



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



In the matter of:

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ISCR Case No. 16-01159

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel

For Applicant: Alan V. Edmunds, Esq.

01/08/2018

Decision

HARVEY, Mark, Administrative Judge:

Personal conduct and alcohol consumption security concerns are mitigated; however, drug involvement and substance misuse security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 9, 2010, and March 31, 2015, Applicant completed and signed Questionnaires for National Security Positions (SF 86) or security clearance applications (SCA). Government Exhibit (GE) 1, 2. On October 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H (drug involvement and substance misuse), E (personal conduct), and G (alcohol consumption).

On November 11, 2016, Applicant provided a response to the SOR and requested a hearing. HE 3. On January 6, 2017, Department Counsel was ready to proceed. On August 15, 2017, the case was assigned to me. On September 7, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 30, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 3 exhibits; Applicant offered 19 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 11-12; GE 1-3; AE A-S. On November 6, 2017, DOHA received a copy of the hearing transcript.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact²

Applicant's SOR response admitted all of the SOR allegations. HE 3.³ She also provided mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 25-year-old supervisor senior auditor, and her current employer has employed her since January 2016. Tr. 14-15; GE 1. She has not served in the U.S. armed forces. In 2013, she received a bachelor's degree in accounting. Tr. 14; AE F; AE N, AE O. She received certifications as a Certified Public Accountant (CPA), Certified Government Financial Manager (CPFM); and Certified Fraud Examiner (CFE). Tr. 14, 19-20; AE F; AE N. She has never married, and she has no children. Tr. 14, 56. She has held a security clearance since October 2010. There is no evidence of security violations.

Drug Involvement and Substance Misuse

Applicant's SOR alleges, and she admitted: she used marijuana from about June 2009 to March 2015 (§ 1.a); she used illegal stimulants from June 2012 to May 2013 (§ 1.b); she used hallucinogens from about June 2012 to May 2013 (§ 1.c); she used cocaine in May 2014 (§ 1.d); she was granted a security clearance in October 2010 (§ 1.e); and she used illegal drugs while holding a security clearance (§ 1.e). Tr. 20; SOR response.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

² Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³ Department Counsel made a motion to withdraw SOR § 2.d; Applicant did not object; and I granted the motion to withdraw SOR § 2.d. Tr. 10.

In Section 23 of Applicant's March 31, 2015 SCA, Illegal Use of Drugs or Drug Activity, she disclosed: (1) marijuana use from June 2009 to March 2015; (2) marijuana use while holding a security clearance; (3) ecstasy use from June 2012 to May 2013; (4) hallucinogens (mushrooms) use twice from August 2013 to December 2013; and (5) cocaine use in May 2014. Tr. 29-32; GE 1.

In response to a question at her hearing about her most recent marijuana use, Applicant said, "I want to say it's October 2017, end of 2015, early 2016."⁴ Tr. 23, 29-31. Later, she clarified that her most recent marijuana use was in "early 2016." Tr. 29-30. Her most recent use of ecstasy was in the "same time frame." Tr. 23, 31. She was unsure about her most recent use of hallucinogens; however, she said, December 2013 is about right. Tr. 23-24. She used ecstasy about seven times. Tr. 31, 55. She ended her ecstasy use when she was in college. Tr. 32.

In December 2010, Applicant was an intern working at a military installation, and she received a security clearance. Tr. 24, 47. She returned to college after the internship, and she used illegal drugs in college. Tr. 24-25. She worked for the DOD during breaks from college. Tr. 47-48. She acknowledged that "technically" she had a security clearance when she used marijuana and ecstasy in college. Tr. 49-50.⁵ She was unsure whether she used illegal drugs while DOD employed her during the period when she was in college. Tr. 50.

⁴ Applicant's SOR alleges she used marijuana until March 2015, and she stated at her hearing that she continued to use marijuana until early 2016. Applicant's SOR does not allege that she was diagnosed with alcohol use disorder. 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)). The allegations of marijuana use after March 2015 and the diagnosis of alcohol use disorder will not be considered except for the five purposes listed above.

⁵ See Veterans Today website, <https://www.veteranstodayarchives.com/2007/06/17/u-s-government-security-clearances-get-the-facts/> (stating, "An 'active' clearance is one in which the candidate is presently eligible for access to classified information. A 'current' clearance is one in which a candidate has been determined eligible for access to classified information but is not currently eligible without a reinstatement. A candidate has two years to remain on a 'current' status before moving to an 'expired' status. Both 'active' and 'current' clearances are easily transferred between employers. An 'expired' clearance is one that has not been used in more than two years and cannot be reinstated. Once sponsored, the candidate must resubmit a clearance application and go forth with a new investigation. Individuals with expired clearances cannot be considered for jobs that require active or current clearances."). See also Army Security Directorate, http://www.ftmeade.army.mil/directorates/dptms/myth_busterv2.pdf (clearance eligibility remains for two years after separation from employment); Army Security Fact Sheet, <http://www.dami.army.pentagon.mil/site/PerSec/docs/Army%20Security%20Clearance%20Fact%20Sheet.pdf>.

On January 11, 2017, Applicant signed a 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. Tr. 17-18; AE G. See AG ¶ 26(b)(3). In February 2017, Applicant completed a two-to-four month drug and alcohol treatment program. Tr. 16-17; AE A. None of Applicant's current associates use illegal drugs. Tr. 56.

Personal Conduct

SOR ¶ 2.a cross-alleges that Applicant engaged in the same conduct under the personal conduct guideline as alleged under the drug involvement and substance misuse guideline in SOR ¶ 1.e.

On August 17, 2011, the police arrested Applicant for theft of property valued at less than \$100. SOR ¶ 2.b. Applicant was charged because she shoplifted from a store. Tr. 45. Applicant pleaded guilty to the theft offense. Tr. 45. She completed 350 hours of court-ordered community service, and she paid a fine. Tr. 17, 46; AE B; AE Q. In September 2015, Applicant's theft conviction was expunged. Tr. 17, 46; AE C; AE Q.

Applicant's July 9, 2010 SCA in Section 23, Illegal Use of Drugs or Drug Activity, asked "In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.) . . . ?" Applicant responded, no, and she did not disclose her marijuana use in June 2009. SOR ¶ 2.c. Applicant followed the advice of others that she should not disclose her history of illegal drug use on her SCA unless she knew she would be taking a polygraph test. Tr. 25-26; SOR response. She regrets this bad decision.

Alcohol Consumption

Applicant's SOR alleges: she consumed alcohol, at times to excess and to the point of intoxication, from age 17 to at least January 2016 (¶ 3.a); on April 2, 2010, the police cited her for possession of alcohol under the legal drinking age (¶ 3.b); on July 24, 2011, the police arrested her for driving a vehicle while under the influence of alcohol (DUI), speeding, driving with a restricted license, and possessing a false identification card (¶ 3.c); and on September 27, 2012, the police charged her with possession of alcohol under the legal drinking age (¶ 3.d). Applicant admitted the SOR allegations. Tr. 27; SOR response.

For her April 2, 2010 underage possession of alcohol offense, the court sentenced Applicant to 20 days of community service, a fine, and probation before judgment Tr. 34-35.

Applicant pleaded guilty to the July 24, 2011 DUI. Tr. 39. From September 2, 2011, to December 13, 2011, Applicant attended a 12-week outpatient alcohol counseling, as ordered by the court, because of her DUI arrest on July 24, 2011. Tr. 17, 39-40; AE D; SOR ¶ 3.e. She received urinalysis tests (no positive test results for illegal drugs), attended Alcoholics Anonymous (AA) meetings, attended eight group sessions, and made progress in the alcohol-counseling program. AE D; AE R; AE S.

From November 10, 2016, to January 9, 2017, Applicant was enrolled in an intensive outpatient drug and alcohol treatment program. Tr. 18-19; AE L. The principal diagnosis was alcohol use disorder moderate. Tr. 41-43; AE L. She did not receive a clear treatment recommendation to abstain from alcohol consumption. Tr. 43, 57. She was advised that she should not use illegal drugs. Tr. 44. On February 2, 2017, she successfully completed the intensive outpatient drug and alcohol treatment program. AE M.

On January 11, 2017, Applicant signed a statement of intent to abstain from all alcohol abuse, acknowledging that any future alcohol abuse is grounds for revocation of national security eligibility. Tr. 18; AE H. Applicant did not define the term "alcohol abuse." She most recently drank alcohol to the point of intoxication in August 2017. Tr. 26. She was not driving while she was intoxicated. Tr. 26. She does not intend to drink to intoxication in the future. Tr. 28. She was happy that she admitted her illegal drug use on her SCA, and she expressed regret and remorse for the decisions that caused the events described on the SOR. Tr. 57-59.

Character Evidence

Five statements attest to Applicant's good character. AE I. The general sense of her statements is that she is diligent, dedicated, professional, honest, and trustworthy. AE I. Her performance evaluations indicate she met her employers' requirements, and she made contributions to her employers' mission accomplishment. AE J. On January 12, 2017, she received a merit pay increase. AE K.

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, "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 applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 and Substance Misuse

AG ¶ 24 articulates the security concern for drug involvement and substance misuse:

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. Controlled substance means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 provides three conditions that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition);” “(c) illegal possession of a controlled substance . . . ;” and “(f) any illegal drug use while granted access to classified information or holding a sensitive position.”

Applicant possessed and used marijuana, ecstasy, psilocybin (hallucinogenic mushrooms) and cocaine.⁶ Some of her illegal drug possession and use occurred when her security clearance was current, but not active. AG ¶¶ 25(a), 25(c), and 25(f) are established.

AG ¶ 26 details conditions that could mitigate security concerns:

(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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this 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 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;

(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 DOHA 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

⁶ 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 e.g., *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

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).

None of the mitigating conditions fully apply. Applicant used marijuana for several years, and ended her marijuana use in early 2016. She used ecstasy about seven times, with her most recent ecstasy use when she was in college. She used a hallucinogen, psilocybin or mushrooms, twice with the most recent use in December 2013. Her illegal marijuana possession and use was while she had a current, but not active, security clearance. Her illegal drug possession and use is recent.

On January 11, 2017, Applicant signed a 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. In February 2017, Applicant completed a drug and alcohol treatment program. None of her current associates use illegal drugs. Her efforts are important rehabilitative steps; however, more time without illegal drug possession and use is necessary to fully mitigate drug involvement and substance misuse security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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

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

(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 individual may not properly safeguard classified or sensitive 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (3) a pattern of . . . rule violations; and

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

All of Applicant's conduct causing a security concern in SOR ¶ 2.a is explicitly covered under Guideline H, and that conduct is sufficient to warrant revocation of her security clearance under Guideline H. AG ¶¶ 16(c) and 16(d) do not apply. Applicant's involvement with illegal drugs affects her professional and community standing. However, this conduct does not create a vulnerability to exploitation, manipulation, or duress because security officials are aware of it. AG ¶ 16(e) is not established. Guidelines H and E address identical issues involving judgment, trustworthiness, and reliability. Guideline E concerns constitute a duplication of the concerns under Guideline H, and accordingly, personal conduct security concerns in SOR ¶ 2.a are found for Applicant.

Applicant's August 17, 2011 theft offense is sufficient to establish AG ¶ 16(e). Applicant falsely stated on her July 9, 2010 SCA that she did not use any illegal drugs in the previous seven years. AG ¶ 16(a) is established.

AG ¶ 17 details two conditions that could mitigate security concerns:

(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; and

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

Applicant's 2010 falsification of her SCA and her 2011 theft of property valued at less than \$100 are not recent. The offenses were not repeated, and they happened under such unique circumstances that they are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment. She disclosed her illegal drug use

on her March 31, 2015 SCA. Security officials are well aware of her theft and illegal drug possession and use. AG ¶¶ 17(c) and 17(e) apply. The judgment concerns stem primarily from Applicant's history of illegal drug use. Guideline E trustworthiness concerns constitute a duplication of the concerns already well documented under Guideline H, and accordingly, personal conduct security concerns are found for Applicant.

Alcohol Consumption

AG ¶ 21 describes the security concern about alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 provides for two conditions that could raise a security concern and may be disqualifying as follows:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption⁷ of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant's history of alcohol consumption, including her alcohol-related arrests, are sufficient to establish AG ¶¶ 22(a) and 22(c).

AG ¶ 23 lists four conditions that could mitigate security concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

⁷ Although the term "binge" drinking is not defined in the Adjudicative Guidelines, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>. "Binge drinking is the most common pattern of excessive alcohol use in the United States." See the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>.

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has one DUI arrest, and it was on July 24, 2011. She has two arrests for underage possession or use of alcohol. Her most recent alcohol-related arrest is more than five years ago. Applicant has excellent performance evaluations, character references, and professional accomplishments. She successfully completed an alcohol-rehabilitation program. She has reduced her level of alcohol consumption and promised not to drink alcohol to intoxication in the future. Additional alcohol-related problems are unlikely to occur. AG ¶¶ 23(a), 23(b), and 23(d) are established. Guideline G security concerns 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(d):

(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), "[t]he ultimate determination" of whether to grant 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, E, and G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 25-year-old supervisor senior auditor. In 2013, she received a bachelor's degree in accounting. She earned certifications as a CPA, CPFM and CFE. Her character statements generally indicate she is diligent, dedicated, professional,

honest, and trustworthy. She contributed to her employers' mission accomplishment. On January 12, 2017, she received a merit pay increase. She has held a security clearance since October 2010. There is no evidence of security violations.

The evidence against granting Applicant access to classified information is more substantial. Her illegal drug use was extensive: marijuana use from June 2009 to early 2016, including while holding a current but not active security clearance; ecstasy use about seven times from June 2012 to May 2013; hallucinogens (mushrooms) use twice from August 2013 to December 2013; and cocaine use in May 2014. Her illegal drug possession and use raise unresolved "questions about [her] reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about [her] ability or willingness to comply with laws, rules, and regulations." See AG ¶ 24.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated drug involvement and substance misuse concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued abstention from illegal drug possession and use, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, and the AGs, to the facts and circumstances in the context of the whole person. Personal conduct and alcohol consumption security concerns are mitigated; however, drug involvement and substance misuse security concerns are not mitigated.

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
Subparagraphs 1.a through 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant
Subparagraph 2.d:	Withdrawn
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge