



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07686

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2016

Decision

Harvey, Mark, Administrative Judge:

Applicant used illegal drugs while holding a security clearance. More time without illegal drug use is necessary to fully mitigate drug involvement security concerns. Personal conduct security concerns are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 29, 2013, Applicant submitted his Electronic Questionnaire for National Security Positions (e-QIP) or security clearance application (SCA) (SF 86). (GE 1) On May 9, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines H (drug involvement) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or

continue 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 granted or revoked.

On June 24, 2016, Applicant responded to the SOR and requested a hearing. (HE 3) On July 28, 2016, Department Counsel indicated he was ready to proceed on Applicant's case. On August 30, 2016, Applicant's case was assigned to me. On October 3, 2016, DOD issued a hearing notice, setting the hearing for October 27, 2016. (HE 1) Applicant's hearing was held as scheduled. Department Counsel offered four exhibits; Applicant offered nine exhibits; there were no objections; and all documents were admitted into evidence. (Tr. 18-23; Government Exhibits (GE) 1-4; Applicant Exhibits (AE) A-I) Additionally, I attached to the record the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On November 3, 2016, I received the transcript. The record was held open until November 18, 2016. (Tr. 16, 58) Applicant provided one exhibit after the hearing. (AE J)

Findings of Fact¹

Applicant admitted the conduct alleged in SOR ¶ 1. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 42-year-old employee of a defense contractor, who has been employed as a leader for a group of engineers providing project management or software development for the previous five years. (Tr. 5, 7; GE 1) In 1992, he graduated from high school, and in 1998, he received a bachelor's degree with a major in industrial technology. (Tr. 6) In 2010, he received a dual master's degree in business administration and engineering. (Tr. 6) He has no military service. (Tr. 6) In 2014, he married, and he does not have any children. (Tr. 7) Applicant has held a security clearance for the previous 18 years. (Tr. 7-8) There is no evidence of security violations.

Drug Involvement and Personal Conduct

In Applicant's SOR response, he admitted the following illegal drug use: marijuana use from 1991 to October 2012 (SOR ¶ 1.a); nitrous oxide use on two occasions from 1991 until July 2007 (SOR ¶ 1.b); narcotics use including Vicodin, OxyContin (on two occasions), and Codeine from 1991 until September 2012 (SOR ¶ 1.c);² and ecstasy use on two occasions in 2006 and 2010. (Tr. 37; SOR ¶ 1.d)

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

²Applicant said he was prescribed and used the Vicodin and Codeine. (Tr. 40) He used OxyContin without a prescription once or twice. (Tr. 40) Applicant provided evidence of numerous prescriptions to alleviate his back pain. (AE J) Applicant is credited with mitigating the SOR allegations relating to his use of Vicodin and Codeine.

SOR ¶ 1.e alleges and Applicant admitted that his spouse used marijuana and stored marijuana and drug paraphernalia in their residence. (SOR response) She used marijuana infrequently; he asked her to remove the marijuana from their residence; and she removed her marijuana from their residence. (Tr. 33-34) He believed she has not recently used marijuana. (Tr. 34, 43)

In Applicant's 2003 Office of Personnel Management (OPM) personal subject interview (PSI), he said he had not used any illegal substances since 1993 or 1994. (GE 3)³ His 2003 OPM had false information about his history of illegal drug use because he used marijuana in the early 2000s usually while camping with friends. (Tr. 36) He said he did not provide accurate information about his history of illegal drug use because he wanted to retain his security clearance. (Tr. 35-36) In his 2003 OPM PSI, he said he did not intend to use illegal drugs in the future. (Tr. 41; GE 3)

Applicant disclosed that in August 2010, he was arrested for drunk in public and possession of marijuana. (GE 1 at 78) He used marijuana as follows: from 2005 to 2007, about 40 times; twice in August 2010; and twice in September to October 2010. (GE 1 at 80) During his October 11, 2013 OPM PSI, Applicant said his most recent marijuana use was in October 2011 when he smoked it once and ate it once. (GE 2 at 3)

In September 2012, Applicant's access to sensitive compartmented information (SCI) was revoked because of his arrest for possession of marijuana and driving under the influence of alcohol in August 2010. (Tr. 25) Applicant went into a diversion program; he completed community service; and he did not receive a conviction. (Tr. 26-27) He did not receive alcohol-related counseling or treatment. (Tr. 46)

Applicant's history of more extensive drug use surfaced during a polygraph examination. (Tr. 28, 38) Applicant began using marijuana in 1991, while he was in high school. (Tr. 29-30) He said he might have sold marijuana in high school. (Tr. 43) He used marijuana 50 to 100 times. (Tr. 31) When he completed security clearance applications before 2012, he did not fully disclose his illegal drug use because he did

³Applicant's SOR does not allege that he repeatedly provided false information on his security clearance applications (SCA) and during his Office of Personnel Management (OPM) personal subject interviews (OPM) about his history of illegal drug use. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's false statements will not be considered except for the five purposes listed above.

not want anyone to know about it, and he did not want to jeopardize his position. (Tr. 32, 35) Applicant's employer has a "zero tolerance" for illegal drug use. (Tr. 33) He acknowledged that his use of illegal drugs while holding a security clearance was a "very, very poor decision." (Tr. 33) His most recent false denial of illegal drug use was in 2009 on his SCA and during his 2009 OPM PSI. (Tr. 37)

After his polygraph examination, which he did not pass, Applicant had a follow-up 2013 OPM PSI. (Tr. 48) He estimated in his 2013 OPM PSI that he used marijuana more than 40 times from 2005 to 2007. (Tr. 36-37) He said he did not use marijuana again until he used it twice in the 2010 to 2012 timeframe. (Tr. 37) His description of his illegal drug use, as outlined in the SOR, was consistent with his 2013 OPM PSI. (GE 2)

Applicant has not received any drug counseling or treatment. (Tr. 38) His most recent illegal drug use was in the 2011 to 2012 timeframe. (Tr. 39) Applicant's employer has not tested him for illegal drug use for at least five years. (Tr. 51) Applicant has received treatment from physicians for back pain. (Tr. 39; AE J) Most of his illegal narcotic use was to treat for back pain. (Tr. 40) See note 2 *supra*.

Applicant said he did not intend to use illegal drugs in the future, and he did not intend to abuse prescription drugs. (Tr. 41) He continues to associate with a friend who is a drug user; however, his friend's illegal drug use is personal and private. (Tr. 42, 50) He has very limited contact with two other illegal drug users, and he assured there was no chance that he would use illegal drugs with them. (Tr. 42)

Applicant said he conscientiously protected classified information. (Tr. 44) His performance evaluations show his diligent efforts on behalf of the contractor and the DOD. (Tr. 44) He worked hard to rebuild the trust of his employer. (Tr. 45)

Character Evidence

Applicant's operations manager has supervised Applicant for four years. (AE A) A coworker has worked with Applicant for five years. (AE B) The general sense of their statements and Applicant's evaluations is that Applicant is intelligent, trustworthy, dedicated, an effective communicator, capable, professional, and responsible. (AE A-AE I) In August 2014, he was employee of the month for his division. (AE D) In 2015, his company gave him an "Extraordinary Engineering Award." (AE C) His performance plans indicate his important goals and contributions to his company and DOD. (AE E-AE I) The character evidence supports reinstatement of Applicant's security clearance. (AE A-AE I)

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.

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 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. Nothing in this decision should be construed to suggest that I 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:

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.

The 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";⁴ "illegal drug possession"; and "any illegal drug use after being granted a security clearance." Applicant used and possessed marijuana, ecstasy,⁵ and OxyContin⁶ while holding a security clearance.⁷ The evidence of record does not establish that when Applicant inhaled nitrous oxide he violated federal law; however, he likely violated state law.⁸ Because there is no record evidence of the state where Applicant used nitrous oxide, that allegation is found for Applicant. AG ¶¶ 25(a), 25(c), and 25(g) apply.

⁴AG ¶ 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."

⁵Ecstasy is a Schedule one controlled substance. Drug Enforcement Administration website, "Fact Sheet Ecstasy," https://www.dea.gov/druginfo/drug_data_sheets/Inhalants.pdf. (HE 5)

⁶OxyContin is a Schedule two controlled substance. Drug Enforcement Administration website, Oxycodone Fact Sheet, https://www.dea.gov/druginfo/drug_data_sheets/Oxycodone.pdf. (HE 6)

⁷AG ¶ 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). Marijuana is a Schedule (Sch.) I controlled substances. See Drug Enforcement Administration listing at http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

⁸While nitrous oxide use is most likely illegal under state law, the location of the offense is not included in the record. Nitrous oxide possession or use does not violate federal law. Drug Enforcement Administration website, "Fact Sheet Inhalants," https://www.dea.gov/druginfo/drug_data_sheets/Inhalants.pdf. (HE 4)

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
 - (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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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). 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.”⁹

Applicant stopped using marijuana in 2011 or possibly 2012. Applicant resolved not to use marijuana in the future. He recognized the adverse impact of drug abuse in connection with access to classified information, and he expressed remorse about using marijuana while holding a security clearance. He also understands that possession of marijuana, ecstasy, and OxyContin (without a prescription) violates federal law. I accept Applicant’s statement that he intends to continue to abstain from illegal drug possession and use as truthful. AG ¶ 26(a) partially applies to his possession and use of illegal drugs;¹⁰ however, more time without illegal drug use is necessary to fully apply AG ¶ 26(a) because of his extensive use of illegal drugs while holding a security clearance.

SOR ¶ 1.e is mitigated because Applicant’s spouse has ended her marijuana possession and use. There is no marijuana stored at Applicant’s residence.

In sum, Applicant used marijuana, ecstasy, and OxyContin while holding a security clearance. His marijuana use was frequent and occurred on numerous occasions from 1991 to 2011 or 2012. Each time he possessed and used marijuana,

⁹ISCR 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.

¹⁰In 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.

ecstasy, and OxyContin (without a prescription) he violated federal criminal law. He violated security rules and his employer's policy against illegal drug use. He understands the adverse consequences from marijuana use;¹¹ however, he has not shown or demonstrated a sufficient track record of abstention from illegal drug use to eliminate drug involvement as a bar to his access to classified information. His repeated dishonest statements about his history of illegal drug use on his SCAs and during his OPM PSIs weigh against approval of access to classified information because they show a lack of reform and rehabilitation. See note 3 *supra*. Drug involvement concerns are not mitigated at this time.

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.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

¹¹Approval 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.

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources; 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. . . .

The SOR cross-alleges under the personal conduct guideline the same conduct alleged under the drug involvement guideline. His illegal drug possession and use while holding a security clearance under Guideline H is sufficient to warrant revocation of his security clearance without applying Guideline E. The concerns under Guidelines H and E address identical issues involving judgment, trustworthiness, and reliability. All personal conduct security concerns described in the SOR are directly related to his drug involvement under Guideline H. Personal conduct security concerns as alleged in the SOR constitute an unwarranted duplication of the concerns under Guideline H, and accordingly are 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 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. My comments under Guidelines H and E are incorporated into my whole-person analysis. Some of the factors

in AG ¶ 2(a) were addressed under Guidelines H and E, but some warrant additional comment.

Applicant is a 42-year-old employee of a defense contractor, who has been employed as a leader for a group of engineers providing project management or software development for the previous five years. In 1998, he received a bachelor's degree with a major in industrial technology, and in 2010, he received a dual master's degree in business administration and engineering. Applicant has held a security clearance for the previous 18 years. There is no evidence of security violations.

The general sense of Applicant's character evidence is that Applicant is intelligent, trustworthy, dedicated, an effective communicator, capable, professional, and responsible. He received several awards from his employer and his performance plans indicate his important goals and contributions to his employer and DOD. The character evidence supports reinstatement of Applicant's security clearance.

The evidence against continuation of Applicant's clearance is more substantial. Applicant used marijuana, ecstasy, and OxyContin (without a prescription) while holding a security clearance. His marijuana use was frequent and occurred on numerous occasions from 1991 to 2011 or 2012. His possession of marijuana, ecstasy, and OxyContin (without a prescription) violated federal criminal law, security rules, and his employer's policy against illegal drug use. He was sufficiently mature to be fully responsible for his conduct. His illegal drug possession and use raises questions about Applicant's "reliability and trustworthiness, both because it may impair judgment and because it raises questions about [his] ability or willingness to comply with laws, rules, and regulations." AG ¶ 24. He has not demonstrated a sufficient track record of abstention from illegal drug use to eliminate drug involvement as a bar to his access to classified information. His repeated dishonest statements about his history of illegal drug use on his SCAs and during his OPM PSIs weigh against approval of access to classified information because they show a lack of reform and rehabilitation. See note 3 *supra*.

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 Applicant mitigated personal conduct security concerns as an unwarranted duplication of drug involvement security concerns; however, he did not fully mitigate the security concerns pertaining to drug involvement.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge