a “significant period of time.” His fiancée’s disapproval of marijuana use appears to be his primary motivation. He has gained a reputation for being a dependable and trustworthy worker. He no longer associates with drug users. His friends and coworkers believe that he has matured. He testified with enthusiasm about his work.

AG ¶ 26(b) also is established. Applicant has new friends, is committed to his fiancée, has abstained from drugs for more than three years, and has submitted the statement of intent encompassed by AG ¶ 26(b)(4).

AG ¶ 26(d) is established, but has limited applicability to Applicant’s drug dependence, which was not alleged in the SOR. His counselor evaluated him in January 2013 and determined that he had successfully completed his substance abuse treatment, his drug dependence was in remission, and no further treatment was necessary.

### **Guideline G, Alcohol Consumption**

The SOR alleges that Applicant was convicted of public intoxication in June 2011 (SOR ¶ 2.a); convicted of driving under the influence of alcohol (DUI) and driving with a suspended or revoked license in February 2008 (SOR ¶ 2.b); and convicted of public intoxication in May 2005 (SOR ¶ 2.c). The SOR also cross-alleges SOR ¶ 1.g under this guideline (SOR ¶ 2.d).

The concern under this guideline is set out in AG ¶ 21: “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Applicant’s admissions, the documentary evidence corroborating his admissions, and the records of substance abuse treatment establish the following disqualifying conditions under this guideline:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(e): evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

AG ¶ 22(f): relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

The evaluation of alcohol dependence in this case was by a counselor whose qualifications were “MS Addictions Counseling.” She was not a “licensed clinical social worker.” However, AG ¶¶ 26(d) is not limited to specific credentials. Instead, it contemplates “a broad range of providers who, by education and by position, are qualified to diagnose and treat alcohol dependence and other substance abuse disorders.” ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008). Furthermore, the evaluation was by a member of a substance abuse and behavioral consulting firm that was recognized by the ASAP program in which Applicant was mandatorily enrolled.

Applicant’s alcohol dependence was not alleged in the SOR, and it may not be considered as an independent basis for denying his application for a security clearance. However, it may be considered may be considered for limited purposes, as noted in the above discussion of Applicant’s drug dependence. I have considered it only for those limited purposes.

The following mitigating conditions are potentially relevant:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 23(b): the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

AG ¶ 23(d): the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified

consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(a) is not fully established. Applicant's last alcohol-related incident was in June 2011, but he continues to consume alcohol in spite of his diagnosis as alcohol dependent. The evaluation in January 2013 that his alcohol dependence was in remission was skewed by his failure to disclose the June 2011 incident. I am unconvinced that he is rehabilitated.

AG ¶ 23(b) is not fully established. Applicant has acknowledged that he has had alcohol problems, but he has not fully accepted the fact that he is alcohol dependent. He has not established a pattern of abstinence, even though he is alcohol dependent.

AG ¶ 23(d) is not fully established. Applicant has successfully completed substance abuse treatment, but he has not established a pattern of abstinence. While the evaluation of alcohol dependence in remission might qualify as a favorable prognosis, the validity of that evaluation is questionable in light of Applicant's failure to disclose the June 2011 alcohol-related incident to the counselor.

### **Guideline E, Personal Conduct**

The SOR alleges that Applicant falsified his responses to DOHA interrogatories in October 2012 by falsely stating that he last purchased and used marijuana in the spring of 2009, when in fact he continued to purchase and use marijuana until at least July 2010 (SOR ¶ 3.a). It also cross-alleges the allegations under Guidelines H and G (SOR ¶ 3.b). In addition, it alleges that he was convicted of misdemeanor use of an improper or fictitious registration, title, or license plate in May 2009 (SOR ¶ 3.c); and it alleges that he was charged with driving with a suspended or revoked driver's license in June 2008 (SOR ¶ 3.d)

The concern under this guideline is set out in AG ¶ 15 as follows:

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.

The disqualifying condition relevant to Applicant's responses to DOHA interrogatories is AG ¶ 16(b): "deliberately providing false or misleading information

concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s level of education and business experience are relevant to determining whether a failure to disclose relevant information ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant has given conflicting information about the termination of his drug abuse. During a PSI in October 2010, he told the investigator that he used marijuana about once a week until July 2010. He responded to DOHA interrogatories in October 2012 by stating that he last purchased and used marijuana in the spring of 2009. At the hearing, he testified that he last used marijuana in July 2010, but that it was a one-time relapse. I conclude that he intentionally falsified his response to the DOHA interrogatories and that AG ¶ 16(b) is established.

Applicant’s record of arrests and convictions, which he has admitted, establish SOR ¶¶ 3.b, 3.c, and 3.d, thereby raising the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(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 . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person’s personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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 unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established. Applicant's response to DOHA interrogatories recanted his earlier admission in the PSI that he used marijuana once a week until July 2010. He made no effort to correct his response to the interrogatories until he was confronted with his inconsistent statements at the hearing.

AG ¶ 17(c) is not established for the falsification alleged in SOR ¶ 3.a. Applicant's falsification of the responses to interrogatories was arguably infrequent, but the inconsistency between his PSI responses and his hearing testimony indicates that at least one more falsehood occurred. His falsification of the response to interrogatories was not minor, because it undermined the integrity of the security clearance process, and it did not occur under unusual circumstances making it unlikely to recur.

AG ¶ 17(c) is established for the traffic infractions alleged in SOR ¶¶ 3.c and 3.d. They were relatively minor offenses and are not recent.

AG ¶ 17(d) is established for Applicant's marijuana use. It is not established for his alcohol-related conduct, for the reasons set out in the above discussion of AG ¶¶ 23(a), 23(b), and 23(d).

AG ¶ 17(e) is established. Applicant has not been candid about his drug abuse between the spring of 2009 and July 2010. However, his broad disclosures of his alcohol and drug abuse and his criminal record have substantially reduced his vulnerability to exploitation, manipulation, or duress.

## Whole-Person Concept

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

I have incorporated my comments under Guidelines H, G, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant grew up in an environment where alcohol and drug abuse were common and accepted. He has changed his social environment and established a good reputation at work. He has not fully accepted the fact that he is alcohol dependent. His lack of candor in his response to interrogatories is a matter of serious concern. After weighing the disqualifying and mitigating conditions under Guidelines H, G, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on drug involvement, but he has not mitigated the security concerns raised by his alcohol consumption and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Subparagraph 1.e (as to marijuana offense): <sup>2</sup>	For Applicant
Subparagraph 1.g (as to marijuana offense): <sup>3</sup>	For Applicant

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<sup>2</sup> The finding regarding the concealed weapon offense is encompassed in the finding on ¶ 3.b.

Paragraph 2, Guideline G (Alcohol Consumption)	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b (cross-alleging 1.a-1.g:	For Applicant
Subparagraph 3.b (cross-alleging 2.a-2.c):	Against Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant

### **Conclusion**

I conclude that 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.

LeRoy F. Foreman  
Administrative Judge

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<sup>3</sup> The finding regarding the alcohol offense is encompassed in the finding on ¶ 2.d.