



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



In the matter of:)	
)	
)	ISCR Case No. 11-11627
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

11/05/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He was twice arrested and once convicted of felony cocaine possession and twice arrested and twice convicted of driving while intoxicated (DWI). He remains on community supervision until June 2014. He used cocaine over a number of years and provided falsified information about his use and arrests on his security questionnaires, during an interview with a DoD investigator, in his response to an interrogatory, and at his hearing. He has unresolved delinquent accounts totaling approximately \$14,000. His drug involvement, criminal conduct, personal conduct, and financial considerations remain security concerns. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 10, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns under

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

Guideline H, Drug Involvement, Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and Guideline F, Financial Considerations. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 1, 2013, Applicant answered the SOR and requested a hearing. On August 14, 2013, I was assigned the case.

On September 9, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on September 25, 2013. At the hearing, Government's Exhibits (Ex) 1 through 10 were admitted. Applicant testified at the hearing, but provided no documents. The record was held open to allow Applicant to submit additional information. No additional material was received. On October 3, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted and also denied he used or purchased cocaine, but admits he was twice arrested and charged with the possession of cocaine. He admits he was arrested, charged with, and convicted of driving while intoxicated (DWI) 2nd. He denies falsifying his February 2011 Electronic Questionnaires for Investigations Processing (e-QIP) and indicated he was sending payments on his past-due, charged-off, and other delinquent accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 40-year-old senior production associate who has worked for a defense contractor since February 2006, and seeks to maintain a secret security clearance, which he obtained in 2006. (Tr. 67) Applicant called no witnesses other than himself, and produced no work or character references. He has a 19-year-old daughter and a 21 year-old son, both of whom are attending college. (Tr. 59) His son is living with him and has done so for the past seven years. (Tr. 59)

At the hearing, Applicant asserted his last use of illegal drugs was a "long time ago," before starting with his current employer. (Tr. 25) He thought his last use might have been in 2002. (Tr. 27) In November 1999, Applicant was drinking with a co-worker at a bar and decided to go to the co-worker's home. (Ex.4) Applicant was stopped for speeding on the trip to the co-worker's home. Applicant asserts the co-worker had cocaine and put it in the door pocket of Applicant's truck when they were stopped. Applicant was arrested for DWI and possession of cocaine. His co-worker was not arrested. Following his arrest, Applicant never discussed the matter with his co-worker.

In a plea bargain, Applicant agreed to three months of probation, to attend 16 hours of DWI classes, and perform community service. (Ex. 4) He was convicted of DWI, and the cocaine possession charge was not prosecuted. In January 2007, during an interview with a DoD investigator, he was asked about the November 1999 arrest

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

and subsequent conviction. He stated he had never used or experimented with illegal drugs. (Ex. 4)

In January 2006, Applicant was laid off from his job, which he asserts resulted in financial problems. (Ex. 4) His unemployment lasted four weeks before he started his current job. (Ex. 4) In September 2006, he was asked during a personal subject interview about his delinquent accounts and he admitted having several delinquent accounts including several unpaid medical debts. (Ex. 4) He stated he would work with the creditors to pay the accounts. (Ex. 4) He has provided no documentation showing he has paid any of his delinquent accounts. He is current on his \$800 monthly mortgage payments, his \$410 monthly truck payments, and department store and credit card accounts. (Tr. 82, 83) He is receiving no calls or letter from creditors demanding payment on delinquent accounts. (Tr. 83) In October 2012, his monthly net disposable income (monthly income less monthly expenses and debt payment) was \$550.

Applicant's July 2006 credit report (CR) lists two accounts (\$79 and \$2,690) assigned to a collection agency or attorney for collection. (Ex. 9) The CR also lists a \$579 collection owed a bank and four collection accounts in the amounts of: \$50, \$79, \$2,434, and \$2,690. (Ex. 9) His September 2012 CR lists five collection accounts: a credit card account of \$3,425 (SOR 4.a), medical bills of \$50 (SOR 4.b), \$1,219 (SOR 4.c), \$225 (SOR 4.d), \$138 (SOR 4.e), and a credit card account of \$8,874 (SOR 4.f). (Ex. 8, Tr. 61 – 63) The CR also lists a \$281 charged-off loan account. (Tr. 63) He asserted that some of the debt was joint debt incurred during his marriage.

In October 2012, in response to financial interrogatories, Applicant indicated he had hired a law firm to assist him with his delinquent accounts. They were to attempt to improve his credit score and have the creditors lower the amount his owed on the delinquent accounts. (Tr. 64) He provided no documentation supporting his assertion, that he paid the firm \$150 per month for four or five months. (Tr. 64) Nor did he provide any documentation as to what results the law firm was able to obtain.

At the hearing, Applicant asserted he was "working on his bills," and had kept up with them on a monthly basis. (Tr. 20) He said he could send documentation showing he had been making payments on his debts and information from his creditors showing payment. (Tr. 23, 58) No documentation was received.

Applicant had given divergent accounts as to his past-drug history and what occurred on the night of his January 2011 arrest for public intoxication and felony cocaine possession. At the hearing he stated he had used cocaine only once following his 1997 divorce, but acknowledged being arrested for possession of cocaine twice. (Tr. 31, 74)

During an April 2012 interview, Applicant provided very detailed information about his illegal drug use, about his frequency of use, why he refrained from using during periods in his life, how he obtained the cocaine, and the physical effects he experienced after using it. This was reported in an April 2011 Report of Investigation

(ROI). In October 2012, he reviewed the ROI and highlighted portions of the ROI with which he did not agree. (Ex. 5) At the hearing, Applicant stated he did not agree with everything written in the ROI. (Tr. 29) He did not say the investigator made up the facts in the ROI, nor did he say the information was incorrect, but simply that he disagreed with what was stated. (Tr. 32) At the hearing, he denied he had previously stated he had stopped using cocaine during his marriage from July 2008 through February 2010. He also denied that in approximately February 2010 “he fell back into his old habits of using cocaine recreationally about 2 to 3 times per year.” (Ex. 5)

In the ROI, Applicant stated he began using cocaine in approximately 1997 and used cocaine through November 1999, and he did not recant this admission during his October 2012 ROI review. However, he denied he was using cocaine monthly during this period. (Ex. 5) In the ROI, he admitted purchasing cocaine in bars, which he denied during the hearing. (Ex. 5, Tr. 38) In the ROI, Applicant stated he did not know the drug dealers, but would simply go to bars, ask around, and would be put in contact with someone willing to sell him cocaine. (Ex. 5) He stated, “he has been clean and sober since his arrest in 1/2011” because he is afraid of losing his job. (Ex. 5) Applicant stated that he does not believe the use of cocaine affects his behavior, and he simply feels more alert when using it.

Applicant stated he did not believe he was drug dependent because he was able to stop using cocaine in the past. (Ex. 5) He stated that no one knows he used cocaine because he was ashamed to admit his use of cocaine. (Ex. 5) He stated he was attempting to stop his cocaine drug habit completely and would seek counseling if offered by his employer. He stated it was his intent not to use illegal drugs in the future. (Ex. 5)

As to Applicant’s January 2011 arrest, the police report indicates Applicant was arrested for public intoxication and possession of a controlled substance, cocaine. (Ex. 3) During an inventory of the vehicle, a small baggy of cocaine was found on the center console. At the hearing, he stated he was drinking at a bar² with an old, high-school friend. At the hearing, he was unable to recall his “old friend’s” last name. (Tr. 67) Applicant stated his friend asked for his car keys so his friend could put his jacket in Applicant’s car. (Tr. 68) Applicant did not intend to give his friend a ride home and it was never explained why his friend asked to leave his jacket in Applicant’s car. (Tr. 77) Applicant claimed his friend used cocaine in his car and left additional cocaine on the center console of his car, all this occurring while he remained in the bar. (Tr. 70) Applicant states he has never seen his friend again and has never questioned his friend as to why his friend left the cocaine in his car. (Tr. 71)

Applicant failed to challenge the ROI that stated on the evening of his arrest he had six beers at home before going to a bar, that after being in the bar, he left the bar,

² Applicant told the police his son had dropped him off at a bar. He told the police he was not the same person they had sent home with a responsible party because the person was intoxicated. (Tr. 69) He never explained why his car was at the bar if his son dropped him off.

and went to his vehicle, and left cocaine on the center console of his vehicle. (Ex. 5, Tr. 78)

In the same ROI, Applicant admits being arrested for DWI in November 1999 and April 2003. He was depressed following his 1997 divorce. He said he would become intoxicated after drinking five to six beers “at least once a week.” (Ex. 5)

The Monday following his arrest, Applicant received a letter of reprimand or suspension when he provided the company’s security officer a copy of the police report. (Ex. 5, 7) The security officer instructed him to immediately report any change in the status of the charges. Even though Applicant was convicted of cocaine possession in June 2011, he did not report that felony conviction until late August 2011. (Ex. 7)

On June 8, 2011, Applicant was found guilty of cocaine possession and sentenced to three years community supervision³ with a \$60 per month supervision fee, required to pay a \$140 laboratory analysis fee, a \$1,500 fine, \$265 in court costs, and required to perform 200 hours of community service.⁴ (Ex. 3) His community supervision is scheduled to end in June 2014. (Tr. 42, 84) He was also ordered to attend drug treatment classes, which he completed. (Tr. 26)

In Applicant’s February 2011 e-QIP (Ex. 1), in response to Question 22, Police Record, he listed the DWI arrests in November 1999 and April 2003, and indicated he had an action pending related to a January 2011 incident. He failed to indicate he had been charged with a felony offense related to his January 2011 arrest. Applicant failed to indicate he was charged with cocaine possession in either the 1999 or 2011 arrests. (Ex. 1, Tr. 43) In response to Question 23, Illegal Use of Drugs or Drug Activity, he indicated he had not used any illegal drug in the prior seven years. The seven-year time periods pertinent to the e-QIPs were 1992 through 2011, because the e-QIPs were completed in 2006 and 2011. On his June 2006 e-QIP, he indicated he had not used or purchased any illegal drug. (Ex. 2) Applicant stated he answered “no” on his e-QIP to questions about the having ever used cocaine because he “wasn’t addicted to it no more.” (Tr. 53)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

³ In many jurisdictions community supervision is referred to as probation.

⁴ Applicant has completed his community service, which was cleaning a cemetery. (Tr. 81)

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 interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement in that the 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.

AG ¶ 25 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant has provided two widely divergent accounts as to his past use of cocaine. At the hearing, he said he used it only once following his 1997 divorce. During an April 2011 interview, which was incorporated into an ROI, he stated he began using cocaine in 1997 and used it until November 1999. He did not agree with portions of the ROI, but failed to recant this admission by highlighting it when he reviewed it in October 2012.

At the hearing, Applicant denied using cocaine more than one time and denied purchasing cocaine. Applicant's demeanor, appearance, and truthfulness were evaluated. I find Applicant's testimony at the hearing was not sincere, open, or honest. I find the detailed information he gave during his April 2011 interview as to his frequency of use, how he would purchase cocaine, and its physical effect on him after using to be reliable. Although he later contradicted these admissions, he never said the information was wrong or incorrect, only that he disagreed with it when he was given an opportunity to clarify his statement in response to DOHA interrogatories.

In 1999, he was arrested and charged with possession of cocaine. In January 2011, he was again arrested and charged with possession of cocaine. In June 2011, he was convicted of possession of cocaine. AG ¶ 25(a) drug abuse and AG ¶ 25(c) possession of illegal drugs, apply.

AG ¶ 26 sets forth conditions that could mitigate security concerns.

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

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and

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

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

(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.

None of the conditions that could mitigate security concerns apply. AG ¶ 26(a) does not apply because his illegal drug use was not infrequent and his last arrest occurred in 2011. He used cocaine over a period of years. I do not believe his claim at his hearing that he used cocaine only once. He stated his reasoning for failing to reveal his cocaine use on his e-QIPs was because he was not addicted to it “no more.” Such a response is inconsistent with a claim of a single use. His use did not occur under unusual circumstances and his use does cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 26(b) does not apply because the period of abstinence has been less than three years. There is no showing he has executed a signed statement of intent with automatic revocation of clearance for any violation. There is nothing in the record as to disassociation from drug-using associates or avoiding the environment where drugs were used. AG ¶ 26(c) does not apply because prescription drugs were not abused. AG ¶ 26(d) does not apply because Applicant was never in aftercare.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct: “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying, ¶ 31(a), “a single serious crime or multiple lesser offenses,” ¶ 31(c), “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” ¶ 31(d), “individual is currently on parole or probation.”

Applicant was arrested in 1999 for DWI and cocaine possession and convicted of DWI. In 2003, he was again arrested and convicted of DWI. In 2011, he was arrested and convicted of cocaine possession, a felony. These arrests resulted in attorney fees, fines, court costs, probation, 200 hours of community service, and community supervision which continues until June 2014. AG 31(a), 31(c), and 31(d) apply.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

None of the mitigating conditions apply to his criminal conduct. As indicated previously, Applicant was arrested twice and convicted twice for DWI. He was arrested twice and convicted once for cocaine possession. AG ¶ 32(a) does not apply because his last conviction occurred in June 2011, less than two and a half years ago. There is nothing unusual concerning his DWI arrests. AG ¶ 32(b) does not apply because Applicant was never pressured or coerced into committing the crimes.

Applicant asserted he never possessed cocaine. His testimony is "some" evidence, but is insufficient evidence to overcome that he was convicted of felony cocaine possession. His conviction required him to pay court cost, other costs, to perform 200 hours of community service, and he was placed on community supervision. AG ¶ 32(c) does not apply.

Applicant remains on community supervision, *i.e.* probation, until June 2014. Nothing in the Directive indicates that an applicant's current probationary status is a *per se* bar to a favorable security decision. However, his probation cannot be simply disregarded. See DISCR Case No. 90-1115 (App. Bd. Oct. 6, 1992) at p.3. Since he is still on probation for the last arrest and conviction, it is premature to confidently conclude that continuation or recurrence of his criminal conduct is unlikely. His lack of remorse indicates he has insufficient insight into his responsibility for his misconduct and recognizes the necessity for behavioral changes.

Applicant did not provide any information or documentation as to job training or higher education, good employment record, or constructive community involvement, he exhibited no remorse, and his last conviction is recent. AG ¶ 32(d) does not apply.

Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant used cocaine over a number of years and repeatedly lied about his use. During an April 2011 interview, he provided a detailed accounting of his cocaine use, which he recanted in part, but not fully. Much of his admitted cocaine use was not challenged during his October 2012 review of the ROI. In February 2011, Applicant completed his e-QIP and listed his 1999 and 2003 DWI arrests. He listed his arrest occurring a month earlier, but did not indicate he had been charged with felony cocaine possession. He chose to list the arrest of the previous month as simply “pending,” and not list the felony offense for which he was arrested.

Applicant was instructed to keep his security officer informed about the court action following his arrest. He failed to report his early June 2011 felony conviction until late August 2011. On the e-QIP, he also stated he had never used or possessed any illegal drugs. In a 2007 interview with a DoD investigator, he said he had never used or experimented with illegal drugs. He responded to a DOHA interrogatory asking about his illegal drug use by listing “N/A.” He had used cocaine from 1997 through 1999 and possessed it in 2011. AG ¶¶ 8(a) and 8(b) apply.

Applicant’s concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. Intentional failure to provide truthful and complete information on a security clearance application and to background investigators is never a minor offense. Untruthful answers cast doubt on his reliability, trustworthiness, and good judgment. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant’s willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant’s conduct suggests he is willing to put his personal needs ahead of legitimate Government interests.

None of the mitigating conditions apply to Applicant's falsification. He made no prompt, good-faith effort to correct the falsification before being confronted with the facts (AG ¶ 17a)), his concealment was not due to improper advice (AG ¶ 17b)), the falsification were not minor and are recent (AG ¶ 17c)), he has not acknowledge the behavior or obtained counseling (AG ¶ 17d)), vulnerability to exploitation, manipulation, or duress was not at issue (AG ¶ 17e)), the information was substantiated (AG ¶ 17f)), and there is no evidence Applicant has disassociated himself from persons involved in criminal conduct (AG ¶ 17g)).

Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He owes approximately \$14,000 on seven past-due obligations. Four of the debts are under \$300 each. None of the delinquent accounts have been paid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating factors for financial considerations apply. His financial difficulties are both recent and multiple. He was out of work for four weeks in 2006, just before obtaining his current job. He asserted, but provided no documentation, that some of his delinquent debt were marital debts. He was questioned about his delinquent debt during a 2006 interview and in written-financial interrogatories. He asserted that he is paying his delinquent accounts, but provided no documentation supporting his assertion. Even the four accounts under \$300 each have yet to be paid.

The four weeks of unemployment in 2006 and his 2011 divorce occurred sufficiently long enough ago as to have little negative impact on his current finances. Additionally, he failed to show how the divorce impacted on his finances. These two events do not mitigate the financial considerations security concerns. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling. He has not demonstrated his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the 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 surrounding this case. Applicant used cocaine over a number of years and lied about it on his e-QIPS, during an interview with a DoD investigator, on a DOHA interrogatory, and at the hearing. He has been twice arrested and once convicted of cocaine possession and twice arrested and twice convicted of DWI. He has been aware of the Government's concern over his delinquent debts since his 2006 interview with a DoD investigator and his delinquent debts remain unresolved.

Rehabilitation or behavioral changes are difficult to measure under these circumstances, given the instance that cocaine was used only once. He clearly sought to mislead the government about his illegal drug usage. Applicant's willingness to put his personal needs ahead of legitimate government interests increases his potential vulnerability and he has not demonstrated that the misconduct is unlikely to recur. Applicant has not mitigated the drug involvement, criminal conduct, personal conduct, or financial considerations security concerns. Clearance is denied.

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, Drug Involvement:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Paragraph 2, Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 3.a – 3.f:	Against Applicant
Paragraph 4, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 4.a – 4.g:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge