



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



In the matter of:	)	
	)	
(Redacted) .	)	ISCR Case No. 15-07433
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett C. Petcher, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

04/27/2017

---

**Decision**

---

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant tested positive for cocaine in September 2014 after using the drug while he possessed a Department of Defense secret clearance. In November 2011, he pleaded guilty to misdemeanor sexual assault of a minor in July 2009. He served 18 months of probation for the offense. His drug abuse is mitigated by the passage of time without recurrence, but concerns persist about his personal conduct. Clearance is denied.

**Statement of the Case**

On April 20, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct, and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On May 13, 2016, Applicant responded to the SOR allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. Counsel for Applicant forwarded the response to DOHA on May 27, 2016. On August 19, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national

interest to grant or continue a security clearance for Applicant. On August 22, 2016, I scheduled a hearing for September 27, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and five Applicant exhibits (AEs A-F) were admitted into evidence without objection. A copy of the letter forwarding discovery of the Government exhibits to Applicant's counsel on August 10, 2016, was marked as a hearing exhibit (HE 1) for the record but was not entered as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on October 6, 2016.

I held the record open after the hearing for Applicant to submit a copy of his discharge certificate from active duty (DD Form 214). Applicant forwarded a copy of his DD 214 by electronic mail on September 27, 2016. On October 3, 2016, Department Counsel indicated that the Government had no objection. The document was accepted into the record as AE F.

### **Summary of SOR Allegations and Response**

The SOR alleges under Guideline H (SOR ¶¶ 1.a and 1.b) and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant tested positive for cocaine on a September 2014 drug analysis while he was in the U.S. military and that his illegal drug use occurred after he had been granted a DOD secret clearance. Additionally, under Guideline E, Applicant was allegedly arrested in April 2010 for felony risk of injury and misdemeanor sexual assault but found guilty of illegal contact with a victim under age 16 (SOR ¶ 2.b).

Applicant provided a detailed response to the SOR in which he admitted that he had used cocaine one time in September 2014 and that several days later, he was given a random urinalysis that returned with a positive result. He denied any other use of an illegal drug and explained that he was allowed to serve the remainder of his enlistment term. Applicant admitted that he had been charged with risk of injury and that he pleaded guilty to illegal contact with a victim under age 16. He indicated that a group of girls came aboard ship after a party and that one of the girls came into his bed while he was asleep and began touching him. He explained that he did not know the girl, did not ask her to come into his room, and did not know that she was underage. He asserted that he later came to learn that the same girl had engaged in sexual contact with two of his roommates. While he admitted that he had pleaded guilty to illegal contact with a victim under age 16, he did so to avoid going to trial. He maintained that he learned from his mistake and would never put himself in a similar position again.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 29-year-old high school graduate with two years of training in the military. (GE 1; Tr. 24.) He has been employed as a quality assurance engineer with a defense contractor since March 2015. He served on active duty in the U.S. military from August 2005 to November 2014, when he was granted an honorable discharge at an E-5 pay grade.<sup>1</sup> (AEs A, F.) He holds a DOD secret clearance that was granted to him in 2005 when he was in the military. (GE 1; Tr. 21, 41.)

---

<sup>1</sup> When asked to provide his most recent rank, Applicant indicated on his security clearance application that he was a petty officer, first class (E-6). (GE 1.) His DD Form 214 indicates a pay grade of E-5 effective October 15, 2014 (AE F), which is consistent with evidence of the October 2014 non-judicial punishment award of a reduction in rate.

On July 4, 2009, Applicant was involved in an incident with an underage female that led to him being arrested on April 12, 2010, for risk of injury, a class C felony. On November 8, 2011, Applicant was convicted of a substituted charge of misdemeanor sexual assault and sentenced to one year in jail, suspended, and 18 months of probation. He was exempted from having to file as a sex offender in the state's registry. (GE 3.) Applicant went before an administrative board. (Tr. 31.) He was retained in the military, and he apparently completed his probation without incident. (AE F.)

In September 2014, Applicant used cocaine with a woman whom he reportedly approached at a downtown bar. (Tr. 42.) He went back to her apartment and used cocaine with her, knowing that illegal drug use was in violation of his secret security clearance and in violation of the military's zero tolerance policy. (Tr. 25-26, 42.) Applicant had been drinking that night, but indicates that he "was not overly intoxicated." Two or three days later, his command ordered him to submit to a random drug screen, which tested positive for cocaine. (GE 4; Tr. 44.) As a result of the positive drug screen, Applicant received non-judicial punishment. He was reduced in rate, placed on restriction for 45 days, and ordered to forfeit half of his pay for two months. (GEs 1, 2, 4; Tr. 44.) An initial incident report filed with DOHA on October 21, 2014, indicates that Applicant would be separated from the military with an Other than Honorable discharge. (GE 4.) Applicant was allowed to complete the remainder of his enlistment. As shown on his DD Form 214, Applicant was discharged on November 30, 2014, at the rate of E-5 with the character of his service designated as "Honorable." (AE F.) Applicant had earned his second Achievement Medal, a third Good Conduct Award, and several other medals for service in the war on terrorism. (AEs E, F.)

Applicant was unemployed following his discharge from active duty. As of mid-January 2015, Applicant had accepted a job offer from his present employer. Needing classified access at the secret level, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on January 19, 2015. In response to the police record inquiries, Applicant indicated that he pleaded guilty in November 2011 to sexual assault in the 4<sup>th</sup> degree, a misdemeanor, and that he was placed on 18 months of probation from approximately November 2011 to May 2013. Applicant also responded affirmatively to an inquiry concerning whether he had illegally used a drug or controlled substance in the last seven years. He indicated that he snorted cocaine a few times one night in September 2014 while at a party. He added that it was "the first and only time" that he had used the drug, and he did not intend to use it in the future because of the negative affect it has on his body and because it has no place in his work or social life. Applicant answered "Yes" to an inquiry concerning any treatment for the use of drugs, and explained that as part of his non-judicial proceeding for violating the military's drug policy, he saw a drug prevention counselor, who determined that he did not need further treatment. Concerning his clearance eligibility, he indicated that his secret clearance was suspended locally by his command as a result of his non-judicial punishment. (GE 1.) Applicant began working for his employer on March 25, 2015. (AE A.) He took a hair follicle test for his employment, which was negative for illegal drugs. (Tr. 40-41.)

On April 2, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Concerning his cocaine use in September 2014, Applicant indicated that he was on leave and at a party with a woman and her friends while they were using cocaine on a Thursday evening, and he decided to try the drug. The following Monday, he took a random urinalysis, which he did not pass. Two weeks later, he went to a non-judicial punishment proceeding. Because of the length of his service, he was scheduled to be discharged in November 2014. This being the only instance of illegal drug use, he was given an honorable discharge. Applicant denied any ongoing association with the woman or her friends involved in his cocaine use. Concerning the criminal charge on his record, Applicant indicated that in July 2009, he was at a party in town with other military personnel, including service members X and Y. He explained that he was sleeping

when, around 2:00 a.m., service member X had sexual intercourse with a woman, whom he did not know and would not recognize. Two to three weeks later, Applicant went on deployment with the military personnel who had been at the party. On their return several months later, Applicant and the others were questioned by the police and informed that several people at the party had been underage, and that the woman with whom service member X had relations was under age 16. Then, in mid-2010, Applicant learned that there was a warrant for his arrest. Applicant indicated that his original sentence had been one year, suspended, with 18 months of probation with the military. He stated that the initial charge was possibly risk of injury to a minor, but it was downgraded to sexual assault in the fourth degree. He claimed he was found guilty by association and because he had knowledge of the incident and had done nothing to stop it from occurring. Applicant denied any personal participation in criminal activity. (GE 2.)

Around September 2015, Applicant began dating his present girlfriend. In approximately May 2016, they began a cohabitant romantic relationship. (Tr. 32, 50.) Applicant owns his home, which he purchased in December 2015. His annual salary of \$80,000 is sufficient to cover the mortgage payments. (Tr. 22-23.)

On April 20, 2016, the DOD CAF issued an SOR to Applicant, citing security concerns about his illegal drug involvement and his personal conduct. On May 13, 2016, in response to the SOR, Applicant indicated that he had learned from his "mistake" using an illegal drug on a single, isolated occasion in September 2014 and that it would not happen again. About his conviction of sexual assault, Applicant indicated that he pleaded guilty to illegal contact with a victim under age 16 and that he did not recall a charge of sexual assault. He stated that the incident occurred when a group of girls came aboard ship after a party, and one of the girls came into his bed when he was asleep and began touching him. He indicated that he would never put himself in a position to allow a similar incident in the future. (Answer.)

On June 2, 2016, Applicant executed a statement of intent to never use or possess an illegal drug in the future or to associate with anyone who uses illegal drug with automatic revocation of his security clearance for any violation. (AE B.) Applicant voluntarily took three drug screens between August 25, 2016, and September 15, 2016. The results were negative for all drugs tested, including cocaine metabolites. (AE C.) On September 8, 2016, Applicant underwent a drug and alcohol evaluation with a licensed alcohol and drug counselor (LADC). Applicant asserted that he had used cocaine only once. Objective testing and his clinical interview showed that he had a low probability of a substance use disorder and that he experiences remorse over his use of the drug. (AE D.)

At his hearing, Applicant testified about his cocaine use in September 2014 that he met a girl downtown, apparently at a bar, and that he had been drinking but was "not overly intoxicated." He claimed that he was alone with the woman in her apartment when they used cocaine together. He did not pay for the cocaine. (Tr. 42-44.) He was not pressured to use cocaine. (Tr. 52.) He admitted that he had not disclosed his cocaine use to his superiors before his random drug screen that led to his non-judicial punishment. (Tr. 44.)

Concerning his involvement with a female under age 16, Applicant testified that he pleaded guilty to illegal contact with a victim under the age of 16, a misdemeanor. He related that three girls had been at a party at his house, even though neither he nor his roommates knew them. One of the girls, who had already had sexual intercourse with one of his two roommates with his knowledge, then came up to his bedroom where he was sleeping. She got in bed with him and touched him in a sexual way. He woke up, saw what was going on, "maybe a minute, and she left." He did not touch her, but he also did not stop her. It did not dawn on him that she was underage. (Tr. 46-47.) Applicant indicated that on his return from a six-month deployment, he learned that the girl was

under age 16. (Tr. 29-30.) Applicant denied any contact with any of the three girls since then. Applicant testified that he has definitely become more responsible since then, citing his homeownership and involvement in a committed relationship. He believes he has “become more wise because of some of the things that have happened to [him] in the past.” (Tr. 32-33.) When asked to explain his guilty plea to sexual assault in the 4<sup>th</sup> degree as reported by an FBI record, Applicant testified that he pleaded guilty to illegal contact with a person under age 16. (Tr. 48-49.) He claimed he was advised to plead guilty by his lawyer to prevent going to trial and risk possible jail time. (Tr. 51.) Applicant admitted that he had to report to a probation officer monthly. (Tr. 49.)

## Character References

Several co-workers familiar with Applicant's work performance with his present employer provided reference letters endorsing Applicant for security clearance eligibility. Applicant has earned the respect of co-workers for his knowledge, eagerness to learn, and his ability to take on new challenges. Applicant's department manager described Applicant as "a hardworking, enthusiastic contributor to the group and department." Applicant has been very courteous, honest, and dependable. (AE A p. 1.) Applicant's current supervisor (AE A p. 6) and the safety program director (AE A p. 2) indicated that Applicant had a detailed understanding and was instrumental in the success of rigorous audits. Applicant handles issues professionally and interacts well with their military customer. A nuclear operations supervisor, who was stationed with Applicant in the military and is Applicant's best friend (Tr. 35), attested to Applicant being the "go to guy" in quality assurance and mechanical knowledge. He described Applicant's living habits as "clean, well-organized, and fiscally responsible." (AE A p. 4.) Another close friend who previously served with Applicant in the same command obtained his job with the defense contractor on Applicant's referral. He retired from the military after 24 years. (Tr. 35.) From his experience of Applicant in the military and now in the same department, he does not have any concerns about Applicant's integrity or honesty. (AE A p. 5.) Applicant testified that both of these co-workers are aware of the 2009 allegations involving the underage girl (Tr. 35), although neither make any mention of the incident or of Applicant's cocaine use in violation of military policy.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 are required to 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 factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion 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 that the applicant may deliberately or inadvertently fail to 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. Section 7 of 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern about drug involvement 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.

Under AG ¶ 24(a), drugs are defined as “mood and behavior altering substances,” and include:

- (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),<sup>2</sup> and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” The evidence establishes disqualifying conditions AG ¶ 25(a), “any drug abuse,” AG ¶ 25(b), “testing positive for illegal drug use,” AG 25(c), “illegal drug possession,” and AG ¶ 25(g), “any illegal drug use after being granted a security clearance.” Applicant used cocaine with a woman he just met in September 2014. He had physical possession of the drug while using it. While he may have been on leave at the time, he knew that illegal drug possession and use was prohibited by active duty military and DOD clearance holders and a violation of the Uniform Code of Military Justice. Applicant’s drug use was detected by a random drug screen and not disclosed voluntarily by him. His illegal drug involvement raises significant security concerns.

Mitigating condition AG ¶ 26(a), “the behavior happened so long ago, was so infrequent, or it 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,” applies. There is no evidence of any illegal drug use by Applicant beyond the single occasion in September 2014, so his cocaine use was infrequent.

Applicant denies any use of an illegal drug other than the use of cocaine on one occasion in September 2014 and any intention to use cocaine or any other illegal drug in the future. Under

---

<sup>2</sup>Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Cocaine is a Schedule II controlled substance.

mitigating condition AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future” may be shown by the following:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; or
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Concerning AG ¶ 26(b)(1), Applicant’s uncontroverted testimony is that he does not associate with anyone who currently uses illegal drugs. Applicant maintains, with no evidence to the contrary, that he did not previously know the woman involved in his cocaine use before he met her at a bar that day. He testified that they went together to her apartment, and that they were alone when they used cocaine. Applicant discrepantly indicated to an OPM investigator in April 2015 that he was at a party with a woman and with her friends, who he did not know beforehand, and that he obtained the cocaine from the woman’s friends. While the discrepancy about the circumstances of his drug involvement has implications for his credibility, his circumstances have changed since his illegal drug involvement. Applicant is now a homeowner and in a committed personal relationship. There is no evidence that he continues to associate with any known illegal drug users or that he frequents places conducive to illegal drug involvement. AG ¶ 26(b)(1) and AG ¶ 26(b)(2) apply.

Concerning AG ¶ 26(b)(3), Applicant had abstained for little more than three months as of his completion of his SF 86. By the time of his hearing in late September 2016, he had abstained for two years, which, when considering the limited extent of his cocaine use, is “an appropriate period of abstinence” for a showing that he can be counted on to abide by a drug-free lifestyle. Applicant executed the statement of intent to abstain with automatic revocation of clearance for any violation, so AG ¶ 26(b)(4) is also established. An LADC evaluated Applicant and found no clinical indication of substance abuse. Applicant regrets his cocaine abuse, and he is not likely to jeopardize his employment by abusing any drug in the future. The drug involvement security concerns are sufficiently mitigated.

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

The security concerns about personal conduct are articulated 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.

Concerning the Government’s case for disqualification under the personal conduct guideline because of Applicant’s cocaine use and the fact that he used the drug while holding a clearance (SOR 2.a), the DOHA Appeal Board has held that security-related conduct can be alleged under more than one guideline, and in an appropriate case, be given independent weight under each. See ISCR 11-06672 (App. Bd. Jul. 2, 2012). Separate from the risk of physiological impairment associated with the use of mood-altering substances, which is a Guideline H concern, Applicant had an obligation as a clearance holder to comply with DOD policy, including the prohibitions against drug involvement. Applicant used cocaine in September 2014, knowing that it was prohibited by the military and in violation of his clearance obligations. His drug use was detected in a random drug



screen, and it led to the imposition of non-judicial punishment in October 2014. Although his use of cocaine may not now warrant disqualification under Guideline H, his use after being granted security clearance eligibility is an aggravating factor that raises separate concerns about his judgment.

Furthermore, Applicant exercised very poor judgment in July 2009 in the incident involving sexual contact with an underage girl. He now submits that he pleaded guilty to illegal contact with a victim under age 16, but he told an OPM investigator in April 2015 that he was convicted of sexual assault in the 4<sup>th</sup> degree. The court records are not before me for review. However, the FBI reports that he was placed on 18 months of probation on a substituted charge of sexual assault in the 4<sup>th</sup> degree, a class A misdemeanor violation under state law § 53A-73A(A)(2).<sup>3</sup> Applicant provided discrepant accounts about his culpability. Applicant told the OPM investigator that he was guilty by association and by having knowledge of the incident, which involved a party at an unknown address where another service member had sexual relations with a female under age 16 when Applicant was sleeping. When he answered the SOR, Applicant indicated that three young women had come aboard ship and one of them had entered his bed and touched him. He testified at his hearing that he and his roommates had a party at their residence, and that he awoke to find a female in his bed touching him in a sexual manner, but he did not reciprocate. He claimed he pleaded guilty on the advice of his lawyer to avoid possibly serving jail time, but it is difficult to find that he was himself a

---

<sup>3</sup> The pertinent state statute under which Applicant was convicted provides as follows:

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) mentally defective or mentally incapacitated to the extent that such other person is unable to consent to such sexual contact, or (D) physically helpless, or (E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.

victim and without some culpability in either intentionally having sexual contact with an underage female or in allowing sexual contact initiated by her to continue. Perhaps because the conduct occurred in 2009, the DOD CAF did not cite criminal conduct concerns. It is another indication of poor judgment, which along with his use of cocaine while in the military with a secret clearance, triggers AG ¶ 16(c), which provides:

(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.

Applicant submits in mitigation that the circumstances that led to his drug use and to his conviction for sexual assault are not likely to recur. AG ¶ 17(c) provides for mitigation when “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,” While the personal conduct concerns were infrequent, they were not minor and did not occur under circumstances that could reasonably be characterized as unique. Applicant told an OPM investigator that he used the cocaine with a woman and her friends at a party, but he now claims he was alone with the woman in her apartment. As for the incident involving the underage female, Applicant indicated in April 2015 that he was guilty by association in another service member’s misconduct in having sexual relations with an underage female while he was sleeping. Yet, when he answered the SOR, he claimed three young women boarded his ship, and one entered his bed while he was sleeping. He now admits the incident occurred after a party that he and his housemates had in their home.

Applicant expressed regret about his drug use and his “mistake” in the incident involving the sexual assault. However, Applicant’s discrepant accounts of the circumstances of his cocaine abuse and of his sexual assault undermine his case for mitigation under AG ¶ 17(d), which provides:

(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.

Moreover, when asked why he used cocaine in knowing violation of the DOD’s zero tolerance policy, he responded, “It was a poor decision on my part. And it was towards the end of my Navy career and it was just one night on one circumstance that it happened.” (Tr. 26.) To the extent that he minimizes or justifies his deliberate disregard of DOD policy and the Uniform Code of Military Justice, he has not shown that he can be counted on to comply with security requirements without regard to his personal interests. Although he completed his probation for the sexual assault without incident, I have persistent concerns about his candor with respect to what transpired that night. The personal conduct concerns are not adequately mitigated.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>4</sup>

Youth was a factor in the 2009 sexual assault. He was 22 at the time, and there is no indication that he knew or should have known that the girls were underage. However, he was 27, had been in the military for nine years, and was serving at the rate of E-6 when he possessed and used cocaine while holding a security clearance. He has exhibited some maturity and stability by buying a home, becoming involved in a committed, cohabitant relationship, and performing work of value to his employer. His work and character references are uniformly positive.

Even so, Applicant placed his judgment, reliability, and trustworthiness in doubt by being less than fully forthcoming at times about the issues of security concern. It is well settled that once a security concern arises, there is a strong presumption against the grant or continuation of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). For the reasons discussed, I am not able to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance eligibility.

### 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

### Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Elizabeth M. Matchinski

---

<sup>4</sup>The factors under AG ¶ 2(a) are as follows:

(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.

Administrative Judge