



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-02806
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

07/21/2016

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on August 12, 2014. On December 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, J, and E. The DOD CAF 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 the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on December 18, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 17, 2016, and the case was assigned to me on March 22, 2016. On March 24, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 18, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. I kept the record open until April 25, 2016, to enable him to submit additional evidence. He timely submitted AX O through U, which were admitted without objection. DOHA received the transcript (Tr.) on April 26, 2016.

### **Amendment of SOR**

SOR ¶ 1.c alleged, "While in the United States Air Force, you received an Article 112 for wrongfully using marijuana." SOR ¶ 2.b alleged, "In approximately September 2002, you received an Article 92 for wrongfully possessing two handguns and being derelict in performance of duties while in the United States Air Force."

On my own motion, without objection from either side, I amended the SOR to conform to the evidence. (Tr. 72-74.) As amended, SOR ¶ 1.c alleges:

In January 2003, while in the United States Air Force, you were convicted by a court-martial of dereliction of duty by negligently possessing two unregistered handguns in your dormitory room on or about September 11, 2002, in violation of Article 92, Uniform Code of Military Justice (UCMJ); and wrongfully using marijuana on divers occasions from September through November 2002, in violation of Article 112a, Uniform Code of Military Justice (UCMJ).

As amended, SOR ¶ 2.b alleges: "You were convicted by a court-martial as alleged in SOR ¶ 1.c above."

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.e, 2.b-2.e, and 3.a-3.d. He denied SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old apprentice electrician employed by a defense contractor since February 2007. He served in the U.S. Air Force from March 2001 to March 2003, and he received a general discharge. He worked in various private-sector jobs until he began his current job. He was unemployed for about three months from

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

December 2004 to February 2005 after being fired for making inappropriate comments to a customer. He was unemployed from December 2005 to March 2006 after voluntarily resigning to seek a better-paying job. He was fired from a private-sector job in February 2007 for repeated tardiness. (GX 2 at 4-5.) He has never held a security clearance.

Applicant married in August 2008. He and his wife have three daughters, who are five years old, two years old, and six months old. (Tr. 40.)

In July 1999, when Applicant was 18 years old, he was cited for underage possession of alcohol, a misdemeanor. He was sentenced to 50 hours of community service.

In the spring of 2002, Applicant was accused of raping a heavily intoxicated woman. He denied raping her, but he admitted that she was sufficiently intoxicated to be unable to exercise good judgment. He testified that he and a friend met the woman at a club, and she invited them to her house and then invited both Applicant and his friend to her bedroom, where they both had sexual intercourse with her. Applicant, his friend, and the woman were all heavily intoxicated. He was never charged with rape or any other offenses related to this incident.

Applicant used marijuana and "spice," a synthetic drug, with varying frequency from June 1993 to March 2011. He stopped using marijuana when he enlisted in the Air Force in 2001, but he resumed using it in September 2002. He stopped using it in July 2006 when he began attending church, and he abstained until December 2011, when he used it one time. He decided to use spice because it was legal at the time, and he used it from December 2011 to March 2011. (GX 2 at 12.) Spice was not a controlled substance until March 1, 2011, when the Drug Enforcement Administration issued an order temporarily placing it in Schedule I of the Controlled Substances Act. (40 Fed. Reg. 11075 (Mar. 1, 2011.))

In January 2003, Applicant was convicted by a court-martial of dereliction of duty by failing to register two handguns with military authorities and using marijuana on divers occasions in September through November 2002. He was sentenced to confinement for four months, forfeiture of \$400 pay per month for four months, and reduction to the lowest enlisted grade. (GX 5 at 10.) He received a general discharge from the Air Force for drug abuse in March 2003. (GX 5 at 1, 11-22.)

Applicant's court-martial conviction for using marijuana was the result of a positive urinalysis. After he was notified of the urinalysis results, he checked himself into a mental health facility. He claimed that he was suicidal so that he would be admitted to the facility. He testified that he was desperate, because he knew he was "throwing [his] life away and needed help." He received a one-day pass while admitted to the facility, and he smoked marijuana while on pass. (Tr. 49-52.)

In March 2003, Applicant was cited by civilian authorities for disturbing the peace by shouting at an individual he suspected of previously assaulting him. He appeared in court and the charge was dismissed.

In July 2005, Applicant was stopped by police after a minor car accident. The police found marijuana in his car. He was charged and released. His court date was changed several times, and he failed to appear on the appointed date. He testified that he failed to appear because his attorney informed him that he was not required to appear on that date. In April 2006, he was charged with contempt of court. He was notified by mail that a warrant had been issued for his release. He turned himself in and was jailed for ten days. The marijuana charge was dismissed after he completed 500 hours of community service. (GX 2 at 10; GX 3 at 2; Tr. 58-60.)

In August 2005, Applicant was arrested for felony breaking and entering with intent to commit a felony, use of a firearm in the commission of a felony, and carrying a concealed weapon, a misdemeanor. He admitted kicking in the door of a house while carrying a concealed handgun, intending to steal marijuana from a person who had previously refused to share the marijuana with him. He spent ten days in jail until his mother posted bail. In January 2006, he pleaded guilty to misdemeanor trespassing and was sentenced to 12 months in jail, which was suspended, and placed on probation for two years. (GX 2 at 11; Tr. 62-64.)

Applicant used hydrocodone with varying frequency from August 2008 to January 2012. He had received a prescription for hydrocodone after corrective surgery for a foot injury in August 2008, but he consumed more than the prescribed dosage. When he had consumed all the prescribed pills, he took some from his father, who also had a prescription for hydrocodone. He estimated that he took 10 or 15 pills from his father's prescription. He stopped using hydrocodone when the pain stopped in January 2012. (GX 2 at 13; Tr. 54-57.)

Between February 1999 and May 2012, Applicant attended several educational institutions, and he received an associate's degree in May 2012. (AX F.) He has been enrolled in a shipyard apprentice program since July 2014. He is an "A" student. He holds a leadership position in the apprentice school student association. His instructors regard him as hardworking, compassionate, knowledgeable, and trustworthy. He is a "Christian rapper," and has written, recorded and performed music designed to motivate others by describing his own struggles. (AX A-C, L, N, P, T.) He is active in his church, working in a soup kitchen, providing haircuts to the homeless, and ministering to inmates in the local jail. (AX D, E, O.) He has been recognized for his community service by his fellow apprentice Jaycees. (AX G-K.) He is devoted to his family. (AX M, O, Q, R, S, U.) He testified that he no longer associates with drug users or persons involved in criminal behavior. (Tr. 66.)

Applicant's supervisor, an apprentice craft instructor, has known Applicant for about seven years. He gave Applicant high marks in all nine criteria pertaining to leadership. He regards Applicant as very trustworthy and an asset to the community. He

has noted that Applicant is a “go-to-guy,” is well liked, respected, and a source of motivation for his peers. He was unaware of the SOR allegations until he came to the hearing. (Tr. 77-81.)

Another apprentice craft instructor, who has known Applicant since 2013, described Applicant’s work as “fantastic.” He testified that Applicant was a hard worker, very reliable, and very responsible. He was familiar with Applicant’s music, in which he sings about his mistakes and how he learned from them. He testified that Applicant makes no excuses for past mistakes. Instead, he uses them to help others avoid going down the same path. This witness was familiar with some of the SOR allegations, but not the details. (Tr. 82-85.)

Applicant’s father retired from the Air Force after 23 years of service and now works as a DOD civilian. He testified that Applicant was “spoiled a little bit” as the oldest child, but that his mother kept in contact with him and kept him in church. He testified that Applicant has atoned for his mistakes and become an excellent father to his children and an excellent son. He is satisfied that Applicant has turned his life around. (Tr. 86-90.)

Applicant’s mother testified that she always believed that Applicant would turn his life around. She believes that the time he spent in jail made him realize that his actions had consequences. She has frequent contact with Applicant and has seen no signs that Applicant has resumed his drug involvement. (Tr. 90-95.)

## **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 used marijuana from June 1993 to March 2011 (SOR ¶ 1.a); used spice until at least March 2011 (SOR ¶ 1.b); was convicted by a court-martial of using marijuana from September to November 2002 (SOR ¶ 1.c, as amended); used hydrocodone from August 2008 to January 2012 without a prescription (SOR ¶ 1.d); and was arrested and charged with possession of marijuana in July 2005 (SOR ¶ 1.e).

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 use of spice preceded the DEA action placing in in Schedule I of the Controlled Substances Act. Thus, he has refuted the allegation in SOR ¶ 1.b, because his use of spice was not illegal at the time. However, his admissions in his answer to the SOR, his testimony at the hearing, and the documentary evidence submitted at the hearing establish the allegations in SOR ¶¶ 1.a and 1.c-1.e and raise 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”; and

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

Applicant’s court-martial conviction for marijuana use was based on his positive urinalysis. However, AG ¶ 25(b) (“testing positive for illegal drug use”) may not be used as an independent basis for denying Applicant’s application for a security clearance, because it was not alleged in the SOR. However, the use of marijuana detected by the positive urinalysis is included in the court-martial conviction alleged in SOR ¶¶ 1.c and 2.b.

The following mitigating conditions 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(c): abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

AG ¶ 26(a) is not established. Applicant’s illegal drug use was frequent and did not occur under circumstances making it unlikely to recur. It is not mitigated by the

passage of time. The first prong of AG ¶ 26(a) (“so long ago”) focuses on whether the criminal conduct 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 evidence. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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.” *Id.* Applicant’s last use of marijuana was in December 2011, and his misuse of hydrocodone ended in January 2012, more than four years ago, which is a “significant period of time.” However, his abstinence from illegal drugs must be considered in the context of almost 15 years of irresponsible behavior. Furthermore, he previously abstained from illegal drug use for five and a half years (July 2006 to December 2011) and then used it again. In this context, insufficient time has passed to mitigate the security concerns raised by his illegal drug use.

AG ¶ 26(b) is not fully established. Applicant no longer associates with drug users, and he has immersed himself in his work, his family, and his community service. However, “an appropriate period of abstinence” is not established for the reasons set out in the above discussion of AG 26(a), and he has not provided the statement of intent set out in AG ¶ 26(b)(4).

AG ¶ 26(c) is established for Applicant’s misuse of hydrocodone. He had a valid prescription for the drug, but he exceeded the prescribed dosage and then used his father’s hydrocodone after exhausting his own supply. He stopped using hydrocodone in January 2012.

### **Guideline J, Criminal Conduct**

The SOR alleges that in 2002, Applicant raped a woman who was unable to consent because she was intoxicated (SOR ¶ 2.a); he was convicted by court-martial of dereliction of duty and wrongful use of marijuana (SOR ¶ 2.b as amended); he was charged with felony breaking and entering, use of a firearm in commission of a felony, and carrying a concealed weapon; and he pleaded guilty to misdemeanor trespass and was sentence to 12 months in jail, suspended (SOR ¶ 2.c); and he was charged with contempt of court in April 2006 (SOR ¶ 2.d). The SOR also cross-alleges the conduct in SOR ¶¶ 1.a-1.e, 3.b, and 3.c under this guideline (SOR ¶ 2.e).

The concern raised by criminal conduct is set out in AG ¶ 30: “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.” The evidence establishes two disqualifying conditions under this guideline: AG ¶ 31(a) (“a single serious crime or multiple lesser offenses”) and AG ¶ 31(c) (“allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted”).



The following mitigating conditions are potentially relevant:

AG ¶ 32(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;

AG ¶ 32(c): evidence that the person did not commit the offense; and

AG ¶ 32(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) is not established. Applicant's criminal conduct did not occur under unusual circumstances and it is not mitigated by the passage of time for the reasons set out in the above discussion of AG ¶ 26(a).

AG ¶ 32(c) is established for the rape alleged in SOR ¶ 2.a. The only evidence of the circumstances surrounding this incident was provided by Applicant. He denied raping the woman, and the circumstances he described reflect that the woman was a willing participant, even though her judgment was impaired.

AG ¶ 32(d) is not fully established. Applicant abandoned his drug abuse and irresponsible behavior in 2011. Since Applicant entered the apprentice program, he has earned the respect of his supervisors, become a leader among his peers, and is involved in community activities. However, insufficient time has passed without recurrence of criminal activity, for the reasons set out in the above discussion of AG ¶ 26(a).

## **Guideline E, Personal Conduct**

The SOR alleges that Applicant received a general discharge due to misconduct from the Air Force in March 2003 (SOR ¶ 3.a); he was cited in July 1999 for underage possession of alcohol (SOR ¶ 3.b); and he was cited disturbing the peace in March 2003 (SOR ¶ 3.c). The SOR also cross-alleges the conduct alleged in SOR ¶¶ 1.a-1.e, 2.a-3.c (SOR ¶ 3.d).<sup>2</sup> The concern under this guideline is set out in AG ¶ 15: "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. . . ."

SOR ¶ 3.a does not allege misconduct; it merely alleges a consequence of the misconduct alleged in SOR ¶¶ 1.c and 2.b. As such, it duplicates SOR ¶¶ 1.c and 2.b.

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<sup>2</sup> SOR ¶ 3.d erroneously purported to cross-allege conduct alleged in SOR ¶ 3.d, the same paragraph making the cross-allegation.

See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved it in Applicant's favor.

The evidence establishes SOR ¶¶ 3.b and 3.c and raises 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; 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(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(c) is not established. Applicant's misconduct was not minor, did not occur under unique circumstances, and is not mitigated by the passage of time for the reasons set out in the above discussion of AG ¶ 26(a).

AG ¶ 17(d) is partially established. Applicant has acknowledged his behavior. He has not obtained formal counseling, but he has involved himself in his work, his family, and his community activities. For the reasons set out in the above discussion of AG ¶ 26(a), insufficient time has passed to conclude that his misconduct is unlikely to recur.

AG ¶ 17(e) is established. Applicant has been open and candid about his past. He has incorporated his irresponsible behavior into his music and used it to help others avoid the mistakes he has made.

### **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, J, and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). Applicant was candid, sincere, remorseful, and credible at the hearing. Although his character witnesses were not fully aware of his irresponsible past, their observations of his current behavior reflect that he has been a responsible, reliable member of the community since entering the apprentice program in July 2014. On the other hand, he has a long track record of serious misconduct. He used marijuana while employed by a defense contractor. He has stopped using marijuana several times in the past and then resumed using it. He has not abstained from illegal drug use for a sufficient period to establish that further illegal drug use is unlikely to recur.

"Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has taken significant steps to turn his life around. Although this is a close case, insufficient time has passed to overcome the strong presumption against granting him a security clearance. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." If Applicant continues on his current path, he may well qualify for a security clearance in the future.

After weighing the disqualifying and mitigating conditions under Guidelines H, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement, criminal conduct, 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):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.e:	Against Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b-3.d:	Against 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