



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-02285

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

09/18/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding personal conduct and financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On April 7, 2008, Applicant submitted a Declaration for Federal Employment (OF 108).¹ On May 21, 2008, he submitted a Questionnaire for Non-Sensitive Positions (SF 85).² On November 19, 2010, he applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).³ On August 15, 2012, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the

¹ Item 7 (OF 108), dated April 7, 2008.

² Item 6 (SF 85), dated May 21, 2008.

³ Item 5 (SF 86), dated May 21, 2008.

interrogatories on September 21, 2012.⁴ On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to the interrogatories, but failed to have his response dated or notarized.⁵ On April 2, 2013, the DOD CAF issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations), and detailed reasons why the DOD CAF could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on April 10, 2013. In a statement, dated and notarized April 18, 2013,⁶ Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on June 3, 2013, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on June 14, 2013, but as of August 26, 2013, he had not submitted any further documents or other information. The case was assigned to me on August 27, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to personal conduct and financial considerations in the SOR (§§ 1.a.-1.p., and 2.a.). Applicant's admissions and other comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor. He has been serving as a field service representative (FSR) since January 2010. He was previously employed in quality assurance and quality control, as a lead mechanic, and as a mechanic.⁷ He was unemployed from December 2004 until January 2005, and from

⁴ Item 9 (Applicant's Answers to Interrogatories, dated September 21, 2012).

⁵ Item 8 (Applicant's Answers to Interrogatories, undated).

⁶ Item 4 (Applicant's Answer to the SOR, dated April 18, 2013).

December 2009 until January 2010.⁸ Applicant served in an enlisted capacity with the U.S. Army from May 2001 until February 2004.⁹ He was administratively discharged under honorable conditions with a general discharge certificate due to misconduct.¹⁰ He graduated from high school in June 2000.¹¹ Applicant has never been married.¹²

Personal Conduct

Applicant has a lengthy history of inappropriate and criminal conduct, characterized for the purposes of his security clearance review as personal conduct, commencing in 2001, and it has continued through at least November 2010. In December 2001 (SOR ¶ 1.a.), Applicant stole an estimated \$600 from a fellow military billet-mate by wrongfully using the automated teller machine (ATM) card and personal identification number (PIN) belonging to that individual.¹³ As a result of his actions, Applicant was charged with larceny of private funds, in violation of Article 121, Uniform Code of Military Justice (UCMJ), and administered nonjudicial punishment under Article 15, UCMJ. He was reduced one grade from E3 to E2 (suspended), given extra duty for 45 days, restricted for 45 days, and fined (suspended).¹⁴

In September 2002 (SOR ¶ 1.b.), Applicant lost his military identification card.¹⁵ As a result of his actions, he was charged with one specification of dereliction in the performance of his duties, in violation of Article 92, UCMJ, and administered nonjudicial punishment under Article 15, UCMJ. He was given extra duty for 14 days, and restricted for 14 days.¹⁶

In June 2003 (SOR ¶ 1.c.), Applicant tested positive for marijuana during a random sample urinalysis.¹⁷ He confessed to using marijuana.¹⁸ As a result of his

⁷ Item 5, *supra* note 3, at 14-18.

⁸ Item 8, *supra* note 5, at 1.

⁹ Item 9 (Certificate of Release or Discharge from Active Duty (DD Form 214), dated February 24, 2004).

¹⁰ Item 9, *supra* note 9; Item 17 (Separation File, various dates). Applicant was processed under Army Regulation (AR) 635-200, Para. 14-12c: "Soldiers are subject to action per this section for the following: . . . Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM." See, Item 18 (AR 635-200, *Active Duty Enlisted Administrative Separations* (June 6, 2005), as revised, Para. 14-12c.

¹¹ Item 5, *supra* note 3, at 12.

¹² Item 5, *supra* note 3, at 23.

¹³ Item 12 (Military Police Report, dated December 17, 2001).

¹⁴ Item 12 (Commander's Report of Disciplinary or Administrative Action, dated May 22, 2002).

¹⁵ Item 13 (Developmental Counseling Form (DA Form 4856), dated September 25, 2002).

¹⁶ Item 13 (Summarized Record of Proceedings Under Article 15, UCMJ, dated October 15, 2002).

¹⁷ Item 16 (Criminal Investigation Command (CID) Report of Investigation, dated June 30, 2003).

actions, he was charged with one specification of wrongful use of marijuana, in violation of Article 112a, UCMJ, and ordered to stand trial at a Summary Court Martial. He was found guilty and sentenced to be confined for 30 days, and ordered to forfeit \$767.¹⁹

Between May and July 2002 (SOR ¶ 1.d.), Applicant wrongfully broke into several automobiles and stole a variety of stereo equipment, including car amplifiers, speakers, compact disc players, and other unspecified property.²⁰ As a result of his actions, he was charged with two specifications of attempt to commit larceny, in violation of Article 80, UCMJ; one specification of conspiracy to commit larceny, in violation of Article 81, UCMJ; one specification of wrongfully damaging the property of another, in violation of Article 109, UCMJ; and three specifications of larceny, in violation of Article 121, UCMJ. He stood trial at a Summary Court Martial, and pled guilty to all the charges. He was convicted as charged, and sentenced to be confined for 30 days, and ordered to forfeit \$767.²¹

In about January 2004 (SOR ¶ 1.e.), Applicant tested positive for marijuana during a random sample urinalysis.²² He confessed to using marijuana.²³ Instead of disciplining Applicant through nonjudicial or judicial punishment, this time the command chose to process him for administrative separation.²⁴

In about August 2006 (SOR ¶ 1.f.), Applicant was stopped by the police for speeding. Following a search of his vehicle, to which he had consented, Applicant was arrested and charged with possession of a prohibited weapon, to wit: brass knuckles.²⁵ He was eventually fined an unspecified amount.²⁶

On April 7, 2008, when Applicant completed and submitted his OF 108, he responded to several questions set forth therein. In response to Question 8 - (*Have you ever served in the United States military? If you answered "yes," list the branch, dates, and type of discharge for all active duty.*), Applicant stated he had received an

¹⁸ Item 16, *supra* note 17. In May 2001, upon entering active duty, Applicant acknowledged receipt of the Army's policy on alcohol and drug abuse. "Any drug abuse by soldiers of the United States Army is against the law, violates Army standards of behavior and duty performance, and will not be tolerated." See, Item 11 (Statement of Understanding (Army Policy), dated May 3, 2001).

¹⁹ Item 14 (Commander's Report of Disciplinary or Administrative Action, dated September 25, 2003).

²⁰ Item 15 (Charge Sheet, dated April 28, 2003).

²¹ Item 15, *supra* note 20; Item 15 (Report of Result of Trial, dated September 18, 2003).

²² Item 16 (Criminal Investigation Command (CID) Report of Investigation, dated April 18, 2004).

²³ Item 16, *supra* note 22.

²⁴ Item 16 (Commander's Report of Disciplinary or Administrative Action, dated April 4, 2004).

²⁵ Item 8 (Personal Subject Interview, dated December 24, 2010), at 5; Item 10 (Federal Bureau of Investigation Identification Record, dated December 9, 2010).

²⁶ Item 8, *supra* note 25, at 5.

honorable discharge (SOR ¶ 1.g.).²⁷ In fact, Applicant was administratively discharged under honorable conditions with a general discharge certificate due to misconduct.²⁸ Applicant deliberately chose to falsify his response to the question in an effort to conceal the true nature of his prior military service.²⁹

In response to Question 9 of the OF 108 - (*During the last 10 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.)*), as well as to Question 10 of the OF 108 - (*Have you been convicted by a military court-martial in the past 10 years?*), Applicant answered “no” (SOR ¶¶ 1.h. and 1.i.).³⁰ In fact, Applicant failed to disclose that he had been convicted following his two courts-martial, as set forth above. Applicant deliberately chose to falsify his responses to the questions in an effort to conceal the true nature of his criminal record.³¹

On November 19, 2010, when Applicant completed and submitted his SF 86, he responded to several questions set forth therein. In response to § 15a - (*Have you EVER served in the United States military or the U.S. Merchant Marine?*), Applicant answered “no” (SOR ¶ 1.j.).³² In fact, Applicant failed to disclose that he had served in the U.S. Army from May 2001 until February 2004. Applicant deliberately chose to falsify his response to the question in an effort to conceal his military service.³³

In response to § 15b of the SF 86 - (*Have you EVER received a discharge that was not honorable?*), Applicant answered “no” (SOR ¶ 1.k.).³⁴ In fact, Applicant was administratively discharged under honorable conditions with a general discharge certificate due to misconduct.³⁵ Applicant deliberately chose to falsify his response to the question in an effort to conceal the true nature of his prior military service.³⁶

In response to § 22b of the SF 86 - (*[In the last 7 years], have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?*), Applicant answered “no” (SOR ¶ 1.l.).³⁷ In fact, in August 2006, Applicant was arrested

²⁷ Item 7, *supra* note 1, at 1.

²⁸ Item 9, *supra* note 9.

²⁹ Item 4, *supra* note 6, at 1.

³⁰ Item 7, *supra* note 1, at 1.

³¹ Item 4, *supra* note 6, at 1.

³² Item 5, *supra* note 3, at 20.

³³ Item 4, *supra* note 6, at 1.

³⁴ Item 5, *supra* note 3, at 21.

³⁵ Item 9, *supra* note 9.

³⁶ Item 4, *supra* note 6, at 1.

³⁷ Item 5, *supra* note 3, at 31.

and charged with possession of a prohibited weapon (brass knuckles). Applicant deliberately chose to falsify his response to the question in an effort to conceal the true nature of his criminal record.³⁸

In response to § 22e of the SF 86 - (*Have you EVER been charged with any offense(s) related to alcohol or drugs?*), Applicant answered “no” (SOR ¶ 1.m.).³⁹ In fact, Applicant failed to disclose that he had been charged and convicted of marijuana use in 2003, as set forth above. Applicant deliberately chose to falsify his response to the question in an effort to conceal his history of substance abuse.⁴⁰ While the SOR alleged that Applicant also tried to hide his 2004 marijuana-related misconduct, the evidence fails to support such an allegation, for while there is evidence of a failed random urinalysis, and a subsequent administrative separation action for misconduct, there is no evidence that Applicant was ever “charged” with a 2004 violation of Article 112a, UCMJ.

The SOR also alleges that Applicant deliberately failed to disclose complete information in response to another question, but the allegation is garbled as it combines two different questions. It refers to § 27a - (*In the last 7 years, have you illegally or without proper authorization entered into any information technology system?*), but quotes § 23a - (*In the last 7 years, have you illegally used any controlled substance, for example, . . . THC (marijuana, hashish, etc.) . . .?*). Appellant answered “no” to the combined questions (SOR ¶ 1.n.).⁴¹ The SOR further alleged that Applicant deliberately failed to disclose his use of marijuana as recently as 2009. While Applicant subsequently admitted both the deliberate falsification and the 2009 marijuana use,⁴² the allegation, as drafted, is too defective and misleading to be of any significant value.

During his personal subject interview with an investigator of the U.S. Office of Personnel Management (OPM) in December 2010, Applicant furnished the investigator false and erroneous information pertaining to his use of marijuana (SOR ¶ 1.o.). He admitted marijuana use at parties one or two times per month from about January 2003 until December 2003, but denied further marijuana use since that time.⁴³ However, in September 2012, in response to interrogatories, Applicant admitted that he had smoked one joint of marijuana every other week from March 2003 until May 2004, and again from August 2009, until October 2009.⁴⁴ Applicant deliberately chose to falsify his response to the question in an effort to conceal his true history of substance abuse.⁴⁵

³⁸ Item 4, *supra* note 6, at 1.

³⁹ Item 5, *supra* note 3, at 31.

⁴⁰ Item 4, *supra* note 6, at 1.

⁴¹ Item 5, *supra* note 3, at 31, 34.

⁴² Item 4, *supra* note 6, at 1.

⁴³ Item 8 (Personal Subject Interview), *supra* note 25, at 3.

⁴⁴ Item 9 (Applicant's Answers to Interrogatories), *supra* note 4, at 5.

⁴⁵ Item 4, *supra* note 6, at 1.

During the same 2010 OPM interview, Applicant also stated that while he had received a general discharge from the Army, after a period of six months, the discharge would be upgraded to an honorable discharge.⁴⁶ That position is directly contradicted by what was expressly stated in his election of rights for separation signed by him shortly before he was administratively separated from the Army:⁴⁷

I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. . . . I understand that if I receive a discharge/characterization of service that is less than honorable, I may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

There is no evidence that Applicant ever applied for an upgrade of his discharge characterization.

Personal Conduct & Financial Considerations

As of October 9, 2012, Applicant had not filed his federal income tax form 1040 with the Internal Revenue Service (IRS) for the tax year 2003.⁴⁸ As of July 4, 2011, he had not filed his federal income tax form 1040 with the IRS for the tax year 2004,⁴⁹ but he finally did so on July 11, 2011.⁵⁰ Substitute tax returns were prepared by the IRS because of his failures to file them for the tax years 2005 and 2006.⁵¹ As of December 10, 2012, he had not filed his federal income tax form 1040 with the IRS for the tax year 2007.⁵² Applicant admitted not filing his income tax returns for 2003 and 2007,⁵³ and attributed his failures to having been unemployed.⁵⁴

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

⁴⁶ Item 8 (Personal Subject Interview), *supra* note 25, at 3-4.

⁴⁷ Item 17 (Election of Rights for Separation, dated December 22, 2003), at 2.

⁴⁸ Item 9 (IRS Account Transcript, dated October 9, 2012).

⁴⁹ Item 9 (IRS Account Transcript, dated July 4, 2011).

⁵⁰ Item 8 (IRS Account Transcript, dated November 23, 2012).

⁵¹ Item 9 (IRS Account Transcripts, dated June 23, 2011).

⁵² Item 8 (IRS Account Transcript, dated November 23, 2012).

⁵³ Item 4, *supra* note 6, at 1.

⁵⁴ Item 8 (Applicant's Answers to Interrogatories), *supra* note 5, at 12.

emphasizing, “no one has a ‘right’ to a security clearance.”⁵⁵ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁸

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁷ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁵⁸ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁹

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.”⁶⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline E, Personal Conduct

The security concern under the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. 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.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), 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*, is potentially disqualifying. Also, *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*, may raise security concerns under AG ¶ 16(b). In addition, security concerns may be raised under AG ¶ 16(c), where there is *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,*

⁵⁹ *Egan*, 484 U.S. at 531

⁶⁰ See Exec. Or. 10865 § 7.

unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant served in with the U.S. Army from May 2001 until February 2004, and on numerous occasions during that period, he committed a variety of wrongful and illegal acts, resulting in nonjudicial punishment and courts martial. He was finally administratively discharged under honorable conditions with a general discharge certificate due to his misconduct. Repeated punishment did not serve as a deterrent, for he was subsequently arrested for possession of a prohibited weapon. When questioned regarding his history of military service, substance abuse, and criminal history, he lied and tried to conceal the substantial negative issues from his past. Applicant certified that his responses to questions were “true, complete, and correct to the best of [his] knowledge and belief,” but he deliberately falsified responses and concealed critical information in his employment and security clearance applications in 2008 and 2010, as well as during his 2010 security interview. Applicant admitted not filing his income tax returns for 2003 and 2007. AG ¶¶ 16(a), 16(b), and 16(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of them apply.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(g), *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* may raise security concerns. Applicant’s failure to file his 2003 and 2007 income tax returns, is well-documented. While the evidence reflects his failure to file his income tax returns, there is no evidence that it was based on Applicant’s inability or unwillingness to do so. His only explanation pertained to his previous brief periods of unemployment, and those periods occurred from December 2004 until January 2005, and from December 2009 until January 2010. AG 19(g) has been established. AG ¶ 19(a) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial considerations, but none of them 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶¹

There is very little evidence in favor of mitigating Applicant's conduct. His military service was such that he was administratively discharged under honorable conditions with a general discharge certificate due to misconduct. There are no positive characterizations as to his reputation for honesty, integrity, truthfulness or good work performance. Instead, he simply avers that "in the last few years, I have not committed any acts that would generate you to question my judgment, integrity, or my behavior."

The disqualifying evidence under the whole-person concept is more substantial. Applicant has an extensive history of criminal activity, including his repeated larceny incidents, his repeated use of marijuana, his dereliction of duty, his arrest for possession of a prohibited weapon, and his administrative discharge under honorable conditions with a general discharge certificate due to misconduct. In addition, there are his repeated incidents of deliberately falsifying material facts and concealing the true facts about his military history, drug involvement, and criminal history. Applicant exhibited a cavalier attitude regarding compliance with rules, regulations, and the law, as well as for truthfulness. Applicant's actions indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁶¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a.:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge