



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



In the matter of:)
)
) ISCR Case No. 15-04722
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

12/11/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. He mitigated the Guideline H, drug involvement security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On October 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, G, alcohol consumption, and H, drug involvement. The action was taken under Executive Order (EO) 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on November 7, 2016, and requested a hearing before an administrative judge. The Government subsequently amended the SOR and Applicant answered the amended SOR on March 6, 2017. The case was assigned to me on June 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2017. I convened the hearing as scheduled on November 13, 2017. The Government offered exhibits (GE) 1 through 10. The exhibits were admitted into evidence without objection. Applicant testified and did not offer any exhibits. The record was held open until November 28, 2017, to permit Applicant to provide documents. He did not provide any documents, and the record closed. DOHA received the hearing transcript on November 22, 2017.

Procedural Issues

In the amended SOR, the Government withdrew the Guideline E allegation in ¶ 1.c and the Guideline G allegation in ¶ 3.a. At the hearing, the Government moved to withdraw the Guideline E allegation in ¶ 1.h. The motion was granted.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d through 1.g, and 1.j. He denied the allegations in SOR ¶¶ 1.i.1 through 1.i.5, 1.k, and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in physics and a master's degrees in engineering. He married in 1997 and divorced in 2000. He has a 19-year-old son from the marriage. He remarried in October 2007 and has two stepchildren and a biological child ages, 16, 14, and 7 years old. He has worked for his present employer, a federal contractor, since 2002 and has held a security clearance since approximately May 2004.²

In February 2007, Applicant was arrested and charged with operating a vehicle while intoxicated (DUI), reckless operation of a vehicle, and possession of an alcoholic beverage in a motor vehicle. When the police officer arrived to the crash scene he met with the drivers of the vehicles and an independent witness. The witness told the police officer that he observed a van driving with its flashers on and rapidly changing lanes. Traffic on the Interstate had stopped. The van was driven by a white male. The witness observed the van hit a stopped vehicle in the left traffic lane. The witness then observed the male driver trade seats with the female passenger. The police officer met the occupants of the van. The female identified herself as the driver of the vehicle and provided her driver's license. Although not married at the time, the license belonged to Applicant's wife. The police officer noted that the position of the driver's seat was too far

² Tr. 23-27.

from the steering wheel for Applicant's wife to properly operate the vehicle. On the driver's side floorboard was an alcoholic beverage in a mug style glass with ice.³

Applicant was identified and described by the police officer as highly intoxicated. Applicant admitted he consumed two glasses of Scotch and one he was drinking while the vehicle was in motion. Applicant failed the field sobriety test. His blood alcohol concentration was .177%. The police officer noted there were three children in the vehicle, two girls, ages three and five, and a nine-year-old boy.⁴

In Applicant's answer to the SOR, he stated that he was attending a funeral for a relative, he had several drinks and used bad judgment when he attempted to drive back to his hotel. He changed lanes and hit a vehicle that was in the right lane. He was arrested, served 100 hours of community service, paid fines, and attended DUI school.⁵

Applicant testified that he pled guilty to the DUI offense and was sentenced as a first offender. When asked if he reported the incident to his employer's facility security officer (FSO), he stated: "Two days after I returned from [state], almost immediately."⁶

Applicant was confronted with a JPAS entry made by his FSO in December 2008. It stated that the FSO sent an email reminder to all cleared personnel about their responsibility to self-report certain events. The FSO stated in the report that almost immediately Applicant reported that in 2007, while attending a parade with his family, he received a call that his uncle was not doing well and was in the hospital. They left the parade, and his wife was driving. It was raining and there was a car stopped in the center lane with no lights or hazards on. Cars were swerving around it, and his wife hit the brakes and skid into the vehicle barely denting it. He and his wife jumped into the back seat because the kids were screaming. When the police showed up the owner of the other vehicle claimed Applicant and his wife switched seats and then the police started to harass them. Applicant was drunk and began arguing and was arrested and released without bail. He explained that the district attorney told Applicant's wife that if she testified he would charge her with perjury. Applicant pled guilty, and he told the judge about the threat. The judge would not accept his plea. Later it was agreed that Applicant would plead to a lesser charge. Applicant paid a fine, court costs, and completed community service, and an alcohol program. His report to the FSO stated that he was then released from probation and is having his case expunged. He further reported that his uncle passed away and, he was in jail for a crime he did not commit.⁷

³ GE 3, 5, 6, 10.

⁴ GE 3, 5, 6, 10.

⁵ Answer to SOR.

⁶ Tr. 29.

⁷ GE 5.

Applicant was asked at his hearing why the FSO indicated that Applicant made the report in December 2008 instead of days after the incident as stated by Applicant in his earlier testimony. He testified that he remembered the FSO's email and submitting the report. He said: "I remember him sending out this email and I reported it. I'm not exactly sure of the date. I thought it was right after the incident happened in February."⁸ He then stated: "I didn't report the arrest. I reported the DUI after it was closed and I was charged with the DUI."⁹ He said that the reason he did not report the arrest was because, "I was unsure at the time that I was required to do that." He said he was not aware he had to report the arrest until after there was a conviction. He was waiting for "closure to be able to report the sentence and the charge of DUI."¹⁰ When asked when the case closed, he stated it was August 2007. He was then asked why he failed to report it until December 2008. He did not have an explanation and stated he thought he had disclosed it in a timely manner. I left the record open for him to provide any evidence to show he reported it earlier. None was provided.¹¹

Applicant was questioned about whether he and his wife changed seats during the DUI incident as noted by the police and a witness. He denied they changed seats. He did not recall why his wife told the police officer she was driving. He was again confronted with the information he provided to his FSO where he said his wife was driving at the time. He stated that this information was incorrect. He admitted he was driving at the time. His wife was sober. He pled guilty because she was threatened by the district attorney with a perjury charge. Applicant testified that the police were correct, he was driving. The FSO got the information about his wife driving from him. He then stated he could not recall why he told his FSO his wife was driving. He stated: "Clearly I was in the wrong for lying to my FSO."¹² Applicant continued to equivocate about who was driving and claimed he was the driver.¹³

Applicant testified that in January 2005 he had a party at his house and cocaine, marijuana, and drug paraphernalia were present in the house. He asserted the items belonged to guests attending the party. Although he was aware that drugs were in his house, he denied using them. He admitted he was working for his present employer at the time and held a security clearance. The police arrived and he was arrested. He testified that the case was dropped against him. He testified he did not inform his FSO of the arrest because he thought the case would be dropped. He further testified that his

⁸ Tr. 30.

⁹ TR. 31.

¹⁰ Tr. 34.

¹¹ Tr. 34-35; GE 3, 5, 10.

¹² Tr. 43. It was not alleged that Applicant failed to timely report his DUI arrest and conviction to his FSO. I have not considered this for disqualifying purposes. I may consider his testimony when making a credibility determination, in the application of mitigating conditions, and when analyzing the whole person.

¹³ Tr. 24-44.

bail was revoked because the bail bondsman thought he was a flight risk, and subsequently he was rearrested on February 4, 2005, for the same incident. He testified all charges were dismissed.¹⁴

County jail arrest records document that on January 30, 2005, Applicant was arrested for possession of cocaine and drug paraphernalia. The County jail arrest records also indicate that in February 2005, Applicant was arrested for possession of cocaine, possession of paraphernalia and possession of marijuana. Applicant disputed that he was arrested for two different incidents. Applicant disputed the accuracy of the statements he made to the Government investigator explaining the different and distinct incidents.¹⁵ The evidence from the municipal court shows that in December 2005, the charge from January 2005 for possession of drug paraphernalia was “retire to file”; and the charge for possession of marijuana was “retire to file”; and for the possession of a controlled substance charge “defendant entered a plea of guilty” and was fined \$357.¹⁶ Applicant’s arrest for illegal possession of a controlled substance in January 2005 was also reported in the Federal Bureau of Investigation (FBI) criminal justice information services division report.¹⁷ Applicant did not disclose the January or February 2005 arrests or his later conviction on his 2014 SCA.¹⁸ The disposition of the offenses from February 2005 are unknown.

In December 2005, Applicant was arrested and charged with being drunk in public. The documentary evidence shows the date Applicant was arrested as December 1, 2005, and his court date was January 17, 2006. He pled guilty and was found guilty of the offense. He was fined \$240, which included court costs, which he paid. Applicant testified that he was not arrested, rather he received a ticket for this incident. He testified that he did not disclose this on his 2014 SCA because he was not arrested.¹⁹

SCA Section 22-Police Records asks: Do you have any other offenses where any of the following happened to you? In the past seven (7) years have you been issued a summons, citation, or ticket to appear in a criminal proceeding against you? (Do not include citations involving traffic infractions where the fine was less than \$300 and did

¹⁴ Tr. 47-57.

¹⁵ GE 4 was admitted into evidence after Applicant reviewed it and had no objection. During his hearing, he disputed facts summarized by the investigator in the report. I will not consider GE 4. However, I have considered GE 8 the county arrest record which notes there were two separate arrests on two different dates. The record was held open to allow Applicant to provide documents to corroborate his version of the incident. None were provided.

¹⁶ Tr. 52-59; GE 8, 9.

¹⁷ GE 6.

¹⁸ GE 3.

¹⁹ Tr. 45-47; GE 2, 8.

not include alcohol or drugs).²⁰ I find Applicant could have been reasonably confused in answering this question, even though his arrest was not a traffic infraction and did involve alcohol, but it was outside the seven year period. He was required to disclose this under the section that asked if he had EVER been charged with an offense involving alcohol or drugs. However, under these circumstances, I conclude there was legitimate confusion, and he did not intentionally fail to disclose the December 2005 drunk in public offense. I find in his favor for SOR ¶ 1.i.1.

Applicant disclosed on his January 2004 security clearance application (SCA) that he was arrested in August 1997 and charged with felony burglary of a building. He disclosed the disposition was “probation and non-adjudication.”²¹ He testified that the charge was reduced to a misdemeanor. A document from the Department of Corrections notes the county where the offense occurred; the charge was nonresidential burglary; a felony; the sentence was 36 months, imposed on November 3, 1999; and the status of the sentence was probation. A court record document notes the judgment of the court as “no jurisdiction.” Applicant did not disclose this felony on his June 2001 public trust application (PTA) or on his 2014 SCA as was required.²²

Applicant disclosed on his 2004 SCA that he had been arrested in July 1996 for possession of marijuana and that the charge was dismissed and expunged. He did not disclose that 1996 possession of marijuana charge on his 2014 SCA or on his 2001 PTA. He did disclosed on the 2001 PTA that he was arrested in October 2001 for possession of marijuana. Other than this admission, there is no other evidence of his October 2001 arrest nor was it disclosed on his 2004 or 2014 SCAs.²³

Applicant disclosed on his 2014 SCA that he was arrested in February 2007 for a “DUI first offense.” He reported it was a misdemeanor, and he was fined and received probation. He reported that he was convicted in July 2007 and was on probation until January 2008.²⁴ No other criminal conduct was reported on his 2014 SCA.

²⁰ GE 3.

²¹ GE 2.

²²Tr. 59-62; GE 1, 2, 3, 7, 9.

²³ Tr. 62-63; GE 1, 2, 3, 7. I have not considered any derogatory evidence that was not alleged in applying the disqualifying conditions. I may consider the information in making a credibility determination, in the application of the mitigating conditions, and when analyzing the whole person.

²⁴ GE 3.

Section 22-Police Record of the 2014 SCA asks:

Other than those offenses already listed, have you **EVER** had the following happen to you? Have you **EVER** been charged with a felony offense? . . . Have you **EVER** been charged with an offense involving alcohol or drugs?²⁵

Applicant responded “No.” He failed to disclose his February 4, 2005 arrest and charge of possession of marijuana (SOR ¶ 1.d); the January 30, 2005 charge of possession of a controlled substance and drug paraphernalia (SOR ¶ 1.e) and subsequent plea of guilty to the possession charge; the 1997 felony burglary arrest and charge (SOR ¶ 1.f); and the 1996 possession of marijuana charge (SOR ¶ 1.g).

Applicant’s 2005 arrests and charges for possession of a controlled substance, possession of marijuana, and possession of drug paraphernalia occurred after he was granted a security clearance in May 2004.²⁶ He responded “no” to SCA Section 23-Illegal use of Drugs or Drug Activity, which asked: “While Possessing a Security Clearance: Have you EVER illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?” He admitted he had been arrested for drug possession while holding a security clearance and that he did not report his arrest to his FSO.²⁷

Applicant stated in his answer to the SOR:

I have never intentionally or deliberately withheld or denied any of my past transgressions, I simply made the mistake of misinterpreting the questions on the [e-Qip] form. To my knowledge I have always made a truthful account of any and all of my arrests and charges that have followed me through my past. After my incorrectly answered e-QIP, I was interviewed on 3/10/2015 and was open and honest about the accounts that I could recall. I did not attempt to mislead, misguide or interfere with the investigator at this time.²⁸

I am not denying any of my arrests or charges, although most of them have been expunged from public record. I am denying that I attempted to withhold them from the government record. I was aware that all of this information had already been submitted as part of my clearance history and to deny any of this now or in 2014 would have been ill-advised.

²⁵ GE 3.

²⁶ Tr. 64-65.

²⁷ Tr. 78.

²⁸ Applicant disputed the information summarized by the investigator in GE 4, and it was not considered.

I apologize my actions have led to continued investigation and a hearing. I do not recall the exact circumstances while filling out the e-QIP as I had never filled out this form before, but I know I was working that day and I believe I was caught up in the previous “seven year” questions and checked the next answers incorrectly. These events and decisions happened long ago and I regret them and have tried to leave this in the past although I do acknowledge that they did happen.²⁹

Applicant denies deliberately failing to disclose any of the information that was alleged in SOR ¶¶ 1.i.1 through 1.i.5 because he misunderstood the questions and because he disclosed them later in his interview. He testified: “I thought I had disclosed them on this e-QIP”³⁰. He denied he deliberately failed to disclose the felony arrest and the drug and alcohol arrests on his 2014 SCA because he thought he was only required to disclose convictions. He also thought the questions only required him to disclose if he was charged. He did not disclose the felony burglary because he stated it was reduced to a misdemeanor. He testified he misinterpreted the questions. He testified that he did not fill out the form correctly and messed it up. He had moved on with his life and was trying to block out the incidents and was having difficulty recalling them.³¹

In his answer, Applicant stated that he has moved on since these events. He has relocated twice, remarried, and has a new life. He is a valued employee and he asked forgiveness. He acknowledged the mistakes he made and he did not foresee mistakes of this magnitude happening again. He testified he has grown up and has changed. He no longer associates with the people he did before. He has not had any incidents in the past ten years. He said he takes seizure control medication because he had brain surgery in August 2007 and again in November 2007, which had an impact on his long-term memory.³²

I did not find Applicant’s testimony or his explanations credible. I find Applicant deliberately failed to disclose the January 2005 and February 2005 drug arrests and later conviction of possession of a controlled substance. Although he stated the second arrest was for the same incident, I did not believe his explanation nor does it negate the fact he did not report either to his security officer. I find he deliberately failed to report the felony burglary charge. Applicant did report that charge on his 2004 SCA, but failed to report it on the 2001 PTA and 2014 SCA, as required. I have only considered the 2014 omission. Applicant’s 1996 possession of marijuana charge was reported on his 2004 SCA, but not on his 2001 PTA. He failed to report it on his 2014 SCA. Based on

²⁹ Answer to SOR.

³⁰ Tr. 67.

³¹ Tr. 66-76. GE 7 reflects Applicant was found guilty and was sentenced to probation. GE 9 indicates the court had no jurisdiction. Regardless of the disposition, the evidence supports that he was arrested and charged with a felony and was required to disclose it.

³² TR. 75-77; Answer to SOR

the totality of Applicant's testimony and demeanor, I conclude his omissions were deliberate and an attempt to conceal his history related to drugs and criminal conduct.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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

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

Section 7 of Executive Order 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 E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual group. Such conduct includes: (1) engaging in activities which if known, could affect the person's personal, professional, or community standing.

Applicant was arrested in February 2007 and charged with operating a vehicle while intoxicated, reckless operation of a vehicle, and possession of an alcoholic beverage. Three young children were in the vehicle when he crashed his van into the back of another car. He was convicted of DUI. (SOR ¶ 1.a)

Applicant was arrested in January 2005 and February 2005 for illegal drug possession of marijuana and cocaine, and possession of drug paraphernalia. He was convicted of a possession of a controlled substance and was fined. These incidents occurred after Applicant was granted a security clearance. He deliberately failed to disclose his arrests and conviction on his 2014 SCA. (SOR ¶¶ 1.d, 1.e, 1.i.2, 1.i.3)

Applicant was arrested in December 2005 for drunk in public. He pled guilty and paid a fine. I have found in his favor regarding his failure to disclose this incident on his 2014 SCA. (SOR ¶ 1.b and 1.i.1)

Applicant was arrested in 1997 and charged with felony burglary of a building. He deliberately failed to disclose his felony arrest on his 2014 SCA. (SOR ¶ 1.f)

Applicant was arrested in 1996 for possession of marijuana. He deliberately did not disclose this information on his 2014 SCA. I did not find Applicant's testimony or explanations credible for failing to disclose the information on his 2014 SCA. I have considered that inconsistent information was disclosed on his 2001 PTA, 2004 SCA, and 2014 SCA. I conclude that Applicant intentionally withheld reporting his past drug and criminal history on his 2014 SCA.

Applicant's deliberate falsifications on his 2014 SCA and his drug involvement while holding a security clearance raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or otherwise inappropriate behavior, and such behavior is unlikely to recur; and

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

The SOR alleges Applicant's DUI arrest, felony burglary charge, and three charges for possession of illegal drugs, which occurred from 1996 through 2007. The 2005 possession of a controlled substance charge occurred while Applicant held a security clearance. He was having a party and was aware that others had brought illegal drugs to his house. He did not report his arrest to his FSO for his 2005 drug arrest. He did not timely report his 2007 DUI arrest and conviction. Applicant has not been involved in any illegal activity since that DUI, which was more than 12 years ago. He has moved twice and no longer associates with people involved in criminal activity. I do not believe he will be involved in future illegal activity. AG ¶¶ 17(d) and 17(g) apply to his personal conduct as it relates to his prior criminal conduct involving drugs, alcohol,

and burglary. However, there remains serious concerns about Applicant's drug possession offenses while holding a security clearance and his deliberate omissions of the information on his SCA.

There is no evidence that Applicant made prompt, good-faith efforts to correct his omissions before being confronted with the facts. Applicant's testimony and explanations were not credible. He testified that he did not believe he had to report arrests, but only had to report a conviction; yet he did not report on his 2014 SCA the felony, which he testified was reduced to a misdemeanor, or his January 2005 possession of a controlled substance offense where he pled guilty and was fined.³³ AG ¶ 17(a) does not apply.

Deliberately failing to disclose required information on a SCA is not a minor offense. Applicant's deliberate omissions cast doubts on his current reliability, trustworthiness, and good judgment. AG ¶ 17(b) does not apply.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following is potentially applicable:

(c) illegal possession of a controlled substance, including cultivation, processing, manufacturing, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant was arrested and charged in January 2005 with possession of cocaine and drug paraphernalia. He was arrested in February 2005 with possession of cocaine, possession of marijuana, and possession of drug paraphernalia. He pled guilty to the January 2005 charge of possession of a controlled substance. Applicant was arrested and charged in 1996 for possession of marijuana. The above disqualifying condition applies.

³³ Applicant testified this offense was reduced to a misdemeanor, but the evidence does not support his position. He also testified that the 2005 possession of a control substance charge was dismissed. The evidence supports he pled guilty to the charge.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's last drug-related incident was in early 2005. There is no evidence of recent involvement with illegal drugs. He stated he has moved twice, remarried, matured, and put these behaviors behind him. He no longer associates with friends involved with drugs. There has been a significant period of time since his last drug incident and the evidence supports a finding that a future drug-related incident is unlikely to recur. I find AG ¶¶ 26(a) and 26(b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a history of drug involvement. It appears he has put that behind him and has not had a drug-related incident since 2005. He has mitigated the security concerns regarding his drug involvement. Applicant has a history of inconsistently reporting criminal arrests, charges, and convictions. He deliberately failed to disclose this history and explained that he was unaware he was required to do because he had not been convicted. I considered Applicant's testimony that medication he takes impacts his memory. However, I did not find it persuasive or that it directly affects his ability to honestly disclose required information. Applicant's testimony lacked candor and credibility. His omissions, concealments, and falsifications are a serious security concern and raise questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concern arising under Guideline H, drug involvement, but failed to mitigate the Guideline E, personal conduct security concerns.

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 E:	AGAINST APPLICANT
Subparagraphs: 1.a-1.b:	For Applicant
Subparagraph: 1.c:	Withdrawn
Subparagraphs: 1.d-1.g:	For Applicant
Subparagraph: 1.h:	Withdrawn
Subparagraph: 1.i.1:	For Applicant
Subparagraph: 1.i.2:	Against Applicant
Subparagraph: 1.i.3:	Against Applicant
Subparagraph: 1.i.4:	Against Applicant
Subparagraph: 1.i.5:	Against Applicant
Subparagraph: 1.j:	Against Applicant
Subparagraph: 1.k:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph: 2.a:	For Applicant
Paragraph 3, Guideline G:	WITHDRAWN
Subparagraph: 3.a:	Withdrawn Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge