

SYNOPSIS

Applicant frequently smoked marijuana and experimented with numerous addictive drugs from 1990 through 1995. He ceased his active use of drugs in 1995. In the last 11 years, he smoked marijuana twice and improperly used over the counter legal substances a few times, the last time in early 2003. He has remained drug free for over four years. He did not falsify his answers about his drug use when he completed his security clearance application in January 2003, nor did he intentionally withhold information about his past drug use in his 2003 interview with a National Security Agency investigator. Applicant has mitigated the government's concerns about his drug involvement and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR sets forth security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On January 6, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to me on January 17, 2007. DOHA issued a notice of hearing on February 22, 2007, and I held a hearing on March 29, 2007. The government submitted five exhibits (GE), which were marked and admitted into evidence as GE 1-5 without objection. Applicant submitted 14 exhibits (App Ex), which were marked and admitted into evidence as App Ex A-N without objection. Applicant and three witness testified. DOHA received the hearing transcript (Tr.) on April 11, 2007.¹

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a, 1.b, 1.d, 1.e, 1.g, and 1.m under Guideline H, and subparagraph 2.e under Guideline E. He admitted that portion of the allegations

¹In closing argument, Applicant's counsel requested administrative notice be taken of the Adjudicative Desk Reference section which discusses Guideline H (Drug Involvement). Given that this information is reference material readily available to me, it is not necessary for me to specifically take administrative notice of it. The document is not admitted into the record. Moreover, the standards in the Adjudicative Desk reference are applicable to adjudicators, not administrative judges.

in subparagraph 2.c related to allegations 1.a, 1.b, 1.d, 1.e, and 1.g.² Those admissions are incorporated as findings of fact. He denied the remaining allegations under Guideline H and Guideline E.³ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant, a single 33-year-old man, works as a software developer for a Department of Defense contractor. He completed a security clearance application (SF-86) in January 2003 when he applied for a security clearance at the National Security Agency (NSA) and an electronic SF-86 in October 2005 for his current position.⁴

While a 16-year-old high school student, Applicant started smoking marijuana with friends once or twice a month. Between the ages of 19 and 22, he increased his use of marijuana significantly. He regularly purchased and smoked marijuana, sometimes a few times a day. During this same period of time, he experimented with other drugs. He used cocaine once at age 17 and again at age 19 or 20. He tried LSD 5-10 times over a period of 5 years, the last time in 1995 when he was 22. He purchased hashish once and used the amount purchased on 4 occasions. He purchased and used psilocybin mushrooms twice, once in 1992 and again in 1993. In 1993, he purchased and used “wet”, a type of leaf treated with Angel Dust or PCP, about 10 times. Until age 20, he occasionally purchased and consumed morning glory seeds to get high. He stopped all his illegal drug experimentation and regular use of marijuana in 1995, around the age of 22. At this time, he began to realize his involvement with illegal drugs was holding him back.⁵

Between 1996 and 2003, Applicant smoked marijuana twice, once in 1999 and again on December 15, 2002. Each time, he smoked marijuana at a friend’s apartment during a social get together. He did not purchase any marijuana himself. He has not smoked marijuana since this time. In late 2002 and early 2003, Applicant improperly used legal substances, at home, out of curiosity, lack of responsibility and foolishness. He purchased and drank a bottle of Robittusin, an over the counter medication. He also purchased a second over the counter medication, Dexalone pills, on several occasions. He consumed 8 to 10 pills at a time for the purpose of trying to get high. He also purchased salvia, a herb and legal substance, at a head shop. He did not experience any hallucinations when he used these drugs, but admits he wanted to get high. During this time, he mixed nutmeg with boiled milk, which he drank to relax. Applicant has not used any illegal drugs since December 2002 and does not intend to do so in the future. Likewise, he has not experimented with non-controlled substances for any reason. He no longer associates with individuals who use drugs.⁶ He has never been arrested for any conduct related to his drug abuse.⁷

²Applicant’s response to the SOR, dated January 6, 2007, at 1-2.

³*Id.*

⁴GE 1 (Electronic SF-86, signed by Applicant on October 21, 2005); GE 2 (SF-86, dated January 27, 2003 and signed by Applicant on February 27, 2003); Tr. at 48.

⁵Tr. at 37-39, 42, 102-104, 106-107, 110.

⁶*Id.* at 38, 40-41, 43-46, 52-53, 65-67, 85-90, 111-115, 117, 119, 121, 123, 126-127.

⁷At age 16, he watched a friend slash truck tires. The juvenile court sentenced him to probation, community service and a fine. This incident is the only arrest for him. Tr. at 36.

From 1993 until 2000, Applicant attended a community college part-time and worked either full-time or part-time. He received an Associate of Arts degree in computer science in 2000. From September 2000 until December 2002, he attended a state university. He graduated in December 2002 with a Bachelor of Science degree in computer science. He attributes his slow progress at the community college to lack of ambition and his drug abuse.⁸

Upon graduation from college, Applicant obtained a job with a contractor for NSA and started working on January 26, 2003. His job required that he obtain a Sensitive Compartmented Information (SCI) security clearance as he did not have a security clearance. When he completed his SF-86 for his job, Applicant answered “yes” to the following question:

Question 27 - Your use of Illegal Drugs and Drug Activity - Illegal Use of Drugs

Since the age of 16 or in the last 7 years, whichever, is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

He listed marijuana and his dates of marijuana use from June 1990 until December 2002, noting that most of his marijuana use occurred within the first seven years of this time period, and his one time use in 1999 and again on December 15, 2002. He did not list any other drug use for the seven years prior to January 2003, nor did he list his use of non-controlled substances.⁹

A NSA investigator interviewed Applicant on April 22, 2003. The investigator did not testify at the hearing, nor are any records from this interview part of the record. During the interview, the investigator reviewed each question on the SF-86 and Applicant’s answer to each question. Applicant confirmed his answers to each question including Question 27. During this interview, Applicant told the investigator about his use of LSD on a few occasions prior to 1996. The investigator did not pursue this line of information any further.¹⁰

In September 2003, Applicant met with a NSA polygraph examiner. Prior to his polygraph examination, Applicant and the polygraph examiner discussed the questions on the SF-86 and the questions to be asked during his polygraph examination. During this meeting, the polygraph examiner explained to Applicant that the scope of Question 27 included all his drug use. With this new understanding, Applicant voluntarily advised the polygraph examiner about the extent of his illegal drug use since high school, and his inappropriate use of non-controlled, over-the-counter medicines and other substances. The polygraph examiner did not testify at the hearing, nor are any

⁸*Id.* at 44, 105-106.

⁹GE 2, *supra* note 4, at 7; Tr. 50-52, 79-81.

¹⁰GE 3 (NSA clearance decision) at 1-2; Tr. at 55-58, 70.

documents related to this examination part of the record. Applicant stated that he passed the polygraph examination. There is no contradictory evidence of record.¹¹

Subsequent to his interview and polygraph examination, NSA issued a decision on Applicant's request for a clearance on February 11, 2004. Applying the standards set forth in the Director of Central Intelligence Directive (DCID) 6/4, Annex C, for drug involvement and personal conduct and the whole person concept, NSA denied Applicant's SCI clearance request. After reviewing the facts of his case, NSA concluded that Applicant provided false and misleading information relative to his illegal drug use in his answers on his SF-86, and did not provide the full extent of his drug involvement in his April 2003 interview. NSA did not acknowledge the 7-year limitation in Question 27, nor did it discuss or explain its conclusion that Applicant had not been truthful in his answers to Question 27 when he did not reveal his past drug use that occurred more than 7 years prior to the date he signed his SF-86. Although Applicant signed his first SF-86, which is dated January 27, 2003, on February 23, 2003, shortly after beginning his employment with a NSA contractor and just after his college graduation in December 2002, NSA mistakenly concluded that Applicant originally dated his SF-86 on August 23, 2001.¹² NSA noted Applicant's intent to refrain from any illegal drug use and the misuse of legal drugs. NSA, however, found that it had only been eight months since Applicant's last reported use of a substance for the purpose of getting high. The NSA decision contains no indication as to how the facts reviewed were obtained. At the hearing, Applicant agreed with the characterization of most of the facts concerning his drug use, but disputed the accuracy of his marijuana use characterized in the decision.¹³

Applicant appealed the denial of his clearance application to the NSA Access Appeals Panel (Panel) on March 11, 2004. In a memorandum dated, May 6, 2004, the NSA Chief of Adjudications indicated his decision to sustain the denial of Applicant's clearance, after reviewing and discussing all the information in their investigative file and Applicant's oral reply. He commended Applicant's decision to refrain from the use of intoxicants; however, in light of the lengthy period of time Applicant had used illegal substances and over the counter substances, the NSA Chief believed Applicant needed a longer period of time to remain clean and sober. The NSA Chief did not discuss the issue of falsification. NSA denied the appeal in a written decision dated November 4, 2004. It advised him that his company could sponsor him again in two years, if he had refrained from his past conduct. His employer terminated him in 2004 because he did not get his clearance.¹⁴

Applicant completed a second SF-86 on October 21, 2005. In response to Question a in Section 24, which is identical to Question 27 on his NSA application, he answered "yes" and provided information regarding his use of marijuana in 1999 and 2002. He also stated that he would

¹¹GE 3, *supra* note 10, 1-2; Tr. at 59-60.

¹²The record contains no evidence which reflects that Applicant initiated his first SF-86 on this date.

¹³GE 3, *supra* note 10, at 3-4; Tr. at 61-64, 67-70.

¹⁴GE 4 (Applicant's March 11, 2004 letter of appeal) at 1-2; App Ex A (NSA letter with memo, dated May 6, 2004); GE 5 and App Ex B (NSA final denial of security clearance on appeal, dated November 5, 2004); Tr. at 46-47, 68-70, 73-76.

not use it again in his lifetime. He did not mention his inappropriate use of non-controlled over-the-counter medicines or substances.¹⁵

Applicant's supervisor, a retired United States Air Force Lt. Colonel, testified on his behalf. He interviewed and hired Applicant for his present position. He is aware of Applicant's past drug use and the falsification charge because Applicant showed him the SOR. In the time Applicant has worked for him, he has not seen any indicators that Applicant has been under the influence of any substance. He described Applicant as having a very high work ethic and his work as high caliber. Applicant's peers and other supervisors think extremely well of him. Applicant is very forthright and never deviates from workplace rules and policies. In his view, Applicant is a mature person, who is very trustworthy and reliable. He recommends Applicant for a clearance.¹⁶

Applicant's long-term girlfriend testified on his behalf. They met four years ago, while working together at another company. She works as a principal contracting specialist for a Department of Defense contractor and holds a security clearance. She knows about Applicant's security problems, as he gave her all the paperwork related to his security problems to review. She knows about his past drug use, which does not effect her opinion of him today. She has not seen any evidence of drug use in the house, including drug paraphernalia. Applicant does not associate with individuals who use or experiment with drugs. She describes Applicant as one of the most honest people she knows. He is a law abiding person and she has no reason to believe he is not telling her the truth. She considers him responsible and dependable. When they worked together, Applicant followed company policies and regulations. She recommends him for a clearance.¹⁷

A co-worker also testified on Applicant's behalf. Based on his past work relationship and current friendship, he recommends Applicant for a security clearance. He has not seen any behavior which shows Applicant to be under the influence of drugs or with impaired judgment. The record contains letters of recommendation from the three witnesses plus six other individuals, who are co-workers, family, or friends. All consider Applicant trustworthy, dependable, responsible, and reliable. They uniformly agree that he is no longer involved with drugs, and that his past drug use is not reflective of the person they know. Applicant's 2006 performance appraisal rates his work performance as significantly exceeds standards.¹⁸

In February 2007, a licensed psychologist evaluated and tested Applicant. Based on his examination and testing, he declined to diagnosis any psychological or personality disorders or medical problems.¹⁹ He finds Applicant a highly intelligent man who appears to be free from

¹⁵GE 1, *supra* note 4, at 24-25.

¹⁶App Ex F (Letter of recommendation, dated March 9, 2007) at 1-2; Tr. at 131-147.

¹⁷App Ex K (Letter of recommendation, dated March 15, 2007); Tr. at 48-49, 150-162.

¹⁸App Ex E (2006 performance appraisal); App Ex F, *supra* note 16; App Ex G (Letter of recommendation, dated January 21, 2007); App Ex H (Letter of recommendation, dated January 28, 2007); App Ex I (Letter of recommendation, dated January 21, 2007); App Ex J (Letter of recommendation, dated January 23, 2007); App Ex K, *supra* note 17; App Ex L (Letter of recommendation, dated January 21, 2007); App Ex M (Letter of recommendation, dated February 12, 2007); App Ex N (Letter of recommendation, dated January 24, 2007); Tr. at 165-173.

¹⁹App Ex C (Report of psychologist, dated March 14, 2007); App Ex D (Curriculum Vitae of psychologist).

psychological disorder and substance abuse dependency or problems. He also emphasized it has been almost five years since his last substance use, the significant change in his lifestyle and environment, and most significantly, his personal commitment to remain drug free, Applicant has matured and is fully capable of holding a position of trust. In reaching this conclusion, the psychologist credibly described applicant's personality, environment and mental status, stating on pages 9-10 of his report:

According to the personality testing, [Applicant] would appear to be well-functioning and highly invested in social conformity and sociability. He may go out of his way to adhere to the expectations of others, particularly those in positions of authority. He has some resistance to any suggestion of psychological problems although he appears capable of accepting responsibility for his behavior and may even lapse into self-blame and self deprecation. He may project a sociable and easy-going style to others although he may experience more internal stress than he demonstrates outwardly. He may also be inclined to put effort into avoiding or downplaying any personal behaviors which could evoke ridicule or contempt from others. He is likely to be hesitant about taking risks for fear of making mistakes or appearing unconventional.

These results substantiate [Applicant's] self-report that he believes much of his earlier drug behavior was attributable to his environment and association with others who used drugs. After starting his substance abuse as a teenager, he found himself to be part of a sub-culture which was saturated with drugs and where drug taking behavior was normative. His drug use during that time may have actually been less about his internal psychology or personal desire for drugs and more about his drug-saturated environment. His personality, particularly when young, led him to go along with the group rather than buck the trend and walk away; to some degree he was trapped in a dysfunctional subculture. His personality profile, combined with the environment he now exists in, particularly as compared to the one he was in when he used drugs, would predict little risk taking, highly conventional behavior and full conformity with the law. In other words, he is highly unlikely to engage in drug taking behavior at this point in his life.

and on page 11:

During [Applicant's] period of substance abuse, he was either an adolescent male with no meaningful responsibilities or he was in a college environment with few commitments or restrictions. His college environment was rife with drugs and his mindset at the time was primarily that of having fun and avoiding responsibility. He has now clearly matured into adulthood with awareness of appropriate behavior and law abiding behavior. He was able to fully describe the negative and destructive influences drugs can have on an individual and he appeared to genuinely express understanding of the high personal cost of drug use. [Applicant] has now fully matured into adulthood and have developed meaningful life goals with attitudes, beliefs and behaviors which preclude the use of drugs.²⁰

²⁰To the extent that the psychologist and other witnesses have assessed Applicant's credibility, I have disregarded those credibility assessments and made my own independent credibility assessment of Applicant.

Applicant used drugs in his teens and early twenties because he had problems with his parents, a lack of responsibility, problems with social groups, lack of direction in his life, uncertainty about his future, and youthful indiscretion. His inappropriate use of over the counter substances was a lack of responsibility and foolish.²¹

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.²²

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²³ The government has the burden of proving controverted facts.²⁴ The burden of proof is something less than a preponderance of the evidence.²⁵ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.²⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷

²¹Tr. at 41, 43-44, 122-123, 126-127.

²²Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

²³ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

²⁴ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁷ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

No one has a right to a security clearance,²⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁰ Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.³¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Drug Involvement

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.³² (AG ¶ 24) Applicant used marijuana on a regular basis from approximately 1990 until 1995. During this same period of time, he experimented with a variety of illegal drugs, including cocaine, LSD psilocybin mushrooms, and hashish. Since 1995, he smoked marijuana twice, and in 2002, used several legal substances for the purpose of attempting to get high. Based on the evidence of record, DC ¶ 25 (a) *any drug abuse*; and DC ¶ 25 (c) *illegal drug possession, including cultivation, processing, manufacture, purchase sale, or distribution* apply.

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* applies. As a teenager and young man, Applicant smoked marijuana on a regular and frequent basis. He also experimented with a variety of illegal drugs, but did not become addicted to any of these drugs. Over time, he realized the negative effect his drug use was having on his life. He decided to cease his drug use and did in 1995. Since 1996, he has smoked marijuana twice, on social occasions, the last time being in December 2002. Recently, a licensed psychologist interviewed and tested Applicant. The psychologist declined to diagnose any

²⁸*Egan*, 484 U.S. at 531.

²⁹*Id.*

³⁰*Id.*; Directive, revised AG ¶ 2(b).

³¹Executive Order No. 10865 § 7.

³²Drug abuse is defined in AG ¶ 24(a)(1)-(2) to include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970. AG ¶ 24(b) also defines drug abuse as the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

psychological or personality disorders. He concluded that Applicant was not drug dependent and that given Applicant's personality and significant change in work and personal environments, there is little likelihood that he would become involved with drugs in the future. His supervisor, co-workers, family, and friends know about his past drug use. All agree that he is trustworthy, dependable, reliable, and honest. Given that he ceased his heavy drug use over 11 years ago and he twice used marijuana in the last 11 years, as well as the psychological evaluation and recommendations, his illegal drug use is not likely to reoccur.

MC ¶26(b) *a demonstrated intent not to abuse any drugs in the future, such as (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) an appropriate period of abstinence* applies. Since 2003, Applicant has stated an intent not to use illegal drugs or any other substances improperly. He has kept his word. He has stayed completely away from using illegal drugs and the improper use of other substances. He no longer associates with people who use drugs, choosing instead to spend time with his girlfriend and new friends from work. He has changed his entire life style from one of a drug culture and irresponsibility to a responsible adult life. He goes to work every day and performs his duties exceptionally well. His supervisor and co-workers view him as reliable and dependable, as does his girlfriend. He has a very conventional lifestyle, which is not conducive to drug use. Applicant has mitigated the government's concerns about his illegal drug involvement and improper use of legal substances.

The government alleged in SOR ¶1.i that Applicant mixed nutmeg and boiled milk in order to hallucinate, but has not established that one can hallucinate from this mixture. Applicant has admitted to drinking this mixture to relax, but not to experiencing hallucinations. In SOR ¶1.1, the government alleged that Applicant used the herb salvia, a legal substance, for the illegal purpose of hallucinating. Applicant denied any hallucinogenic affect and the government provided no evidence that use of this herb caused hallucinations, as alleged. Guideline H is found in favor of Applicant.

Personal Conduct

Under Guideline E, 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 sensitive information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance. (AG ¶ 15) Applicant denied that he deliberately falsified his answer to Question 27 by omitting his drug use between 1989 and 1995. He argues that he answered the question as asked, and listed his drug use for the seven years prior to the date of the his SF-86. When a falsification is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.³³ For DC ¶ 16 (a) *deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . to apply,*

³³See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

the government must establish that Applicant's omission, concealment or falsification in his answer was deliberate.

Applicant began answering the questions on his 2003 SF-86 on January 27, 2003 at the age of 29. He completed and signed it on February 23, 2003. Question 27 asked about his drug use from age 16 or in the last 7 years, whichever was shorter. Since Applicant was 29 years old, he properly listed his drug use for the last 7 years or back until January 1996, when he was 22. He listed his marijuana use and included the full dates of his use. NSA based its finding of falsification on an incorrect application date. Applicant did not initiate his SF-86 on August 23, 2001. In August 2001, Applicant worked at the university he attended and had no need of a security clearance for his position. He did not begin his employment with the NSA contractor until late January 2003, about a month after his college graduation. Because the NSA falsification finding is based on an incorrect date and his answer is factually correct, the falsification finding is entitled to no weight. Applicant truthfully answered Question 27. Allegation 2.a under Guideline E is found in favor of Applicant.

Concerning allegation 2.b, the government has not established that Applicant deliberately withheld information from a government investigator during his April 2003 interview for the NSA clearance. Applicant credibly testified about the interview process, which he described as the interviewer reviewing the SF-86 questions and his answers. He also stated that he raised his LSD experimentation with the interviewer who did not ask more questions regarding this issue. The NSA decision discusses his factual admission about LSD use. It does not discuss how this fact was revealed in the interview or how its conclusion that Applicant did not reveal the full extent of his drug use during his 2003 interview is supported by the evidence in its record. Thus, the NSA decision does not refute Applicant's testimony. Furthermore, the record lacks any evidence which supports this allegation and the NSA finding. Allegation 2.b under Guideline E is found in favor of Applicant.

Concerning allegations 2.c and 2.d, the issues raised in these allegations were also alleged under Guideline H and were mitigated under this guideline. They would be mitigated under Guideline E for the same reasons. Allegation 2.e. correctly alleges that NSA denied Applicant a security clearance in part because it found that Applicant falsified his past drug use. Question 27 on Applicant's 2003 SF-86 asked him to reveal his drug use for the past 7 years, and he did. Given my conclusion that NSA based its finding that Applicant falsified his answer to this question on an incorrect date and the lack of evidentiary support for NSA's conclusion that Applicant failed to reveal the full extent of his drug use in his April 2003 interview, I find that the government has not established its case or that Applicant mitigated the adverse information. Guideline E is found in favor of Applicant.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his acts, omissions, motivations and other variables. Each case must be adjudged on its own

merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

As a teenager and young man, Applicant experimented with numerous drugs, many of which were potentially habit forming and dangerous to him. Of all the drugs he tried, he used only marijuana on a regular and frequent basis. By age 22, he realized that his drug use was having a negative impact on his life. He ceased his regular use of marijuana. Over the next six years he smoked marijuana twice more. In all the years he smoked marijuana and experimented with other more addictive drugs, the police never arrested and charged him with any drug related crimes. Thus, the information about his past drug use came solely from him. His decision to experiment with over the counter medicines and salvia in 2002 after a long absence from drug experimentation raises a concern about his judgment at that time. However, since graduating from college and entering the business world, he has changed his behavior and attitude completely. His friends and colleagues view him as responsible, dependable and reliable. He has a good work ethic and is very respected at work for his skills and abilities. He has developed a long-term personal relationship. His goals are much different now. He has direction in his life and has chosen to stay away from his past drug friends and environment.

NSA denied him a SCI clearance because of his past drug use. NSA advised that he could reapply for a clearance in two years, if he remained drug free. It has been more than two years since NSA's decision. Applicant has kept his word and remained drug free for more than four years. This fact is corroborated by a psychologist, who refused to diagnose any psychological or personality disorders, and concluded that Applicant did not have any drug dependency.

NSA also concluded that he falsified information on his SF-86 about his past drug use by using an erroneous initial date for his SF-86. NSA's conclusion on falsification is not supported by the evidentiary record and this conclusion is entitled to no weight because his answer was not false. Applicant truthfully answered the question about his past illegal drug use when he completed his SF-86 in 2003 and again in 2005. The SF-86 does not ask any questions about the improper use of non-controlled or over the counter substances.

Applicant broke the rules against use of an illegal drugs as a teenage and young man. He recognized the error of his ways and corrected both his attitude and his conduct. I have carefully weighed the mitigating factors, the totality of the circumstances surrounding his decision to smoke marijuana and experiment with numerous illegal drugs, his honesty in revealing this information, his work ethic, his change in attitude and life style, and his present relationships against the seriousness of his misconduct. I have concluded that he would not act in a manner which would harm the government. There is little likelihood he could be pressured, coerced, exploited, or subjected to duress for his past conduct. He has matured and developed a conventional, drug free life style. There is little likelihood that his drug use would occur in the future. Applicant has mitigated the government's concerns pertaining to his drug involvement and his personal conduct.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline H :
Subparagraphs a-m:

FOR APPLICANT
For Applicant

SOR ¶ 2-Guideline E:
Subparagraph a-e:

FOR APPLICANT
For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry
Administrative Judge