



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



In the matter of:)
)
) ISCR Case No. 22-02560
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2025

Decision

KATAUSKAS Philip J., Administrative Judge:

This Decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. Applicant did not mitigate security concerns about his drug involvement and substance misuse or personal conduct security concerns over his failure to disclose his drug use on his security clearance applications. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on April 28, 2021. On May 2, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). The DOD issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 12, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). administrative judge. The case was assigned to me on February 2, 2024. On January 31, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on March 28, 2025. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 were admitted without objection. Applicant offered Applicant Exhibits (AE) A and B, and they were admitted without objection. Applicant testified and called one character witness. DOHA received the transcript (Tr.) on April 10, 2025.

Findings of Fact

Applicant is 42 years old, was married in January 2013 and divorced in April 2016, after learning that his wife had been unfaithful and was pregnant by another man. He has no children. He earned his bachelor's degree in December 2007. He served on active duty in the U.S. Army from February 2012 until February 2016 when he was honorably discharged. He has been employed as a federal contractor from 2017 to the present. He has worked for his current sponsor since July 2022. He is currently enrolled in a bachelor's accelerated cyber security program. (GE 3; Tr. 39, 45, 64.)

SOR

Under Guideline H, the SOR alleged that Applicant: **(a)** used marijuana with varying frequency from fall 2000 to October 2021; **(b)** used cocaine, to include crack cocaine, with varying frequency from February 2014 to January 2016; **(c)** used marijuana and cocaine, as set forth in subparagraphs 1.a and 1.b above, after being granted access to classified information in about October 2011; **(d)** tested positive for cocaine on a urinalysis in about January 2016; and **(e)** tested positive for marijuana on a urinalysis in about 2008. (SOR ¶ 1.)

Applicant admitted **SOR ¶ 1.a** using marijuana before 2011 but denied use after 2012, admitting being in contact with others using but avoided using it himself. (Answer ¶ 1.a.) He admitted **SOR ¶ 1.b**. He admitted **SOR ¶ 1.c** using marijuana and cocaine, as set forth in subparagraphs 1.a and 1.b above, after being granted access to classified information in October 2011; but he answered that his clearance was suspended from August 2014 to January 2016 and that charges (not alleged) were eventually dropped, and he never was around classified material. (Answer ¶ 1.c.) He admitted **SOR ¶ 1.d.** (Answer ¶ 1.d.) He denied **SOR ¶ 1.e** testing positive for marijuana on a urinalysis in about 2008. He alleged that his employer "had a grudge" against him and "stereotyped" him to get him fired. He was not fired but "may have smoked marijuana 1 to 3 times that year." (Answer ¶ 1.e.)

Under Guideline E, the SOR alleged that Applicant: **(a)** deliberately failed to disclose on his September 13, 2011 SCA his marijuana use set forth in subparagraphs 1.a above; **(b)** deliberately failed to disclose on his August 5, 2020 SCA his marijuana and cocaine use set forth in subparagraphs 1.a and 1.b above; **(c)** deliberately failed to disclose on his August 5, 2020 SCA his marijuana and cocaine use set forth in

subparagraphs 1.a through 1.c above; (d) deliberately failed to disclose on his April 28, 2021 SCA his marijuana and cocaine use set forth in subparagraphs 1.a and 1.b above; (e) deliberately failed to disclose on his April 28, 2021 SCA his marijuana and cocaine use set forth in subparagraphs 1.a through 1.c above; and (f) in his August 5, 2022 personal subject interview (PSI) initially falsified material facts about his marijuana and cocaine usage, until he was confronted by the investigator. (SOR ¶ 2.)

Applicant admitted SOR ¶¶ 2 a through 2 e without qualifications. He admitted SOR ¶ 2.f “but with a refute,” which is discussed further below (Answer ¶ 2.)

Applicant’s Testimony

Applicant currently has a Secret clearance. It was granted in May 2013 while he was in the Army but was placed on hold from August 2014 to January 2016. It was placed on hold, because of a domestic case which did not involve his ex-wife. They were separated at the time. It involved a woman he was having a relationship with, and they were “horseplaying.” He pulled her wig “in a joking manner,” and she called the police. He was arrested, placed in a cell for 12 hours, and released. The Army put him on staff duty and required him to take an ASAP (Alcohol Safety Action Program), because he had been drinking. He successfully completed that program, and his clearance hold was lifted just before he left the Army in February 2016. (Tr. 39-43.)

Guideline H

SOR ¶ 1.a (marijuana use from fall 2000 to October 2021). In his Answer, Applicant admitted using marijuana before 2011, but he denied use after 2012 admitting only being in contact with others using but avoided using it himself. (Answer ¶ 1.a.) He testified that during that time period, he used it “very sparingly,” because [part of the time] he played college and high school football. He used once a year or every other year at social gatherings, during the 18-year-time period, from age 18 to 35 years old. In 2018, he allowed the girl he was dating to blow her marijuana smoke in his face. He was aware she was smoking marijuana. He testified he was “pretending” to breathe but then admitted that he was breathing. Between 2000 and 2018, he used marijuana on average once a year or more often. He never purchased marijuana or used it while in the Army. He did not use marijuana after he got out of the Army or actively use it at any time as a federal contractor. (Tr. 46-53.)

In 2018, Applicant was working for a defense contractor, and another girlfriend had returned from a trip. She handed him a gummy. He did not ask any questions about it. She did not tell him it might have THC in it, because she knew he would not take it. The gummies were mixed up (regular and THC). He had no symptoms and did not inform his employer. That was the first time he had an edible. In the past, he had only been smoking marijuana. (Tr. 53-57.)

Applicant testified about a trip he made to State A in 2021 with another girlfriend. They stopped at a tobacco store to buy drinks, snacks, and cigarettes. He told his girlfriend and the clerk that because of his job he could not have anything that contained

THC. He read a gummy package and felt they did not contain THC. He only ate the gummies because his girlfriend "pushed" him to do it. He knew they may have had THC in them. There are no other incidents involving marijuana use or anybody offering him an edible, a cigarette, or anything that may have contained THC. (Tr. 57-62.)

SOR ¶ 1.b (cocaine use from February 2014 to January 2016). In his Answer, Applicant admitted using marijuana and cocaine as alleged. (Answer ¶ 1.b.) He testified that he was in the Army during that time, between ages 31 and 32. He had a security clearance. He used cocaine sporadically, including crack cocaine, possibly once a month or every other month. He had moved in with "this girl." She introduced him to drugs. He met her in September 2013, and she initially hid her cocaine use from him. Soon he started using cocaine once or twice a month with her. Then he began using with her family and friends. He knew it was a violation of federal law and the Uniform Code of Military Justice. He never notified his command of his cocaine use. He tested positive for cocaine in January 2016 just before he left the Army. Other than his 2008 positive marijuana test and 2016 positive cocaine test, to his knowledge, he has never tested positive for any other illegal substances. To his knowledge, he currently does not associate with anybody who uses cocaine, and he has not used cocaine since 2015. (Tr. 63-75.)

SOR ¶ 1.c (use of marijuana and cocaine after being granted access to classified information in October 2011). In his Answer, Applicant admitted this allegation but added that he "never was around classified material." (Answer ¶ 1.c.) The following is from GE 4:

Did any of your use, set forth above, occur while you had access to classified information or while you were holding a sensitive position?

Yes ✓ No _____

- a. If "YES," please specify when you were granted access to classified information OR began working in a sensitive position and any end date(s), if applicable.

*Did not do sensitive work
or use*

SOR ¶ 1.d (testing positive for cocaine on a January 2016 urinalysis). In his Answer, he admitted this allegation. (Answer ¶ 1.d.) Applicant testified that he tested positive for cocaine on a January 2016 urinalysis just before he left the Army. Since 2016, he has been tested by employers for illegal substances and was never positive. (Tr. 74-76.)

SOR ¶ 1.e (testing positive for marijuana on a urinalysis in about 2008). In his Answer, he denied that he was fired by his employer (not alleged) but admitted that he "may have smoked marijuana 1 to 3 times that year." (Answer ¶ 1.e.)

Applicant recently finished a substance alcohol class from December 2024 to January 2025. In August 2016, he was arrested and convicted in 2017 in State B for a

DUI. His license was revoked. As part of the plea, he was required to take a substance abuse class. He then moved to State C but did not complete the class for State B. He just completed the course, so he could have his license reinstated in State B. He also completed the course, because he thought it would help his security clearance situation. (Tr. 77-81.)

From 2020 to 2021, Applicant saw a personal counselor and discussed his drug use. Applicant has been trying to distance himself from that drug use path. To his knowledge, none of his close friends, associates, or family members use any kind of illegal drugs. He does not intend to use illegal substances in the future, because it is “definitely not worth it . . . [and] could devastate and ruin your life.” (Tr. 82-83.)

Guideline E (Failures to Disclose)

SOR ¶ 2.a (marijuana use from Fall 2000 to October 2021). In his Answer, Applicant admitted this allegation. (Answer ¶ 2.a.) He was directed to GE 1, his September 13, 2011 SCA at 20. He testified that he marked “No” to the question “any illegal drug use in the past seven years.” He agreed that the SCA covered the time period before he completed that SCA. He explained that in 2011, he was preparing to join the . . . Army, and he “was advised by a recruiter to just say ‘no’” to a question about illegal drug use “if he wanted to join.” “That was just the quick guidance he gave me.” So, he took that advice and did not include his illegal drug use on the September 2011 SCA. He agreed that he certified that his responses to the SCA were complete and correct. (Tr. 83-85.)

SOR ¶¶ 2.b and 2c. (marijuana and cocaine use while possessing a security clearance). In his Answer, Applicant admitted these allegations. (Answer ¶¶ 2.b and c.) He was directed to GE 2, his August 5, 2020 SCA at 41. He testified that he checked “No” to all questions concerning illegal drug use. He agreed that a correct answer would have included his marijuana use, cocaine use, and crack cocaine use. He agreed that a correct answer would have also included use with a security clearance that he had been granted. (Tr. 85-86.)

Applicant explained why he did not disclose his drug use on the August 5, 2020 SCA: “The reality was the stigma behind it. I was ashamed. I wanted to distance myself and just move past it. I understand, it was the wrong thing to do.” He was 37 years old when he completed this SCA. He had been working as a federal contractor for about three years and had served in the Army. He agreed that he certified that his responses to the SCA were complete and correct. He agreed that he knew at the time that he had not included his drug use and that it was purposeful. (Tr. 86-88.)

SOR ¶ 2.d (marijuana and cocaine use). In his Answer, Applicant admitted this allegation. (Answer ¶ 2.d.) He was directed to GE 3, his April 28, 2021 SCA at 40 to 41. He testified that he marked “no” to all questions about illegal drug use and use while holding a clearance. Those questions would have covered marijuana, cocaine, and crack cocaine. He explained why he failed to include that information on this SCA:

App.: [It] was a mistake . . . I wanted to be consistent with the other two [SCAs] . . . I will state that with the other two it didn't come up . . . it was a shameful past of mine . . . I'm not proud about at all.

DC: So there had been no adverse consequence to lying in the previous two applications, so you lied again in the third one.

App.: Yes. (Tr. 88-89.)

SOR ¶ 2.e (marijuana and cocaine use). In his Answer, he admitted this allegation. (Answer ¶ 2.e.)

SOR ¶ 2.f (initially falsified material facts about his marijuana and cocaine use, until he was confronted by the investigator). In his Answer, he admitted this allegation but with the following "refute":

I was asked during the interrogation why she was conducting the interview which at the time I didn't know and stated. She allow (*sic*) me to time to figure it out. I then provided a list of answers until she agree (*sic*) when I stated the correct answer and then she informed me that I failed a drug test in 2016. From that point she wanted me to explain in detail what took place. There I provided detail (*sic*) information, (Answer ¶ 2.f.)

Applicant was directed to AE B, his July 12, 2023 statement about his August 5, 2022 PSI that is part of GE 5. He agreed that on April 14, 2023, he certified that his PSI was accurate and made no corrections but that three months later in AE B, he changed his "interpretation" of his PSI. He agreed that in his PSI he stated that he did not list his drug use or answer honestly in prior subject interviews when asked about his drug use. He agreed that he intentionally lied on his security forms and intentionally lied during his subject interview because he did not want to be judged on that period of his life. He agreed that he was not proud of that period. He also agreed that during his PSI, he changed his story and added additional drug use. For example, he changed from a one-time use of cocaine in 2015 to weekly and every other week use in August 2015 and January 2016. (Tr. 92-101.)

Department Counsel questioned Applicant to summarize his testimony. Applicant confirmed that he used marijuana with varying frequency between 2000 and 2018. (Tr.104-105.)

A.J.: Department Counsel, I thought you asked a very clear question. Could you just repeat it, or I could ask the court reporter to repeat it?

D.C.: Sure. I want to be clear. You have admitted to using marijuana, with varying frequency, between 2000 and 2018?

A.J.: Can you answer that, sir?

Applicant: Um.

A.J.: Yes or no.

Applicant: I don't believe I did in 2018.

A.J.: I'm sorry?

Applicant: I will say yes. (Tr. 104-105.)

Applicant confirmed that in 2018 a woman using marijuana in front of him blew marijuana smoke directly into his face in a motor vehicle. He also confirmed that in the same year another woman provided him with a gummy he ingested that she said that might have contained THC. (Tr. 105.)

Applicant confirmed that he used cocaine with varying frequency between 2014 and 2015. He confirmed that he used crack cocaine between 2014 and 2015. He confirmed that he used marijuana, cocaine, and crack cocaine at various times while he was in the U.S. Army between 2012 and 2016. (Tr. 105-106.)

Applicant agreed that he was employed as a federal contractor beginning in April of 2017 to the present. He confirmed that he used marijuana at various times while employed as a federal contractor. He confirmed that he had been granted a security clearance in 2013 and that his use of illegal substances occurred after he had been granted a security clearance. (Tr. 106-107.)

Applicant confirmed that he knowingly falsified information about his prior drug use on the three separate security clearance applications he submitted in 2011, 2020, and 2021. (Tr. 107.)

Character Witness Ms. A's Testimony

In the time the witness has known Applicant, he has been nothing but kind, thoughtful, and shown incredible integrity. This hearing was a little hard to sit through, because it is not the man she knows. In all of their time together, he has partaken in most of her hobbies. They go hiking, they walk her dog, and watch TV shows. He introduced her to sports. She has never known him to engage in any of this behavior (Tr. 114.)

When they were first getting to know one another, Applicant disclosed what had happened. Her understanding was that this was a little bit of a spiral going through a divorce. Joining the military, trying to serve his country, finding out that the person he had married was unfaithful, and in such a despicable way. He spiraled a little bit was her understanding of the situation. (Tr. 114-115.)

Everything the witness heard from Applicant post that point was that he had moved here [State A] to turn his life around. He said he was not engaging in any of that.

She had no evidence that he was. He also shared that he had sought counseling. Because originally, he just [thought] he can cold turkey stop the behavior. And that is what he did. But he recognized that there was some deeper wounds. He was really upset about the situation with his ex-wife and that if he didn't address that situation it was possible that he could get upset again. So he sought counseling. All of her experience with him is that he is kind, respectful, and responsible. (Tr. 114-115.)

The witness is employed as the director of a teacher residency program. She does not hold a security clearance and has never held one. Prior to today's hearing, she was aware of the issues that were listed in the Statement of Reasons. She sat through the entire hearing. Nothing that was discussed today was a surprise to her. She was aware of all of that prior conduct. The witness has known him since October 2021. She has never witnessed him using any illegal substances. Nothing has come up in her relationship where she has questioned his truthfulness or his trustworthiness as it relates to him, her household, or any aspect of their relationship. (Tr. 116-117.)

The witness testified that Applicant was homeowner, is selling his home, and is moving into her home. She would not allow him in her home if that behavior was going on. In every situation and conversation, it always comes down to, that he did this to himself. He takes responsibility every single time, and he has not done anything like this since she has known him. She does not anticipate that he would do it again. (Tr. 117-119.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988). The DODA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard. Substantial evidence means "evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla." 484 U.S. at 531. Substantial evidence is a lesser burden than both clear and convincing evidence and preponderance of the evidence, the latter of which is the standard applied in most civil trials.

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(a), the entire process is a conscientious scrutiny of several 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 national security eligibility will be resolved in favor of the 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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 details the security concern for drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition);

- (b) testing positive for an illegal drug; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's admissions and testimony established by substantial evidence that he used illegal drugs as alleged in SOR ¶¶ 1.a and 1.b. That evidence also established that he tested positive for illegal drugs as alleged in SOR ¶¶ 1.d and 1.e. Thus, AG ¶ 25(a) and (b) apply.

Although Applicant admitted he had access to classified information, as alleged in SOR ¶ 1.c, he further answered that he "never was around classified material." His response to an interrogatory was: "Did not do sensitive work or use." In ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022), the Appeal Board held that access to classified information has two elements in addition to eligibility. They are that: (1) an applicant must have signed a nondisclosure agreement (NDA); and (2) an applicant must have a need-to-know (NTK). In this case, there is no evidence that he signed an NDA or had a NTK. This allegation has not been established.

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;
- (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 is grounds for revocation of national security eligibility; 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.

I have considered mitigating condition AG ¶ 26(a). Applicant's use of illegal drugs originated in 2000. It plagued him until at least 2018 or beyond. Those drugs included marijuana, cocaine, and crack cocaine. He used illegal drugs while on active duty in the U.S. Army and later while a civilian working for a defense contractor from 2017 to the present. The beginning of his illegal drug use may have begun years ago, but it was not at all infrequent thereafter. Testing positive for marijuana in 2008 and for cocaine in 2016 did not deter him. With his long history of drug abuse, it is difficult to find that it is unlikely

to recur. Ms. A's honest and informed testimony offers some hope for his future. That alone, however, is not sufficient to find that mitigating condition AG ¶ 26(a) applies.

I have considered mitigating condition AG ¶ 26(b), which has two key elements, the first of which is an acknowledgement of his drug involvement and substance misuse. Here, Ms. A testified that she was familiar with the SOR and that Applicant fully disclosed to her his drug involvement and substance misuse. He also reiterated that acknowledgement in his testimony. That first element has been satisfied. The second key element is that he show an established period of abstinence, and it provides a nonexclusive list of three considerations. The first two are his disassociation from drug-using associates and a change in the environment where drugs were used. His now close relationship with Ms. A since 2021 and their plan to cohabitiate satisfies these two considerations. The third consideration is a signed statement of intent to abstain from all drug involvement and substance misuse in the future with the sanction being the revocation of his security clearance. This is not a mere formality, and it is missing here. Even if there were such a statement, on this record, he has not shown a pattern of abstinence sufficient to mitigate his decades-long drug abuse and substance misuse. Mitigating condition AG ¶ 26(b) does not apply.

Finally, I have considered mitigating condition AG ¶ 26(d). In about August 2014 while in the U.S. Army, after a domestic dispute involving alcohol, Applicant was ordered to take an ASAP. He successfully completed that program. In August 2017, he was convicted of DUI and ordered to complete a similar program. Because he relocated to a different state, he did not complete that program until January 2025. More recently, he has sought counseling to address lingering issues caused by his divorce. Neither of those programs, although no doubt helpful, were prescribed drug treatment programs contemplated by AG ¶ 26(d). Therefore, that mitigating condition does not apply.

Guideline E: Personal Conduct

AG ¶ 15 details the security concerns 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful or candid answers during national security eligibility investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

I considered the following disqualifying condition under AG ¶ 16:

(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.

Applicant's admissions and testimony established by substantial evidence that he falsified material facts as alleged in SOR ¶¶ 2.a through 2.e as follows:

In his September 13, 2011 SCA by deliberately failing to disclose his marijuana use as set forth in SOR ¶ 1.a;

in his August 5, 2020 SCA by deliberately failing to disclose his marijuana and cocaine use as set forth in SOR ¶¶ 1.a through 1.c; and

in his April 28, 2021 SCA by deliberately failing to disclose his marijuana and cocaine use as set forth in SOR ¶¶ 1.a through 1.c.

SOR ¶ 2.f alleged that in his August 5, 2022 PSI Applicant initially falsified material facts about his marijuana and cocaine use, until he was confronted by the investigator. In his Answer, he admitted this allegation but with a "refute." The first sentence of this "refute" is: "I was asked during the interrogation why she was conducting the interview *which at the I time I didn't know and stated.*" (Emphasis added.) By the time of this PSI, he had been through the security clearance process in 2011, 2020, and 2021. The idea that he did not know in 2022 why this interview was being conducted is simply not credible. The "refute" went on: "She allow (sic) me to time to figure it out." It shows he was just trying to buy some time. Ultimately, after this exchange, he disclosed the full extent of his drug involvement and substance misuse. SOR ¶ 2.f has been established by substantial evidence.

The evidence has established SOR ¶¶ 2.a through 2.f. Therefore, disqualifying condition AG ¶ 16(a) applies. AG ¶¶ 17(a) through (g) sets forth seven mitigating conditions under Guideline E. I have carefully reviewed each of those conditions, and none of them apply to the facts of this case.

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case. Two issues are presented.

First, Applicant has engaged in drug use and substance misuse since 2000. Although he attributed much of his drug involvement to his admittedly painful divorce in 2016, his drug use began in 2000, which preceded his divorce by more than a decade and a half. Although he has completed two ASAP programs and sees a personal counselor, he has not attended a prescribed drug treatment program contemplated by

AG ¶ 26(d). He should consider such a program, not just for security clearance purposes but for his own health.

Second, Applicant intentionally lied on his 2011, 2020, and 2021 SCAs. He did so, because he was not proud of his shameful past. Serial lying on those questionnaires, however, was not the answer to getting beyond that past. In fact, it exacerbated that past and is not easily mitigated.

Applicant leaves me with serious questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

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-1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraphs 1.d-1.e: Against Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraphs 2.a-2.f: Against Applicant

Conclusion

Considering all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge