KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant used marijuana from 1971 to at least April 1994. In May 1975, he was convicted of distribution of a controlled substance. Applicant sold marijuana for profit to another defense contractor employee for about nine months from about July 1993 until April 1994, when he was arrested and convicted of selling illegal drugs. He did not accurately disclose his criminal drug involvement when he completed his security clearance application in 2002. His evidence in mitigation falls short of overcoming the very serious Criminal Conduct and Personal Conduct concerns. Clearance is denied.

CASENO: 03-06241.h1

DATE: 06/29/2007

DATE: June 29, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 03-06241
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT
Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT
Jeremiah Donovan, Esq.

SYNOPSIS

Applicant used marijuana from 1971 to at least April 1994. In May 1975, he was convicted of distribution of a controlled substance. Applicant sold marijuana for profit to another defense contractor employee for about nine months from about July 1993 until April 1994, when he was arrested and convicted of selling illegal drugs. He did not accurately disclose his criminal drug involvement when he completed his security clearance application in 2002. His evidence in mitigation falls short of overcoming the very serious Criminal Conduct and Personal Conduct concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6, ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on August 5, 2005, detailing the basis for its decision–security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). With the assistance of an attorney, Applicant answered the SOR on August 22, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on December 28, 2005.

On January 9, 2006, I scheduled a hearing for February 10, 2006. An amended notice was issued on January 13, 2006, rescheduling the matter for March 1, 2006, at Applicant's request due to his unavailability. On March 1, 2006, Applicant appeared *pro se*, as he had discharged his attorney the previous day, and he requested a continuance to obtain new legal counsel more familiar with the laws of the jurisdiction of his arrest in 1974. I granted a continuance over the Government's objection. On April 24, 2006, I rescheduled the hearing for May 18, 2006.

On May 17, 2006, the hearing was cancelled verbally because Applicant had been separated from his employment with the defense contractor on April 28, 2006. Applicant was rehired by the same defense contractor in late September or early October 2006, and his case was reopened. On March 13, 2007, the case was assigned to DOHA Administrative Judge Charles Ablard to conduct a hearing on the original SOR The case was transferred to me on March 26, 2007, due to workload considerations. On April 4, 2007, I scheduled a hearing for April 27, 2007.

At the hearing on April 27, 2007, counsel for Applicant entered his appearance. The Government submitted nine exhibits (Ex. 1-9). Applicant testified on his behalf and submitted two exhibits (Ex. A-B). A transcript (Tr.) of the proceedings was received on May 11, 2007.

FINDINGS OF FACT

DOHA alleged under Guideline J that Applicant was convicted of conspiracy to distribute illegal drugs in about 1974 (SOR ¶ 1.a); felony sale of a controlled dangerous substance in 1994 (¶ 1.b); and violation of 18 U.S.C. § 1001 by failing to disclose his 1974 offense on his security clearance application (SF 86) (¶ 1.c). Under Guideline E, Applicant allegedly sold marijuana for

profit to a coworker for nine months in about 1994 while employed by a defense contractor and holding a CONFIDENTIAL clearance (¶ 2.a) and deliberately falsified his July 2002 SF 86 by not reporting his 1974 drug offense. In his Answer, Applicant admitted the criminal drug offenses and sales to a coworker (¶¶ 1.a, 1.b, 2.a). He denied intentional falsification of his SF 86 (¶ 2.b), asserting he believed the record of his 1974 offense had been expunged.

After consideration of the pleadings, exhibits, and hearing transcript, I make the following findings of fact.

Applicant is a 51-year-old designer who began working for his current employer, a defense contractor, in March 1980. He was laid off in late April 2006, but returned to the company in about late September or early October. He requires a SECRET security clearance for his duties.

Applicant began smoking marijuana as a teenager in 1971. Over the next 23 years, his involvement with the drug varied from times of no or little use to use three to four times per week. On occasion, he sold marijuana to friends at cost. While still in high school, he tried hallucinogenic mushrooms once. He also experimented with cocaine years ago.

On his graduation from high school in 1974, Applicant got a job for about six months as a mason tender with a contractor that his sister had hired to construct her new home. He stayed in the area thereafter, working in restaurants, and at odd jobs whenever he could. After work hours, he drank beer and played pool with other tradesmen at a local lounge. One night, Applicant was asked whether he had any amphetamines by someone who had several times expressed interest in his sister. Applicant claims he told this person he did not use amphetamines and to ask someone else. He denies he named anyone specifically ("I told him go to talk to someone else. I made no reference to anyone specifically." Tr. 38), but he was subsequently arrested on charges relating to aiding and abetting a drug sale that he denies knowing took place. Applicant pleaded guilty to a charge of distribution of a controlled substance in May 1975,[1] and he was sentenced to one year probation and $250 court costs.[2] Applicant was discharged from probation in May 1976. He contends that he only pleaded guilty because of the prohibitive costs of contesting the charge at trial.

Following his arrest, Applicant moved to his current state of residence where, over the next few years, he worked as a waiter, longshoreman, and night watchman. Seeking a position with his present employer, Applicant was told by an interviewer that experience in the steel trade would increase his chances of being hired. Applicant worked for about nine months at a sheet metal shop

[1]DOHA alleged in SOR ¶ 1.a that Applicant was convicted of conspiracy to distribute illegal drugs, apparently based on Applicant's admission to a Defense Security Service agent on December 2, 2003, that he had been charged with a "variety of charges (specifics not recalled) related to drugs with the primary charge being conspiracy to distribute illegal drugs." (Ex. 5).According to Superior Court records, Applicant was convicted of distribution of a controlled substance (E), in violation of Chapter 94, Section 32. In May 2006, an associate justice of the court certified the offense was a misdemeanor. (Ex. A).

[2]Applicant testified on direct examination that his decision to plead guilty was influenced, in part, by the judge telling him that the offense would be expunged or sealed. (Tr. 43-44) There is no proof that the offense was expunged, and as shown by Exhibit A, his conviction is still on record of the Superior Court. Applicant testified that he understood the state to have unsealed records "in order to find out if people were trying to get guns." (Tr. 44) Applicant never received an order of expungement. (Tr. 67)

but was laid off. In March 1980, he started with his present employer (defense contractor X) as a sheet metal mechanic. He was given a company-granted CONFIDENTIAL security clearance.[3] Applicant continued to smoke marijuana during off-duty hours, knowing that it was illegal and that he was violating his employer's policy against drug use.

In about July 1993, Applicant worked part-time as a bartender in addition to his work for defense contractor X. After an acquaintance from this part-time job told him that he could obtain marijuana, Applicant decided he could make about $100 by procuring marijuana for a coworker at company X. On at least 10 to 15 occasions over the next nine months, Applicant acted as a middleman, buying marijuana and then selling it to this coworker, in quantity of one pound, sometimes more. He purchased the marijuana in one pound increments for $1,400 to $1,600 and sold it to this coworker for $2,000 to $2,400 per pound. On at least one occasion, he sold this coworker two pounds of the drug. Applicant sold the marijuana knowing that it was illegal to do so, as he could make a significant amount of profit on the transactions.[4] He assumed this coworker was selling the marijuana to others, although he made no effort to confirm it. Applicant claims he gave no thought to his involvement in the drug transactions being inconsistent with him holding a clearance.

This coworker subsequently ran into legal trouble, and Applicant believes he cooperated with police to apprehend Applicant for his drug sales. On or about April 4, 1994, this coworker asked Applicant for some marijuana. Applicant stopped at a local delicatessen on his way to work when he saw the coworker's vehicle, and he was arrested for having one pound of marijuana in his possession. While he was under arrest, the police executed two search and seizure warrants for the residence of Applicant and his then girlfriend. The police found marijuana, packaging material, a scale, and approximately $13,000 in cash (about $8,000 from drug sales), in Applicant's apartment. Applicant was charged with possession of marijuana with intent to sell, possession of more than four ounces of marijuana, possession of drug paraphernalia, and sale of a controlled substance within 1500 feet of a school. Applicant did not provide the police with the identity of his supplier. He felt "put upon" and told them he would not "tattletale on [his] fellow union members." (Tr. 96) In January 1995, Applicant was convicted of sale of a controlled substance, a felony. The court sentenced him to serve six years confinement, suspended, and three years probation with conditions; to perform 200 hours of community service; to pay $3,000 to a drug awareness education program; and to undergo a drug evaluation and complete a drug counseling program, if required.

To avoid a possible layoff, in 1996 or 1997 Applicant transferred to the design department, which provided him access to more detailed information than just the finished drawing or plan that he had worked with previously. The position required a SECRET security clearance. Applicant

[3]Applicant admitted ¶ 2.a, that he sold marijuana for profit to a coworker for nine months while he held a CONFIDENTIAL clearance issued on October 12, 1989. Yet, Applicant testified that he never held other than the "green badge" which meant a company-granted CONFIDENTIAL clearance until after September 11, 2001. It now means an interim SECRET clearance. (Tr. 58). The government presented no documentation showing the grant of a DoD CONFIDENTIAL clearance.

[4]Asked on cross examination to confirm that he sold the marijuana to make money, Applicant responded, "A small amount. And I also had you know it was basically somebody asking me and I would get it for them you know." (Tr. 80). He had at least $8,000 in drug proceeds in his apartment when it was searched in April 1994, which cannot reasonably be characterized as a small amount.

executed a security clearance application (SF 86) on July 25, 2002.[5] He responded "YES" to question 21:

> Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

He indicated that he had been fined, ordered to perform community service, and placed on two years probation for an April 1994 possession of marijuana offense. Applicant provided the same information in answer to question 24:

> Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

He did not disclose his 1974 distribution of a controlled substance offense in response to question 24. He claims it was because he had been told by the judge that it was going to be expunged and he thought it fell within the enumerated exception, even though he never received a formal notice of expungement.

Applicant answered "NO" to question 28, "Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" Applicant explained he did not list his past involvement with marijuana because he feared it would negatively affect his clearance.

On December 2, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent. Applicant admitted to the agent that he had used marijuana from "about age 16 (1971) and continuing through 1994 (age 37)," at times three to four times weekly, with other periods of "little or no use whatsoever." Applicant described experimental use of cocaine once "years ago" and hallucinogenic mushrooms in high school. He indicated that he had been arrested at age 18 on drug charges, including conspiracy to distribute an illegal drug, and convicted of one or two charges (not specified), but denied any culpability ("I did absolutely nothing wrong . . . The undercover individual asked me to sell him drugs. I told him to go see someone else in the bar without identifying who he should see." Ex. 3). Applicant averred that he had the case expunged after two years of probation so

[5]Three iterations of the security clearance application were admitted: an EPSQ Version 2.2 dated June 28, 2002, and signed July 25, 2002 (Ex. 1); an SF 86 dated September 3, 2002, bearing no signature but indicating Applicant signed the form on July 25, 2002 (Ex. 2); and an SF 86 dated July 26, 2002, also with no handwritten signature but again noting that Applicant signed the form on July 25, 2002 (Ex. 3). All contain the same responses to questions 21, 24, and 28.

he did not list it.[6] As for his arrest in 1994, Applicant indicated he had "acted as a middleman," selling quantities of one to two pounds of marijuana to a coworker for about nine months. Applicant averred that at the time of his arrest, he had $13,000 in his apartment, but that only about $8,000 were drug proceeds. He denied any other sales for profit, but admitted he had sold to friends in the past at cost.

Applicant was reinterviewed on December 10, 2003, concerning his failure to disclose on his security clearance application all of the drug charges that had been filed against him or his use of illegal drugs. As for his sales of marijuana, Applicant averred he sold the coworker about a pound per week, sometimes two pounds, purchased at between $1,400 and $1,600 per pound, and sold at between $2,000 and $2,400 per pound. Applicant indicated he had not listed the conspiracy charge because it had been expunged, and he listed only the 1994 felony possession of marijuana as the court found him guilty of only that charge. He admitted he had not disclosed his use of marijuana because he was "concerned that the information would reflect bad [sic] on [him] and have negative consequences."

When asked at his hearing about his marijuana use, Applicant testified, "It would have been marijuana. It was quite a while ago even before the arrest. Just recreationally, on the weekends, perhaps in the evenings, maybe one marijuana cigarette." (Tr. 51) Applicant denied any use of marijuana since his arrest in 1994, and any intent to use an illegal drug in the future, and the government presented no evidence to rebut that.

Applicant's supervisor for several years, up to and including 2006, found Applicant to be "a good employee, always dependable, responsive and willing to pitch with a helping hand." He is respected by his group members.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a

[6]Applicant did not specify the document from which he omitted the information. It is presumed to be his SF 86 in light of all the evidence of record.

determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts, including the adjudicative guidelines, I conclude the following with respect to Guidelines J and E:

The security concern under Guideline J is that *a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* Directive ¶ E2.A10.1.1. Applicant admitted to a long history of drug offenses. He acknowledged that he possessed and used marijuana for many years, and distributed marijuana–each instance is a criminal offense and potentially disqualifying under this guideline, even if it did not result in a conviction. He also admitted that for about nine months ending in April 1994, he sold large quantities of marijuana to a coworker for large profits, resulting in a felony conviction. With regard to the May 1975 misdemeanor conviction for distribution of a controlled substance, Applicant denies engaging in criminal conduct and maintains he pled guilty only to avoid the expense and risk of litigation and receive the benefits of a plea bargain. However, considering all the circumstances, including Applicant's guilty plea, his history of drug involvement, his willingness to engage in drug sales, and his general lack of credibility (discussed *infra*), I find the evidence of this conviction sufficient to raise security concerns. His drug crimes fall within Guideline J disqualifying conditions (DC) ¶ E2.A10.1.2.1, *Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*, and ¶ E2.A10.1.2.2, *A single serious crime or multiple lesser offenses*.

The Government submits Applicant deliberately omitted his conviction for distribution of a controlled substance in about 1974 from his SF 86, and thereby violated § 18 U.S.C. § 1001.[7] Applicant does not deny he omitted the offense, but claims he believed it was exempt from disclosure under the enumerated exemption for drug crimes that had been expunged. As specified in the language of question 24, the lone exception to mandatory disclosure is for those convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. § 844 or 18 U.S.C. § 3607. Expungement by a state court pursuant to a state law would not fall within the exception, although a good faith mistaken reliance on such an expungement order could negate the willful intent required for a 18 U.S.C. § 1001 violation.

The file contains no expungement order or evidence proving the record had ever been sealed. While the 1974 charge was not reported by the FBI (Ex. 6), the court record noting his conviction (Ex. A) does not substantiate expungement. An associate justice of the superior court annotated the

[7] 18 U.S.C. § 1001 provides in part:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

record in May 2006 to indicate that the offense was a misdemeanor. Telling in its absence is any notation by the judge that the record had been expunged or previously sealed. Moreover, Applicant's testimony about the expungement does not make sense. When asked on direct examination whether his decision to plead guilty was influenced by anything that the judge said, Applicant responded:

> The judge mentioned to me that I seemed like a nice kid, I'd completed everything properly. He was going to do me a favor and expunge this from my record. I never ever had to put this on any job applications after that. (Tr. 43)

The court records show Applicant was sentenced to probation after he changed his plea to guilty. His decision to change his plea could not have been influenced by a promise to expunge the offense based on his compliance with a sentence that had not yet been imposed. Moreover, had Applicant been acting in good faith when he completed his SF 86, he would not have responded falsely to question 28 concerning any use of drugs while possessing a security clearance, or inaccurately reported the charges filed against him in 1994 and the sentence imposed for his drug sales. Even though Applicant put the government on notice that he had been culpable of possession of marijuana in 1994, the government would have had no basis to know from his security clearance application that he continued to smoke marijuana after a drug arrest in 1974 until he was arrested in April 1994, at times up to three or four times weekly, or that he sold large quantities of the drug for profit to a coworker at company X, which led to his arrest, not only on possession charges but also for sale of narcotic within 1500 feet of a school, possession of drug paraphernalia, and possession of marijuana with intent to sell. The order of probation indicates he was convicted of "sale (vice possession) of controlled substance" and sentenced to six years in prison, albeit fully suspended, in addition to probation.

Applicant's false response to question 28 has not been alleged, so it cannot provide the basis for denial of his clearance under Appeal Board precedent (*See, e.g.*, ISCR Case No. 94-1159, App. Bd. Dec. 4, 1995). Yet, it is still relevant to assessing his intent when he completed his SF 86 and his credibility generally. It is not disputed that Applicant recalled the 1975 conviction when he completed his SF 86. He was no longer a 18-year-old first offender deserving of a "second chance" but a convicted drug felon who had violated the drug laws for some 20 years. When faced with the drug arrest inquiry, he made no effort to check with the court to determine whether he was legally justified in not reporting his first drug conviction, even though he had never received an expungement order, and the single exception from reporting is where the court issued an expungement order under the authority of two specific federal statutes, 21 U.S.C. § 844 or 18 U.S.C. § 3607. He has failed to persuade me that his omission of the 1975 conviction was due to good faith misunderstanding. His knowing false statement falls within Guideline J, DC ¶ E2.A10.1.2.2, and also raises Guideline E concerns (*see Personal Conduct, supra*).

In mitigation of the Criminal Conduct concerns, the two drug convictions are very dated (*see* mitigating condition ¶ E2.A10.1.3.1, *The criminal behavior was not recent*). While they cannot be viewed in isolation from his SF 86 misrepresentation, it has been almost five years since Applicant's SF 86 omission. Yet, I am unable to conclude that there is *clear evidence of successful rehabilitation* (*see* MC ¶E2.A10.1.3.6) because Applicant continues to deny any culpability with respect to the

1975 conviction for distribution of a controlled substance,[8] to minimize the seriousness of his drug sales to a coworker while employed by a defense contractor,[9] and to deny any intentional falsification of his SF 86.

Guideline E—Personal Conduct

Under the guideline for Personal Conduct, the security concern is that *conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* Directive ¶E2.A5.1.1.

Guideline E DC ¶E2.A5.1.2.2, *The deliberate omission, concealment, or falsification of relevant and material 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,* applies because of his deliberate omission of his 1975 drug conviction from his SF 86.

Serious personal judgment concerns are also raised by his multiple sales of marijuana from about July 1993 to April 1994, in quantities of one pound, and at least once double that, to a coworker at a significant profit. Even though the transactions took place off company property, Applicant knew his conduct was against the law, and because of its illegality, would not have been condoned by his employer. Applicant's demonstrated unwillingness to conform his behavior to what is expected of an employee with a CONFIDENTIAL clearance (whether granted by his employer with delegated authority or by the DOD), engenders significant doubts about whether he can be counted on to properly safeguard classified information. DC ¶ E2.A5.1.2.5, *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*, applies as he knowingly violated the laws and his employer's rules or policies against illegal drug involvement. His conduct as a middleman in these drug transactions also implicates ¶ E2.A5.1.2.6, *Association with persons involved in criminal activity*.

To his credit, Applicant disclosed his drug conviction at age 18 and his nine months of drug sales in 1994 when he was interviewed by a Defense Security Service (DSS) special agent on December 2, 2003. The Guideline E concerns raised by his knowing falsification of his SF 86 may be mitigated by a prompt good faith effort at rectification (*see* ¶ E2.A5.1.3.3, *The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*). It is not clear whether the investigator knew of the 1975 drug distribution conviction before Applicant told him. Even assuming Applicant volunteered his conviction, his

[8]Applicant continued to deny at his hearing that he had referred the undercover officer to an specific individual at the lounge. When asked whether he explained the circumstances to the judge, he denied the opportunity as his lawyer who "did most of the talking." According to Applicant, he explained it to his lawyer, who "was more interested in making a deal than finding out the truth." (Tr. 63)

[9]When asked whether he sold the drugs to a coworker to make money, Applicant testified , "A small amount. And I also had you know it was basically somebody asking me and I would get it for them you know." (Tr. 80) He had previously told the DSS agent that he began selling for profit because he had the opportunity to purchase large amounts at a price that put him in a position where he could make "a significant profit on the transactions." (Ex. 4)

disclosure more than one year after his SF 86 is not prompt. At his hearing, Applicant raised for the first time that he might have acted on reliance of advice from the person at company X who processed the forms ("I think I might have asked a woman who actually processes the forms. And I explained to them and they said don't put it down." Tr. 67). While he named a person, he indicated she no longer worked for the company. His uncorroborated claim is not enough to satisfy MC ¶ E2.A5.1.3.4, *Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*. As for his illegal drug sales, there is no evidence to show that he continues to associate with any known drug users or suppliers (*see* ¶ E2.A5.1.3.7, *Association with persons involved in criminal activities has ceased*).

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Directive ¶ E2.2.1. Applicant has demonstrated little respect for the law for more than 30 years (*see* ¶ E2.2.1.1, *The nature, extent, and seriousness of the conduct*). He possessed, used and distributed illegal drugs to friends for many years, even after he had been convicted of a drug offense. In 1993, he seized an opportunity to make a significant personal profit by selling marijuana in substantial quantity of one pound or more. For the next nine months, he sold marijuana to a coworker without concern for his fiduciary obligations to his employer. He benefitted from having his six-year prison term suspended, but when presented the opportunity to demonstrate that he had fully reformed, he elected to conceal relevant and material facts about his past illegal drug involvement (*see* ¶ E2.2.1.6, *The presence or absence of rehabilitation and other pertinent behavioral changes*). The passage of time since his drug sales and SF 86 falsification are not enough to overcome the very substantial doubts that persist for his judgment and reliability. He continues to minimize the seriousness of his illegal drug sales and shows little remorse.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

DECISION

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

Elizabeth M. Matchinski
Administrative Judge