



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 12-04336
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2013

Decision

Tuider, Robert J., Administrative Judge:

Applicant possessed and used illegal drugs from about 2005 to about May 2011, and then he falsely denied this conduct when completing his Electronic Questionnaires for Investigations Processing (e-QIPs). Shortly after completing his e-QIPs, he volunteered to an Office of Personnel Management (OPM) manager that he used and possessed illegal drugs. His 2012 driving under the influence of alcohol (DUI) charge was not substantiated. Drug involvement concerns are mitigated by the passage of time, and personal conduct concerns are mitigated because Applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts and under the whole-person concept. Eligibility for access to classified information is granted.

Statement of the Case

On October 18, 2011 and January 6, 2012, Applicant submitted e-QIPs. (GE 1, 2) On October 10, 2012, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines H (drug involvement), E (personal conduct), and J (criminal conduct).¹ The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant, deny, continue, or revoke a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be denied, granted, continued, or revoked.

On November 8 and 16, 2012, Applicant responded to the SOR. (Tr. 12-14) On December 27, 2012, Department Counsel was ready to proceed on Applicant's case. On January 4, 2013, DOHA assigned Applicant's case to me. On January 10, 2013, DOHA issued a notice of video teleconference hearing, setting the hearing for January 16, 2013. Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 10-12) Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered three exhibits, and Applicant offered one exhibit. (Tr. 21-25; GE 1-3; AE A) There were no objections, and I admitted GE 1-3 and AE A. (Tr. 24-27) On January 24, 2013, I received the transcript of the hearing.

Findings of Fact

Applicant's SOR response admitted all of the SOR allegations, and he provided some extenuating and mitigating information. His admissions are accepted as factual findings.

Applicant is a 24-year-old industrial security specialist, who has worked for his current defense-contractor employer since October 2011. (Tr. 27-28) In 2006, he graduated from high school, and in 2011, he received a bachelor's of arts degree in political science with a minor in history. (Tr. 27, 28) His current employment is his first post-college employment. (Tr. 31) He has never been married, and he does not have any children. (Tr. 31)

Drug Involvement and Personal Conduct

From about August 2005 to about May 2011, Applicant occasionally used marijuana. (Tr. 34-40; SOR ¶ 1.a; SOR response) On about August 2004 to about early 2005, he used cocaine. (Tr. 34; SOR ¶ 1.b; SOR response) In the spring of 2010, he used lysergic acid diethylamide (LSD) and 3,4-methylenedioxy-N-methamphetamine (MDMA) on one occasion. (Tr. 34; SOR ¶ 1.c; SOR response) In about 2005, he used Oxycontin and Xanax (Tr. 34; SOR ¶¶ 1.d and 1.e; SOR response) Between about August 2008 and about May 2010, he used Adderall. (Tr. 34; SOR ¶ 1.f; SOR response)

¹Department Counsel moved to change the end date of Applicant's cocaine use in SOR ¶ 1.b from "about May 2006" to "early 2005." (Tr. 14-15) There was no objection, and I granted Department Counsel's motion to amend. (Tr. 15)

He has not used any illegal drugs since about May 2011, when he graduated from college. (Tr. 35)

Applicant used marijuana with some friends in college, and he has contacts with some of those former students at college; however, they have stopped using illegal drugs too. (Tr. 36-40) They are subject to drug testing. (Tr. 36-37) He no longer has contacts with any known drug users. (Tr. 35-40, 70-71)

A medical doctor, who is a Diplomat of the American Society of Addiction Medicine, evaluated Applicant. (AE A) He opined that Applicant's illegal drug use was sporadic during his high school and college years; Applicant ended his illegal drug use; he does not have a current or recent substance abuse problem; and he is now "mature and very goal oriented." (AE A)

Applicant emphasized that his drug abuse was immature and irresponsible. (SOR response) He promised that he would not use illegal drugs in the future. (Tr. 35-40; SOR response; AE A; GE 3)

Criminal Conduct

On January 14-15, 2012, Applicant drank six or seven beers from 5:00 pm to 1:00 am. (Tr. 64) A few minutes after leaving a bar, Applicant was arrested and charged with DUI. (Tr. 60-65; SOR ¶ 3.a; SOR response) His blood alcohol content (BAC) was .81. (GE 3 at 6; SOR response) The court found that this level is within the margin of error and Applicant's "BAC was likely below .08. (SOR response) On February 13, 2012, the DUI charge was dismissed. (GE 3 at 6; SOR response) Applicant has learned from his arrest, and he does not drive anywhere after consuming alcohol. (Tr. 68) He has reduced his alcohol consumption. (Tr. 68)

Personal Conduct

Applicant completed his initial SCA and received a Secret clearance. (Tr. 29-30) His second SCA was completed because his employer wanted to upgrade his clearance from Secret to Top Secret with possible access to sensitive compartmented information (SCI). (Tr. 29-30)

Section 23 of Applicant's October 18, 2011 and January 6, 2012 SCAs asked in the last seven years whether he had illegally used drugs or controlled substances. (GE 1, 2; SOR response) Applicant answered "No" to these two questions and did not disclose his use of marijuana, cocaine, LSD, MDMA, Oxycontin, Xanax, and Adderall from about August 2004 to about May 2011. (GE 1, 2; SOR response)

Applicant took several days to complete his SCAs. (Tr. 42-43) When he was completing his SCAs, Applicant believed disclosure of his illegal drug use would adversely affect his employment, and he asked several family members and friends, including his mother and stepfather, for their opinions about whether he should disclose

his history of illegal drug use on his SCAs. (Tr. 42-45; SOR response) They told him he should not disclose his illegal drug use. (Tr. 42-45; SOR response)

In January 2012, about a week after he completed the second SCA, Applicant learned he could expect to be interviewed by an investigator. (Tr. 47) He decided in January 2012 to “come clean” and tell the investigator about his illegal drug use. (Tr. 47-48) No one advised him that he might be required to take a polygraph test. (Tr. 50)

The first time he disclosed the falsification of his October 18, 2011 and January 6, 2012 SCAs to the Government was in his February 26, 2012 OPM personal subject interview (PSI). (Tr. 48-50; GE 3) Applicant told the OPM investigator about his illegal drug use before being questioned about it. (Tr. 49) The February 26, 2012 OPM PSI summary is consistent with Applicant’s statement about volunteering this information. (GE 3) The OPM PSI states Applicant “volunteered and openly discussed discrepant drug history.” (GE 3) He fully described his illegal drug use to the OPM investigator, and at his hearing, he affirmed the accuracy of the summary of the February 26, 2012 OPM PSI. (Tr. 48-50; GE 3)

Applicant was sincerely remorseful about his falsification of the two SCAs. (SOR response) He assured that that he would be honest on all future security-type documents. (SOR response)

Character Evidence

Five character witnesses, including co-workers, supervisors, and friends, made statements on Applicant’s behalf.² Applicant disclosed his illegal drug use and falsification of his SCAs to the five character witnesses. (Tr. 56-57) They described Applicant as honest, caring, diligent, intelligent, dedicated, and responsible. He has outstanding potential to contribute to security and his company. He has a positive demeanor and a reputation as a problem solver. Their statements support reinstatement of his access to classified information.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 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 and modified.

²Unless stated otherwise, the sources for the facts in this paragraph are attachments to his SOR response.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se 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.

Two drug involvement disqualifying conditions in AG ¶¶ 25(a), 25(c), and 25(g) could raise a security concern and may be disqualifying in this case: "any drug abuse,"³ and "illegal drug possession." These two disqualifying conditions apply because Applicant possessed and used marijuana, cocaine, LSD, MDMA, Oxycontin, Xanax, and Adderall from about August 2004 to about May 2011.⁴ He admitted his illegal drug use to an OPM investigator, in his SOR response, and at his hearing. He possessed the illegal drugs before he used them.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

(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

³AG ¶ 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."

⁴AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

(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.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). The illegal drugs Applicant possessed and used are listed on various schedules of Section 812(c) of Title 21.

(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.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant’s last use of marijuana occurring approximately 17 months before the hearing was not recent. 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.”⁵

⁵ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, affirmed the administrative judge’s decision to revoke an applicant’s security clearance after considering the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

Applicant acknowledged that he possessed and used marijuana, cocaine, LSD, MDMA, Oxycontin, Xanax, and Adderall from about August 2004 to about May 2011 for some drugs on a one-time, experimental basis, and for others on an occasional basis. Applicant admitted his illegal drug use showed immaturity and poor judgment. He recognized the adverse impact on his life of drug abuse in connection with access to classified information. I accept Applicant's statement to the OPM investigator, in his SOR response, and at his hearing as credible. He sincerely intends to abstain from future drug possession and use. AG ¶ 26(a) applies to his illegal-drug-related conduct because it is not recent, is unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or good judgment.⁶

Applicant demonstrated his intent not to abuse illegal drugs in the future. He has not used illegal drugs since May 2011; he has disassociated from drug-using associates and contacts; and he has avoided the environment where drugs were used. AG ¶ 26(b) partially applies.

AG ¶¶ 26(c) and 26(d) are not applicable. Marijuana, cocaine, LSD, MDMA, Oxycontin, and Xanax were never lawfully prescribed for him. He did not provide proof of satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In conclusion, Applicant possessed and used illegal drugs on multiple occasions while in high school and college. He ended his illegal drug possession and use in about May 2011. The motivations to stop using illegal drugs are evident. He understands the adverse consequences from illegal drugs.⁷ He has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

⁶In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

⁷Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;⁸ and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant answered "No" to section 23 of his October 18, 2011 and January 6, 2012 e-QIPs, which asked in the last seven years whether he had illegally used drugs or controlled substances. He did not disclose his use of marijuana, cocaine, LSD, MDMA, Oxycontin, Xanax, and Adderall from about August 2004 to about May 2011. He admitted that he intentionally failed to disclose his illegal drug possession and use. AG ¶¶ 16(a) and 16(b) are established. Applicant did not disclose his illegal drug possession and use on his two e-QIPs because he was worried that his security clearance and employment would be denied. He was also embarrassed about his drug offenses and falsification of his e-QIPs, and AG ¶ 16(e) applies.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

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

⁸The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

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

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

(b) 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 clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(a) applies. Applicant deliberately and improperly failed to disclose his illegal drug possession and use on his e-QIPs because he was worried that his security clearance and employment would be denied, and after receiving advice from relatives and friends that he should not disclose this derogatory information. On February 26, 2012, he volunteered the derogatory information about his illegal drug possession and use to an OPM investigator.

An intentional omission allegation is not mitigated when an applicant admits the omission after an investigator tells him or her that the Government has already learned facts establishing the omission.⁹ If an Applicant provides false information in multiple interviews, voluntary, accurate disclosure during the third interview does not mitigate the falsification concern.¹⁰ In ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) the

⁹ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

¹⁰ISCR Case No. 03-00577 at 5 (App. Bd. Dec. 11, 2006) (sustaining denial of security clearance for applicant who falsified pertinent questions in his 1999 security clearance application and failed to provide corrective information in three subsequent investigative interviews).

Appeal Board considered an applicant's claim that he promptly disclosed his firing from employment to an investigator after falsely denying the termination from employment on his security clearance application stating:

. . . Applicant did not disclose his termination from the hotel until he was at his security clearance interview. The . . . investigating agent asked about the hotel in the context of previous employments and Applicant indicated he worked there. The investigator then asked if anyone at the hotel would have anything negative to say about Applicant, at which time Applicant supplied the investigator with a name and the hotel management. Subsequently, Applicant informed the investigator that he had been fired from the hotel.

The Appeal Board in ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) affirmed the administrative judge's decision not to credit applicant with making a "prompt, good faith [effort] to correct the falsification before being confronted with the facts." *Id.* at 4-5. Stated differently, once it becomes apparent to an applicant that an investigator is likely to discover derogatory information, it is too late to receive mitigating credit under AG ¶ 17(a).

In the instant case, Applicant disclosed the omission concerning illegal drug possession and use before being confronted with any information that made it appear likely the investigator would discover that derogatory information. He fully cooperated with the investigator's follow-up interrogation.

AG ¶ 17(e) fully mitigates AG ¶ 16(e). Applicant disclosed his drug involvement and falsifications of his e-QIPs to an OPM investigator, in his SOR response, at his hearing, and to his character witnesses mitigating this specific security concern.

In sum, Applicant's falsification of his two e-QIPs by intentionally failing to disclose his illegal drug possession and use was improper and raised a security concern. He did not disclose this information because he was worried that his security clearance and employment would be denied. Shortly after he completed his e-QIP, he volunteered the information at his OPM interview. In good-faith, he corrected the omission, concealment, or falsification before being confronted with the facts. Guideline E concerns are mitigated; however, assuming AG ¶¶ 17(a) and 17(e) are not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.¹¹

¹¹In ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010), the applicant intentionally denied that he had private employment on his security clearance application (SCA) to conceal that employment from his employer. Fifty-one days later, ISCR Case No. 09-05655 at 5 (A.J. May 12, 2010), at his OPM interview, he "(1) corrected the omission in his SCA without first having been confronted with the facts; and (2) cooperated with the follow-up questioning by the investigator." ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010). The underlying security concern about that applicant's private employment was resolved when he resigned from that company. He also received some positive character references. The Appeal Board affirmed the mitigation of the intentional and recent falsification of his SCA under the whole-person concept without ruling on the applicability of AG ¶ 17(a).

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 two conditions that could raise a security concern and may be disqualifying in this case, “(a) a single serious crime or multiple lesser offenses,” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.”

AG ¶¶ 31(a) and 31(c). Applicant was arrested and charged with DUI on January 15, 2012.

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.

AG ¶ 32(a) applies because Applicant has resolved not to drive after consuming alcohol. The DUI offense is unlikely to recur.

AG ¶ 32(c) applies. Applicant’s BAC was .81, and the court found this test result was below the statutory threshold for a DUI. The charge was dismissed because Applicant did not commit the DUI offense.

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

The whole-person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of his security clearance. Applicant failed to disclose on his October 18, 2011 and January 6, 2012 e-QIPs that he possessed and used marijuana, cocaine, LSD, MDMA, Oxycontin, Xanax, and Adderall from about August 2004 to about May 2011. The drug abuse and falsification of his e-QIPs were imprudent, irresponsible, and improper. His failure to disclose his drug involvement was to avoid denial of his security clearance and loss of employment. This is not a valid reason for failing to fully and honestly disclose derogatory information on his security clearance applications.

The rationale for reinstating Applicant's clearance is more substantial. He was forthright and candid in his OPM interview, his SOR response, and at his hearing about his failure to disclose his illegal drug possession and use in high school and college, as well as his rationale for failing to provide this information.¹² Applicant is a 24-year-old industrial security specialist. In 2011, he received a bachelor's of arts degree in political science with a minor in history. His current employment is his first post-college employment. He has the maturity and trustworthiness to conscientiously comply with security requirements. He achieved some important employment goals, demonstrating his self-discipline, responsibility and dedication. He has been employed by a defense contractor since October 2011, and his colleagues and superiors laud his diligence,

¹²ISCR Case No. 05-03554 at 4-6 (App. Bd. Aug. 23, 2007) (discussing factors an administrative judge should consider when making credibility determinations including consistency of statements).

dedication and trustworthiness. He is an intelligent person, and he understands why his failure to disclose illegal drug possession and use on his security clearance application was improper. His DUI charge in 2012 was not substantiated. Drug involvement concerns are mitigated by the passage of time, and personal conduct concerns are mitigated because Applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts to an OPM investigator and under the whole-person concept. He acknowledged that he showed poor judgment and regrets his conduct. He demonstrated his loyalty, patriotism, and trustworthiness through his service to the Department of Defense as a contractor. He is an asset to his employer.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude drug involvement and personal concerns are mitigated. For the reasons stated, I conclude he is eligible for access to classified information.

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 H:	For Applicant
Subparagraphs 1.a and 1.f:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Tuidor
Administrative Judge