DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 21-02333
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2022

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana between 2008 and November 2017, including while he held a Department of Defense (DOD) security clearance. He deliberately falsified his October 2020 security clearance application by not disclosing his drug-related arrests. Clearance eligibility is denied.

Statement of the Case

On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) 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 DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 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 the National Security Adjudicative Guidelines (AG) effective June 8, 2017, applicable to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On January 10, 2022, Applicant answered the SOR allegations and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The Government submitted a File of Relevant Material (FORM) on March 21, 2022, consisting of a statement of its position and ten exhibits pre-marked as Items 1 through 10, which included the SOR (Item 1) and Answer to the SOR (Item 2). DOHA forwarded a copy of the FORM to Applicant on March 22, 2022, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on April 1, 2022. No response was received by the May 1, 2022 deadline.

On June 15, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on June 20, 2022.

Evidentiary Rulings

Department Counsel submitted as Item 5 in the FORM a summary report of a personal subject interview (PSI) of Applicant conducted on February 25, 2010, by an authorized investigator for the Office of Personnel Management (OPM). The summary report of the PSI was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following notice regarding Item 5:

> **IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) (Item 5) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to this FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you**

have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded if he was represented by legal counsel. *Pro se* applicants are not expected to act like lawyers, but they are expected to take timely and reasonable steps to protect their rights under the Directive. *See* ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). *See also* ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Applicant was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant did not respond to the FORM.

Government officials are entitled to a presumption of regularity in the discharge of their official responsibilities. *See, e.g*., ISCR Case No. 15-07539 (App. Bd. Oct. 18, 2018). Applicant can reasonably be held to have read the PSI summary in Item 5, and there is no evidence that he failed to understand his obligation to file any objections to the summary if he did not want the administrative judge to consider it. Accordingly, I find that Applicant waived any objections to the PSI summary. Items 1 through 10 are accepted as evidence for my consideration subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges under Guideline H, and cross-references under Guideline E (SOR ¶ 2.a) that Applicant used marijuana with varying frequency from about 2008 to at least November 2017 (SOR ¶ 1.a); that he was arrested for possession of a controlled substance in February 1992 (SOR ¶ 1.b), possession of marijuana in January 1996 (SOR ¶ 1.c), and felony possession of a controlled substance, possession of marijuana, and possession of drug paraphernalia in November 2017 (SOR ¶ 1.e); and that he tested positive for marijuana in a March 2009 urinalysis test (SOR ¶ 1.d). Additionally, under Guideline E, Applicant is alleged to have falsified his October 13, 2020 Electronic Questionnaire for Investigations Processing (e-QIP) by responding negatively to an inquiry into whether he had ever been charged for an offense involving alcohol or drugs and deliberately concealing the drug charges in SOR ¶¶ 1.b, 1.c, and 1.e. (Item 1.)

When Applicant responded to the SOR, he admitted that he had used marijuana in the past, but not since 2009 when he failed a drug urinalysis test. He admitted his arrests in 1992, 1996, and 2017, but asserted that the 1992 and 1996 charges were dropped and he was released by the police in the 2017 incident because he was not impaired. As for his alleged failure to list the charges on his SF 86, he indicated that he was not aware that he had to report offenses that were outside the 10-year scope of the SF 86 and claimed that he was suspected of driving under the influence in the 2017 incident and was unaware of the marijuana charge before being contacted by investigators. He asserted that he knew he could not hide public information from the DOD. (Item 2.)

After considering Items 1 through 10 in the FORM, I make the following findings of fact.

Applicant is a 54-year-old high school graduate. He served on active duty in the United States Air Force from October 1986 until April 1990, when he was granted a general discharge under honorable conditions. The circumstances that led to his discharge are not in evidence. Applicant has been married since May 2000 and has two daughters, now in their early 30s, from previous relationships. He has worked as an aircraft maintenance technician for a defense contractor most recently since December 2009. He previously worked for the company as a flight operations mechanic from November 1998 until March 2000, when he was laid off. (Items 3-5.)

Applicant was employed outside of the defense industry from March 2000 to December 2009. (Items 3-5.) With his return to work for the defense contractor contingent on him obtaining an interim clearance, Applicant completed and certified as accurate an e-QIP on December 9, 2009. He responded negatively to the e-QIP's police record inquiries, including whether he had ever been charged with any offenses related to alcohol or drugs. He answered "Yes" to a question concerning any illegal drug use in the last seven years and indicated that he smoked marijuana once on vacation in February 2009. He responded negatively to an inquiry into any counseling or treatment in the last seven years because of his use of illegal drugs. (Item 3.)

A Federal Bureau of Investigation (FBI) records check on December 18, 2009, revealed that he had been arrested in May 1990 for assault and battery; in January 1996 for possession of marijuana; and in April 2001 for violation of an *ex parte* order. (Item 6.) On February 25, 2010, Applicant was interviewed by an authorized investigator for the OPM. He explained about his January 1996 marijuana arrest that he was visiting a person, whom he later learned was a drug dealer, when police raided the residence. He was arrested for having a small amount of marijuana on his person and spent a night in jail before being released. The charge was subsequently dismissed. As for his reported use of marijuana, he was on vacation with some friends for his wife's birthday, and they all smoked marijuana. After he returned from the vacation, he was selected for a random drug screen by his then employer in March 2009, and he tested positive for marijuana. He was required by his then employer to attend a drug and alcohol awareness program, which he said consisted of one session a week for one month. Applicant denied any other

involvement with marijuana. (Item 5.) On November 4, 2010, DOHA granted him a DOD secret clearance. (Item 10.)

On June 24, 2020, the DOD Continuous Evaluation Program developed unreported information (validated on July 2, 2020) that Applicant had been arrested on November 21, 2017, and charged with felony possession of a controlled substance except 35 grams or less of marijuana/ synthetic cannabinoid; possession of marijuana/synthetic cannabinoid of 11-35 grams; and unlawful possession of drug paraphernalia. (Items 9, 10.) The police records show that Applicant had been involved in an accident with another vehicle. The responding officers detected the odor of burnt marijuana about Applicant, whose vehicle was then searched. A small bag of marijuana was in plain view on the floorboard in the backseat of the car. Additionally, the police seized a metal grinder containing marijuana and, from the center console, a small bag containing suspected crack cocaine. During a search of Applicant's person incident to his arrest, the police found a small metal pipe containing burnt residue in his back pocket. Laboratory tests revealed that approximately 2.2 grams of marijuana and 1.3 grams of cocaine had been seized from Applicant's vehicle. On March 13, 2018, the county prosecutor notified the police that the case would not be prosecuted. (Item 8.) The reason for the declination of prosecution is not in evidence.

On October 13, 2020, Applicant completed and certified as accurate an e-QIP on which he responded negatively to the police record inquiries, including the following:

> **In the last seven (7) years** have you been arrested by any police officer, sheriff, marshal or other type of law enforcement official?;
>
> Have you **EVER** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses); and
>
> Have you **EVER** been charged with an offense involving alcohol or drugs?

Applicant also responded negatively to e-QIP inquiries concerning any illegal use of a drug or controlled substance in the last seven years and any illegal use or illegal involvement with a drug or controlled substance while possessing a security clearance. In response to a question about whether he had ever been ordered to seek treatment because of illegal drug use, Applicant responded that he had failed a drug test in 2008 [sic] and attended a program from March 2009 to November 2009 after testing positive for marijuana. Applicant reported no alcohol-related incidents, counseling, or treatment on his e-QIP. He answered negatively to the following question:

> **In the last seven (7) years** has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel? (Item 4.)

On March 10, 2021, Applicant was interviewed by an OPM investigator about his unreported November 2017 drug-related arrest. When asked whether he had been arrested or detained in the last seven years, Applicant responded that he was detained for a short time in the Fall of 2017 but added that he thought only arrests had to be disclosed. He explained that he had been rear-ended by another vehicle and for some reason the police felt he was intoxicated even though he passed a breathalyzer test. He denied that he had been charged with other offenses, even after he was confronted with the drug charges. He asserted that he had not used marijuana since his treatment in 2008 and would not use any drugs in the future; that his brother had sometimes used his name and been in legal trouble; and that he had reported this to the police. He stated that he had never been notified of a drug arrest; was unaware of it; and it did not happen. (Item 7.)

Applicant is the only listed suspect on the police records of the November 2017 incident. The personally identifying information (PII) for Applicant on the police report, including the home address, date of birth, age, social security number, height and weight (within five pounds), matches his PII on his October 2020 e-QIP. (Items 4, 9.) The police report also contains a driver's license number for Applicant. (Item 9.) The brother named by Applicant as having used his name on occasion is five years younger than Applicant, and he has a different address. (Item 4.)

On November 3, 2021, Applicant completed interrogatories from DOHA. In response to an inquiry into whether he had ever illegally used any drugs or controlled substances, Applicant responded that he had used "Pot" one time, in 2009, and he did not intend to use the drug in the future. (Item 7.)

When Applicant responded to the SOR on January 10, 2022, he admitted he had been arrested in November 2017 after his car was rear-ended on the highway, but then stated:

> While getting checked out in the ambulance, the officer mistakenly thought that I was impaired, though I was not. He took me into the station for a sobriety check which I passed and was released because I was not impaired. When the investigator reached out to me about this incident, it had verbiage about a marijuana possession that I was unaware of. I currently have a lawyer looking into this incident.

As to why he did not list the incident on his October 2020 e-QIP, Applicant stated that he "admitted and reported" that he was suspected of DUI on the date in question but that he took a sobriety test and was released. He reiterated that he knew nothing of a marijuana charge at the time. About his failure to disclose his 1992 and 1996 drug arrests on his e-QIP, Applicant stated that he was unaware that he had "to repeat a topic already addressed that fell outside of the 10yr range of the current investigation." (Item 2).

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are set forth in AG ¶ 24:

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

In addition to the above matters, I note that marijuana is a Schedule I controlled substance under federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

Applicant admitted on his December 2009 e-QIP and during his February 2010 PSI that he used marijuana in February 2009 while on vacation with his spouse and some friends. He recently claimed in his November 2021 response to interrogatories that he had used marijuana only one time, in 2009. With respect to his drug-related arrests in 1992, 1996, and 2017 that implicate him in the illegal possession if not also the use of controlled drugs on those occasions, Applicant admitted in his January 2022 Answer to the SOR that he used marijuana "up until 2009." He denies any involvement with marijuana since he failed a urinalysis test in 2009 and completed counseling.

With respect to his November 2017 arrest, Applicant has not successfully rebutted the evidence showing that the police seized a metal grinder and illegal drugs (about 2.2 grams of marijuana and 1.3 grams of cocaine) from his vehicle or that he had a smoking pipe with burnt marijuana residue in his back pocket. The police are presumed to have acted in good-faith in reporting what they discovered during their searches. Applicant did not present any evidence that would lead me to question the legitimacy or validity of the police report. Prosecution of the drug charges was not pursued, but it is unclear why, and I cannot speculate in that regard. Applicant did not provide any evidence to overcome the reasonable inference that he, and not his brother, was involved in the incident. Applicant is identified as the suspect with PII details that match his e-QIP.

At the same time, there is no evidence of any involvement by Applicant with illegal drugs after his failed urinalysis around March 2009 until his arrest in November 2017, and there is no evidence of drug involvement by him since November 2017. Even on those facts, the following three disqualifying conditions under AG ¶ 25 apply:

(a) any substance misuse;

(b) testing positive for an illegal drug; and

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

AG ¶ 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position," warrants some discussion because of the observations of the police who arrested Applicant in November 2017. The police reported smelling "the odor of burnt marijuana emitting from [Applicant's] person." When coupled with the fact that Applicant had a marijuana pipe in his rear pocket, the logical inference is that he used marijuana if not immediately before his arrest, then around that time. Whether or not AG ¶ 25(f) is established with respect to use, there is sufficient evidence of illegal drug possession while he held a DOD secret clearance to raise the security concerns underlying AG ¶ 25(f) in that persons holding security clearance are expected to comply with the federal drug laws and DOD policy prohibiting illegal drug involvement.

Applicant bears the burden of establishing that matters in mitigation apply. AG ¶ 26 provides for mitigation of illegal drug involvement and substance misuse as follows:

(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 an individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or 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 illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) applies in that Applicant's drug involvement is not recent. His claim that he did not know drugs were involved in his November 2017 arrest lacks credibility. He lied when he responded to DOHA interrogatories and claimed he used marijuana only in 2009 and only one time. His lack of candor about the extent of his drug involvement has serious Guideline E implications in this case, but it is not a substitute for record evidence of drug use. In that regard, there is no evidence of any illegal drug use or possession since November 2017.

Applicant's inconsistent representations about his drug involvement also extend to his reported counseling. He denied on his December 2009 e-QIP that he had ever attended counseling or been ordered, advised, or asked to attend counseling or treatment as a result of his drug use. He subsequently told an OPM investigator in February 2010 that, after he tested positive for marijuana in a random drug screen, his then-employer required him to attend a drug and alcohol awareness program one day a week for one month. On his October 2020 e-QIP, Applicant admitted that he had been ordered, advised, or asked to seek counseling as a result of his drug use, but he indicated that he attended a program from March 2009 to November 2009. His illegal possession of drugs and drug paraphernalia, if not also use of marijuana in 2017, while he held a security clearance undermines the rehabilitative effect of that program, whether it lasted one week or eight months. He provided no evidence that would satisfy AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts."

The Appeal Board recently reiterated that an applicant who uses illegal drugs after having completed a security clearance application or after otherwise being placed on notice of the incompatibility of drug abuse and clearance eligibility raises questions about his judgment, reliability, and willingness to comply with rules and regulations. *See* ISCR Case No. 19-02499 at 4 (App. Bd. Jul. 7, 2021) citing, *e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). Applicant's possession of marijuana and cocaine in November 2017 reflects an unwillingness to comply with laws and regulations. His burden of persuasion with respect to mitigating the Guideline H security concerns is not met by him suggesting that his brother may have been the person involved in the November 2017 drug incident, or admitting that he was detained but not arrested for suspected driving under the influence of alcohol. I am concerned that the DOD does not know the full extent of Applicant's drug involvement. The drug involvement and substance misuse security concerns are not mitigated.

Guideline E: Personal Conduct

The security concerns about personal conduct are set forth in AG ¶ 15, which provides:

> 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.

Applicant's marijuana use, failed drug test, and drug-related arrests establish the security concerns under AG ¶ 15 and support "a whole-person assessment of questionable judgment." The November 2017 incident involving illegal possession of marijuana, cocaine, and drug paraphernalia is of particular concern because it occurred while he held a DOD secret clearance. Moreover, the evidence reflects that Applicant omitted the arrests from his October 2020 e-QIP. He denies intentional concealment, claiming with respect to the February 1992 and January 1996 charges that he did not realize that he had to list arrest information reported during his prior investigation that was outside the ten-year scope of the e-QIP, and, with respect to the November 2017 charges, that he "admitted and reported that [he] was suspected of DUI on the date in question."

The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true or accurate. To raises security concerns under Guideline E, the responses must be deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record evidence as a whole. *See e.g.*, ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017). Applicant is alleged to have deliberately falsified the question into whether he had **ever** been charged with an offense involving alcohol or drugs. Unlike some of the e-QIP inquiries, the question does not have a seven-year scope. Furthermore, there is nothing in the inquiry that informs the applicant that he or she does not have to list information that occurred before a previous background investigation. While Applicant's explanation for not listing his 1992 and 1996 charges is plausible, it is difficult to find that he acted in good faith. His claim that he reported the November 2017 incident as a DUI is not substantiated by the documentary evidence. He did not indicate anywhere on his October 2020 e-QIP that he had been arrested in November 2017. The information about his arrest was developed in the continuous evaluation process. His lack of candor about his reason for omitting that offense makes it difficult to accept that his omission of the earlier offenses was due to a lack of understanding as to what was required to be reported. AG ¶ 16(a) applies. It provides:

> (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, of award fiduciary responsibilities.

Moreover, when considered together, Applicant's arrest record and his efforts at concealment trigger the security concerns set out in AG ¶ 16(c):

> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor,

> unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.
>
> Three mitigating conditions under AG ¶ 17 warrant some discussion. They are:
>
> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's consistent employment with a defense contractor since December 2009 weighs in his favor. His 1992 and 1996 arrests occurred more than 25 years ago. While so much time has passed since those incidents, his arrest in November 2017 precludes application of AG ¶ 17(c). His denial of any drug-related involvement in the November 2017 incident reflects a lack of reform. His e-QIP falsification is not mitigated by either AG ¶ 17(a) nor AG ¶ 17(d) when he continues to misrepresent his involvement on November 2017 and falsely claims he reported that he was detained for DUI. The personal conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). They are as follows:

> (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.

The Government must be assured that those persons granted access to classified information can be counted on to fulfill their responsibilities consistent with laws,

regulations, and policies, including federal drug laws and security clearance requirements. Applicant raised considerable doubts in that regard by possessing marijuana and cocaine in November 2017 and falsely denying that involvement. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons previously discussed, doubts persist as to whether it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance.

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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

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

_____
Elizabeth M. Matchinski
Administrative Judge