



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-02827

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Mark Myers, Esq.

10/18/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate the security concerns regarding his involvement with illegal drugs, but did mitigate security concerns covering allegations of misstatement of his expressed intent not to use illegal drugs in the security clearance application he completed. Eligibility for access to classified information is denied.

History of Case

On December 12, 2018, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Agent, Directive 4, National Adjudicative Guidelines (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on March 1, 2019, and requested a hearing. The case was assigned to another judge on March 27, 2019 and reassigned to me on June 27, 2019. The case was scheduled for hearing on August 27, 2019. At hearing, the Government's case consisted of two exhibits (GEs 1-2). Applicant relied on one witness (himself) and 15 exhibits. The transcript (Tr.) was received on September 10, 2019.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) told an authorized investigator for the DoD during his security interview that he enjoyed marijuana more than drinking alcohol and understood that marijuana is federally illegal; (b) used marijuana from February 2018 to at least May 2014, after filling out his electronic questionnaire for investigations processing (e-QIP); (c) used marijuana with varying frequency from about October 2007 to at least May 2018; (d) purchased marijuana from about October 2007 to at least May 2018; (e) used hallucinogenic mushrooms approximately three times from about April 2011 to June 2012; (f) used LSD approximately four times from April 2011 to June 2012; (g) purchased hallucinogenic mushrooms from about April 2011 to June 2012; (h) used ecstasy/molly approximately four times from about October 2011 to June 2012; (i) purchased ecstasy/molly approximately four times from about October 2011 to June 2012; (j) used cocaine approximately five times from August 2011 to February 2012; and (k) purchased cocaine approximately two times from about August 2011 to February 2012. Allegations covered by SOR ¶¶ 1.c-1.k of Guideline H are incorporated under Guideline J.

Under Guideline E, Applicant allegedly (a) falsified material facts in the e-QIP he executed in August 2016, in response to section 23-illegal use of drugs or drug activity, illegal use of drugs or controlled substances by responding “no” to the question inquiring about his intended use of drugs or controlled substances in the future; (b) abused illegal drugs as detailed under Guideline H; and (c) continues to associate with individuals who use illegal substances.

In his response to the SOR, Applicant admitted each of the allegations pertaining to his use and purchase of illegal drugs and association with persons who have used and purchased illegal drugs with explanations. He claimed that he ceased using and purchasing illegal drugs after June 2012, except for marijuana, which he continued to use until Spring 2014 when he ceased all marijuana use and purchases, except for a brief return to using the substance in February 2018 while he was going through a divorce proceeding.

Applicant further claimed that he fully intended to cease future use of any illegal substances when he completed his e-QIP, but made a poor decision to use marijuana again in 2018 due to a difficult divorce. He further claimed that he answered the question in section 23 of the e-QIP truthfully, honestly, and to the best of his ability, noting that he made the decision in 2014 to stop using marijuana for good. Applicant incorporated his prior answers when responding to the allegations covered by Guideline J.

Procedural Rulings

Before the close of the hearing, Department Counsel moved to amend the SOR to read as follows: SOR ¶ 1.h to be amended to read “You used MDMA, commonly referred to as ecstasy/molly, four times,” and SOR ¶ 1.i to be amended to read, “You purchased MDMA, commonly referred to as ecstasy/molly, approximately four times.” for good cause shown, and there being no objection from Applicant and his counsel, Department Counsel’s motion to amend was approved without the need for a continuance.

Findings of Fact

Applicant is a 29-year-old aeronautical engineer for a defense contractor who seeks to retain a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in August 2016, separated in November 2017, and divorced in July 2018. (GE 1 and AE I). He has two children from this marriage (ages six and three). (GE 1 and AE I) Between August 2009 and May 2012, he attended a state university many miles from his residence in the state. (GE 1) Between August 2012 and August 2013, he attended other colleges without earning a degree or diploma. After transferring to another state university closer to his home in August 2015, he attended classes as a full-time student between August 2013 and May 2016 and earned bachelor’s and master’s degrees in aeronautical engineering from this university. (GE 1 and AE C) Throughout his college career, he has earned excellent grades in his course work while contributing to his local community. (AE E) Applicant reported no military service.

Since August 2016, Applicant has worked for his current employer. (GE 1) He reported periods of unemployment between August 2015 and August 2016 while a full-time student. (GE 1)

Applicant’s drug history

Applicant was introduced to marijuana in high school and smoked the drug approximately five to ten times (one to two grams per sitting) with friends in high school with either a joint, hookah, pipe or bong. (GE 2) Applicant’s friends supplied the marijuana freely to Applicant. (GE 2 and Applicant’s response)

Between August 2009 and June 2012, Applicant used multiple illegal drugs while in college. (GEs 1-2) He smoked marijuana on a weekly to daily basis (3.5 grams every two days) with friends (3.5 grams at a time). (GEs 1-2) Applicant purchased marijuana from several of his friends and a neighbor once to twice a week at a cost of \$10 a gram for his personal use. (GEs 1-2) For the duration of his academic tenure at the state

university he matriculated to in 2009, he continued to use marijuana on a weekly to daily basis.

Beginning in April 2011, Applicant began experimenting with other illegal drugs. (GEs 1-2) Between April 2011 and June 2012, Applicant admitted to using the following drugs in addition to marijuana with varying frequency: hallucinogenic mushrooms, approximately three times, LSD, approximately three times, ecstasy/molly (MDMA), approximately four times, and cocaine, approximately five times. By far, the most common illegal drug he used during this five-year period was marijuana. (GEs 1-2)

Contemporaneously with his use of these other drugs, Applicant purchased them in various amounts. (GEs 1-2) Except for marijuana, Applicant ceased using and purchasing illegal drugs after his withdrawal from college in June 2012. (GEs 1-2; Tr. 38-39) Altogether, Applicant estimates he used marijuana over 1,000 times while enrolled in college (2009-2012). (GE 1) Concerned about his use of illegal drugs, Applicant left school in June 2012 and moved home to better focus on his educational goals. (GE 1) And, for over a year (June 2012-August 2013), Applicant abstained from all controlled substances. (GEs 1-2)

In August 2013, Applicant obtained a legalized medical marijuana license after complaining of trouble sleeping while maintaining a heavy school and work schedule. (GE 2) Between August 2013 and June 2014, he estimates he used marijuana over 500 times before suspending his use out of concern for his wife and family. (GE 2) To meet his marijuana needs, he purchased the substance from family members and college friends once or twice a week. (GE 2) He told the investigator from the Office of Personnel Management (OPM) who interviewed him in May 2018 that he enjoys marijuana more than drinking alcohol and understands that marijuana activity is illegal under federal law and not allowed while holding a security clearance. (GE 2) While he has continued to associate with some of the individuals who smoked marijuana with him and supplied him with marijuana, he has severed ties with others. (GE 2)

In August 2013, Applicant obtained a medical marijuana license to buy marijuana for use as a sleeping aid. (GE 2) While holding the license, he purchased marijuana from a state dispensary and used the substance twice a day to address his stress stemming from his son's health issues and made purchases from his known sources to sustain his personal marijuana needs. (GE 2; Tr. 48) Applicant held the license for a year before making the decision in June 2014 to relinquish the license and cease using and purchasing marijuana out of concern for the adverse effects the drug was having on his school work and emotional stress from his pending divorce. (GE 2; Tr. 51-52) Applicant is credited with abstaining from marijuana and all illegal drugs between June 2014 and February 2018.

Upon learning of his state's full legalization of marijuana in January 2018, Applicant (fully aware of his employer's "no drug" policy) resumed his use of the substance in February 2018. (GE 2; Tr. 48-51) When asked about his resumed marijuana use and purchase in his OPM interview, he told the investigator that after

marijuana became legalized in his state in 2018, he “smoked it once every two weeks via joints” from February 2018 through May 2018 and smoked the substance “by himself during a walk or in a parking lot.” (GE 2) He told the agent that he obtained his marijuana through purchases: one purchase in February 2018 and another in May 2018. (GE 2) He indicated to the agent that he obtained his marijuana through purchases: one purchase in February 2018 and another in May 2018. (GE 2) By contrast, when asked about the extent of his resumed marijuana use between February and May 2018 after completing his 2016 e-QIP, he responded with his confirming more limited use: once in February 2018 and another in May 2018, without exhausting his February and May purchases. (Tr. 48-51) Applicant’s contrasting estimations are difficult to reconcile without further evidence.

Whether Applicant could have reconciled his conflicting versions of his marijuana use between February and May 2018 is unknown. For he was never asked to reconcile his competing accounts. Without more clarifying information from Applicant, his earlier version offers the most reliable and credible version. Adverse inferences are warranted, accordingly, that his earlier version of resumed use provided the interviewing OPM agent is the accepted one.

Since he quit using marijuana in May 2018, Applicant has submitted to voluntary drug testing and achieved negative test results in a series of non-randomized drug tests. (AEs N-P; Tr. 45-46) These reflect encouraging initiatives taken by Applicant. However, because of his lengthy history, understanding of bans on the use of illegal drugs under federal law, and recency of his resumption of marijuana use and purchases, overall favorable inferences covering the likelihood of his returning to illegal drug activity in the foreseeable future cannot be drawn at this time.

While Applicant associated with many of his fraternity brothers who used illegal drugs during his three years of college enrollment in 2009-2012, he ceased association with most of these individuals once he transferred and completed his college education at other respected colleges and universities. (GEs 1-2) Except for one of his former fraternity brothers from his 2009-2012 college years, Applicant has not associated with individuals who use marijuana and other illegal drugs since 2012. (GE 2)

E-QiP misstatements

Asked to complete an e-QIP in August 2016, Applicant provided full and accurate disclosures of his past use and purchase of illegal drugs when answering drug-related questions covered by Section 23 of the e-QIP. And, he made a commitment to abstain from future drug use in answering **no** to the question of whether he intended to use illegal drugs in the foreseeable future. (GE 1) Two years later in an interview with an OPM investigator, he told the investigator that he enjoys marijuana more than drinking alcohol; he understands that marijuana use is federally illegal; and he is able to completely function with marijuana use. (GE 2) However, he stopped short of telling the investigator that it was his intention to resume his marijuana use when he answered **no** to question 1 of Section 23 of his e-QIP. (GE 2) So, while Applicant facially breached his

stated commitment to abstain from future drug use, when he resumed his marijuana use in 2018, what is at issue is whether he misrepresented his future intentions or provided what he believed at the time to reflect his abstinence intentions when he completed his e-QIP.

Considering all of the circumstances surrounding Applicant's coming clean about his past drug involvement in his 2016 e-QIP and unforeseen stressful circumstances that he faced two years later with his pending divorce, Applicant's assurances of his good-faith intentions of future drug abstinence when he completed his e-QIP are both plausible and credible, and, as such, warrant favorable findings. Accordingly, allegations of falsification are unsubstantiated.

Endorsements and awards

Applicant is well-regarded by his past supervisor who worked with Applicant for several years before his retirement earlier this year and expressed awareness of Applicant's past use of illegal drugs. (Tr. 21) He characterized Applicant as a very good engineer and a "very outstanding citizen." (Tr. 20-25) He made an offer of employment to Applicant before the latter was asked to complete an e-QIP. (Tr. 27-28)

In preparing Applicant to complete an e-QIP for his security clearance, Applicant's former supervisor stressed the importance of being honest in answering the questions put to him in the questionnaire. (Tr. 22-23) Knowing what he knows now about Applicant's prior drug activity, he would still hire him. (Tr. 22) His former supervisor affirmed that Applicant was made aware of his company's "no drug" policy shortly after he was offered a position with the company in August 2016. (Tr. 25-27) Based on his knowledge of Applicant's past use of illegal drugs, he considers Applicant's past involvement of illegal drugs to represent "an experimental phase of his life, "although "just a little bigger experiment." (Tr. 24-25)

Asked further about his impressions of Applicant's character, his former supervisor credited Applicant with understanding the importance of protecting classified and sensitive information and offered his professional opinion that Applicant could be trusted to protect classified information and honor his employer's "no drug policy." (Tr. 20, 25) He added that he considered Applicant to be honest and trustworthy. (Tr. 20-22) Applicant is equally praised by his current manager of the engineering team that Applicant belongs to. (AE A) His manager, who has had the opportunity to work closely with him since September 2016, credited Applicant with providing exceptional work as one of his managers high performing employees. (AE A) Because of the excellent work he produces, Applicant has been in demand by other organizations and has received spot awards and accelerated promotions. (AEs A-C) Whether his current manager was aware of Applicant's past drug involvement is unclear.

Colleagues, fellow students, and faculty members who have shared close professional working relationships with Applicant credited him with being a hardworking and superb student and coworker while helping others around him succeed. (AE A) Overall they characterized him as honest and trustworthy in all of his interactions with

them. It is unclear, though, whether any of Applicant's colleagues, fellow students and faculty advisors were ever made aware of his drug history.

Between 2016 and 2017, Applicant has earned excellent performance evaluations from his current aerospace engineering employer. (AE H) Between December 2016 and 2017, he has received spot awards in recognition of his team and individual accomplishments and contributions. (AE D)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

The AGs include conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns. They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Drug Involvement

The Concern: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations AG ¶ 24.

Personal Conduct

The Concern: 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 ¶ 15.

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 30.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Between 2007 and 2009, Applicant used and purchased marijuana in varying frequency while in high school. (GE 2) While a student at a state university between 2009 and June 2012, he expanded his use and purchase of other drugs while continuing to use and purchase marijuana in various frequencies. Other illegal drugs used and purchased by Applicant during this three year period consisted of hallucinogenic mushrooms (three times), LSD (four times); MDMA (four times), and cocaine (five times). Applicant continued using and purchasing marijuana for his personal needs after he left his state university in June 2012, but ceased using and purchasing the other drugs he pursued when enrolled at his initial state university (2009-2012).

Concerned about the affect his marijuana activity was having on his wife and family, Applicant ceased using and purchasing marijuana altogether in June 2014. Except for his brief resumption of marijuana use and purchasing over a four-month period spanning February-May 2018, Applicant, with the help of counseling and concern about his professional career ceased all involvement in the use and purchase of marijuana and pledged to avoid marijuana and other illegal drugs.

On the strength of the evidence presented, three disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶¶ 25(a), “any substance misuse”; DC 25©, “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.” Judgment concerns continue to be raised over Applicant’s lengthy pattern of recurrent abuse of illegal drugs.

Twice in this decade, Applicant abstained from marijuana use and purchases, only to resume his use and purchases in response to changes in his state’s drug laws: once in August 2013 after obtaining a state-approved legalized medical marijuana license, and again in February 2018 after his state fully legalized the use and purchase of marijuana. Once he realized that his continued use of marijuana violated the “no drug” policies of DoD and his employer and placed at risk his obtaining a security clearance, he ceased using marijuana after May 2018 and authored a statement of intent never to use or purchase marijuana or any other illegal drugs with expected revocation of any security clearance he should he return to illegal drug usage. Applicant fully understands

that any resumption of drug usage, regardless of how minimal the dosage might violate not only federal law but the anti-drug policies of both the DoD and his company and is committed to steering clear of all illegal drugs.

When the Federal Controlled Substances Act (CSA) has been challenged on federalism grounds, the courts have consistently extended federal preemption authority over competing state laws that legalize marijuana use. In *Oakland Cannabis Buyers*, 532 U.S. 483 (2001), the Supreme Court did not attempt to invalidate the enabling legislation adopted by the particular state in issue. This legislation was designed to implement the key enabling provisions of the state's Proposition 215, under ¶¶ 11362.5 *et seq.* Proposition 215 (known as the Compassionate Use Act) was passed by this state's voters in 1996 to validate the right of residents of the state to possess and use marijuana for medical purposes, when they have a recommendation from a licensed physician. In reaffirming federal preemption of the state's competing law legalizing marijuana use for medicinal purposes, the *Oakland Cannabis Buyers* Court extended its oversight role in ensuring that federal preemption jurisdiction over illegal drug violators without regard to the state's marijuana exception.

In a more recent related case, the Supreme Court seized the opportunity to refine and clarify the reach of its holding in *Oakland Cannabis Buyers, supra*. In *Raich v. Gonzales*, 545 U.S. 1, 8-14 (2005), the Court addressed the claims of two state residents who suffered from a variety of serious medical conditions and sought to avail themselves of medical marijuana pursuant to the terms of the state's Compassionate Use Act. Notwithstanding that county investigating officials had found that one respondent's medical use of marijuana was entirely lawful, federal agents seized and destroyed all six of her cannabis plants.

In *Raich v. Gonzales, supra*, the Supreme Court held that the regulation of marijuana under the CSA was fully within Congress' commerce power (U.S. Const., art. I, ¶ 8), because marijuana production intended for home production could have a substantial effect on supply and demand in the national market. The *Raich* Court reasoned that federal failure to regulate the intrastate manufacturing and possession of marijuana would leave a considerable gap in the CSA. In turn, the Court vacated the Ninth Circuit's judgment.

So, even though Applicant complied with his state's 1996 law including a medical marijuana exception and updated 2018 law that completely legalized marijuana use and purchases, neither of his state-approved marijuana permits would have foreclosed the Federal Government from prosecuting illegal possession charges under the CSA. Applicant appears to understand the reach of the CSA in its preemption of his state's marijuana legalization and how it reinforces the controlling authority of the DoD's and his employer's anti-drug policies that ban marijuana and other legal drugs from the workforces of both DoD and DoD contractors.

To his credit, Applicant has since committed himself to full compliance with the anti-drug policies in force by the DoD and his employer and ceased using and purchasing marijuana altogether after May 2018. Based on his mistaken reliance on a 2018 state law legalizing marijuana to resume his use of marijuana in 2018, he may claim partial benefit of one mitigating condition of the drug involvement guideline: MC ¶ 26(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.” While Applicant warrants credit for his providing a signed statement of his intent to abstain from all drug involvement and substance misuse, too little time has passed since his last use and purchase of marijuana in May 2018 to afford him any meaningful benefit of MC ¶ 26(b).

Although Applicant is committed anew to avoiding illegal drugs in the future and individuals who use them, he has made these commitments before, only to resume his use and purchases of marijuana when both favorable and pressing circumstances arose. Over the years, he has enjoyed periods of abstinence (June 2012 through August 2013 and June 2014 through January 2018) only to return to recurrent use and purchase of marijuana in February 2018. Whether he can hold the line against recurrent drug involvement in the foreseeable future remains uncertain based on his past history.

Personal conduct concerns:

Besides incorporating allegations of drug involvement and substance abuse from Guideline H, the SOR alleges falsification of Applicant’s 2016 e-QIP by violating the commitment he made in his response to a question posed under section 23 of the e-QIP not to use marijuana or any other controlled substance in the future illegal drugs in the future. Allegedly, he violated his expressed promise not to use marijuana or other controlled substances in the future by using marijuana on multiple occasions between February 2018 and May 2018. Applicant’s explanations of his expressed intent to avoid illegal drugs in the future, being sincere and credible at the time they were made, warrant inferences that these allegations are unsubstantiated.

Because the drug use allegations covered by Guideline H covered all of the material issues concerning Applicant’s past drug use and purchases, no additional discussion of the disqualifying and mitigating conditions covered by Guideline E are not necessary to complete the analysis of the security significance of Applicant’s historical use and purchase of marijuana and other controlled substances.

Criminal conduct concerns

Like the allegations covered by Guideline H, the incorporated allegations of SOR ¶¶ SOR 1.a-1.k are adequately covered by the analysis of the allegations waged under Guideline H and do not merit separate discussion under Guideline J. No additional discussion of the disqualifying and mitigating conditions covered by Guideline J are necessary to complete the analysis of the security significance of Applicant’s historical use and purchase of marijuana and other controlled substances.

Whole-person assessment

From a whole-person perspective, Applicant has established independent probative evidence of his recurrent use of marijuana under stressful circumstances associated with his pending divorce. He has also established probative evidence of his renewed understanding of the importance of the anti-drug policies of the DoD and his employer that have been in force for all of his years of employment with his current employer. Worth underscoring, too, are Applicant's important contributions to his employer and DoD. He is credited with bringing strong endorsements from his current manager, former supervisor, academic advisor, colleagues, and former classmates. While his endorsements are weakened some by the absence of any stated awareness in his furnished written endorsements of knowledge of Applicant's prior involvement with illegal drugs, they do speak well of Applicant's academic and professional achievements and are entitled to considerable weight.

Benefitting Applicant, too, from a whole person perspective are his documented solid performance evaluations, awards, and education achievements. Taken together, they serve Applicant well in his professional development with his current employer and wherever his interests and goals carry him in the future. His education and professional progress to date entitles him to considerable credit in assessing his overall reliability, trustworthiness, and ability to abstain from using drugs proscribed by federal law and the policies of DoD and his employer.

Without acknowledgments of awareness of Applicant's past drug use from those who have provided written endorsements, though, his impressive endorsements, education records and transcripts, performance evaluations, and awards are not enough to surmount security concerns over his long and recurrent history of illegal drug abuse. While he has signaled his willingness to be bound by the anti-drug policies of the DoD and his employer, more time in demonstrated abstinence is needed to facilitate safe predictable judgments about his ability to avoid recurrent drug involvement when placed in stressful circumstances.

Taking into account all of the facts and circumstances surrounding Applicant's lengthy history of illegal drug involvement, Applicant does not mitigate security concerns related to his lengthy and recent history of abuse of illegal drugs. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a-1.k of Guideline H and incorporated Guidelines E and J. Favorable conclusions are warranted with respect to the allegations of falsification and continued association with persons who use illegal substances that are covered by Guideline E.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Sub-paras: 1.a-1.k:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Sub-paras. 2.a and 2.c:	For Applicant
Sub-para. 2-.b:	Against Applicant
GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-para. 3.a:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

