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

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| In the matter of: | ) | |
| | ) | |
| ---------- | ) | ISCR Case No. 06-17524 |
| SSN: ---------- | ) | |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: James R. Bodnar, Esquire

February 26, 2008

## Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) December 7, 2005. On April 2, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline J (Criminal Conduct), Guideline H (Drug Use), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR and responded by letter, notarized on June 1, 2007, in which he denied allegations 1.a) and 1.b) under Guideline H. He also requested a hearing before an Administrative Judge and identified his personal representative. Accompanying that letter was another letter dated June 1, 2007, from Applicant's personal representative. The personal representative entered his appearance and submitted three letters of recommendation on Applicant's behalf.

DOHA received the case for assignment to an Administrative Judge on October 2, 2007, and I was assigned the case on October 17, 2007. A Notice of Hearing was issued by DOHA on October 17, 2007, setting the hearing for November 2, 2007. Applicant, with his personal representative, and Department Counsel timely appeared and the hearing commenced. Department Counsel introduced thirty documents on behalf of the government, which were admitted as Exhibits (Exs.) 1–30. Applicant offered four exhibits, which were accepted into the record as Exs. A–D. The transcript (Tr.) was received on November 13, 2007, and, as noted below, the record was closed on December 7, 2007.

During the November 2, 2007, hearing, Department Counsel moved to amend the SOR and the parties orally addressed the allegations raised. In order to perfect his exact wording for the record,[1] Department Counsel was given until November 10, 2007, to provide a written draft of his proposed amendments to the tribunal and to Applicant.[2] Department Counsel's amended allegations contained an allegation that Applicant falsified material facts in a sworn statement to an investigator on December 6, 2006, when he denied using any type of drugs since 1978 and that he had not had subsequent adverse law enforcement contact since 1996. In a timely response, dated November 7, 2007, Applicant denied the two allegations, noting that the handwritten investigative notes paraphrase discussion with Applicant and do not disclose violations for use or under the influence of marijuana after 1978, and further noting that the subsequent adverse law enforcement contact referenced were civil in nature. On November 29, 2007, Department Counsel correctly stated: "The distinction between criminal offenses and ordinance violations for drug possession and [sic] whether Applicant was criminally charged with drug use on his FBI record are not relevant or germane to the falsification. With each side afforded an opportunity to address the new allegations in writing and with no further submissions offered, the record was closed on December 7, 2007. After consideration of the proposed amendments, the applicable standards and case law governing SOR amendment, Applicant's opportunities to address the issues raised, and the positions expressed by both sides in their post-hearing submissions, I grant Department Counsel's motion to amend the SOR.

## Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has been with the same company for three-and-a-half years, serving as a telephone technician supporting telephone operations and computer lines. His prior experience is in the same capacity, as well as professional work as a low voltage expert. Applicant has a high school education. Married in 1997, he has two children.

When Applicant was 19 years of age, on August 27, 1977, he was arrested for disorderly conduct after an incident at a local tavern. He was found guilty in municipal court and fined $60. He was arrested 13 more times between August 1977 and January

[1] Tr. 89-102.

[2] Tr. 101.

1989. Of those incidents, he denied seven of the related allegations in his May 16, 2007, answer to the SOR.[3]

In Applicant's April 13, 2007, answer to the SOR, which included explanations, he denied seven of the incidents, including denials to two arrests (SOR ¶ 1.e and ¶ 1.h.). Regarding the other denied allegations, Applicant noted that the charges arising from four of the incidents were ultimately dismissed (SOR ¶ 1.b, 1.g, ¶1.l, and ¶1.n) and noted he ultimately was found not guilty of one charge (¶ 1.j). Regarding two contempt allegations, Applicant stated that the matter was resolved when he explained he was unaware of the court date and the case refiled in one situation (¶ 1.k) while another was dismissed when he again explained he had not received the warrant (¶ 1.l). He admitted the remainder of the allegations, including arrests and/or convictions for possession of marijuana, cocaine, and barbiturate (arrests and referral to a diversionary program after found guilty of charges); obstruction and trespassing (arrest and conviction); possession of marijuana (arrest and conviction); theft (arrest and conviction); drunk driving (arrest and conviction); possession of marijuana and cocaine (arrests and convictions).

Applicant further admits that, on February 20, 1990, he was charged and found guilty of disorderly conduct. He was fined $130. (SOR ¶ 1.o). He also admits he was arrested for sexual assault and family offense/welfare of child on or around June 19, 1990, but notes that the charges were dismissed. (SOR ¶ 1.q). He denies knowledge of the allegation (SOR ¶ 1.p) that he was arrested on March 6, 1990, for contempt, attributing the citation to one possibly made in error and properly belonging to a third party.[4]

On or about December 10, 1996, Applicant was charged with possession of controlled substance, possession of marijuana/hash, possession of LSD, and manufacture/distribute controlled substance, a felony. During the investigation, Applicant was identified as a supplier of marijuana.[5] Applicant asserts that the LSD belonged to a friend that was staying with him. He conceded, however, that the marijuana belonged to him for use by himself and his girlfriend: "I guess I was still doing drugs back then you know, smoking pot. . . . "[6] He was found guilty and sentenced to five years in prison with credit for two days served, his driver's license was suspended for two years, and he was fined approximately $2,175; he served approximately 60 to 90 days in prison and released on 18 months probation in lieu of further incarceration. Although Applicant still denies the allegations reflected in SOR ¶ 1.r, he admits he pled

[3] SOR ¶¶1.b, 1.c, 1.e, 1.g, 1.h, 1.k, and 1.l.

[4] That third party, an acquaintance of Applicant, is also cited as having been the accused in SOR ¶¶ 1.g and 1.k).

[5] Tr. 69, 73-75.

[6] Tr.42. *Note:* Despite this wording, Applicant later "explained that his perception of what the word drug is, is that it had to do with cocaine, heroine. Hard – what we classify as hard drugs. He did not feel it applied to marijuana." Tr. 93; Tr. 71-72.

guilty to possession of LSD. As a result of this conviction, he attended Narcotics Anonymous (NA) three times a week and submitted to drug testing three time a week for 18 months.[7] He also notes that the event "turned [his] life around and [he] turned away from drugs permanently." The following year he married and started a family.

In December 2004, Applicant was arrested and charged with alcohol consumption in public/disorderly persons. He was found guilty and fined $219. On July 23, 2005, Applicant attended a social gathering of friends and acquaintances at a public event. The township police spotted people with and around Applicant smoking marijuana. The police ordered those in the vicinity to stop. Applicant proceeded to leave the scene.[8] The police caught up with him and he denied having used marijuana. Applicant, however, was arrested and charged under the criminal code with possession of drug paraphernalia, possession of marijuana/hash under 50 grams, and resisting arrest.[9] He was found guilty of the possession charges and fined $780 by the municipal court.

On December 7, 2005, Applicant completed an e-QIP. On that form, he indicated he had not illegally used any controlled substances in the prior seven years (Question 24a) and indicated his most recent offense as having occurred in December 1996.[10] On December 6, 2006, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. During that interview, Applicant swore: "My limited experimental use of marijuana was the only drug I ever used and I have never used an type of drug since 1978." He also signed a sworn statement indicating: "I have never had any other adverse law enforcement contact since 1996." Applicant has since stated that he interprets the term "drug" to be limited to "hard drugs," not to include marijuana.[11] At hearing, he indicated he no longer uses marijuana, which he often referred to as "pot."

## Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

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[7] *See* Answer to SOR, dated April 13, 2007.

[8] Tr. 61-62.

[9] Ex. 29 (Office of the Prosecutor file, dated August 5, 2005) at 3; Ex. 30 (State Disposition Sheet).

[10] Question 23 encompasses felony offenses, firearm and explosives offenses, pending criminal charges, Uniform Code of Military Justice offenses, and any offenses related to alcohol or drugs. No distinctions limit disclosure to felonies or exclude applicable charges before a municipal court.

[11] *See*, *e.g.*, Tr. 108.

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . ."[12] The burden of proof is something less than a preponderance of evidence.[13] The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.[14]

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 the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[15] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive

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[12] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[13] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[14] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

[15] *Id*.

information.[16] The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.[17] 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.

Based upon consideration of the evidence, I find the following adjudicative guideline to be the most pertinent to the evaluation of the facts in this case:

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

**Guideline H - Drug Involvement.** *The Concern*: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. "Drugs" are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (*e.g.*, marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances. "Drug abuse" is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

**Guideline E - Personal Conduct.** *The Concern*: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

## Analysis

### Guideline J, Criminal Conduct

Security concerns relating to the guideline for criminal activity arise because such conduct creates doubt about a person's judgment, reliability, trustworthiness, and willingness or ability to comply with laws, rules, and regulations. With respect to

[16] *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

[17] Executive Order 10865 § 7.

Guideline J (Criminal Conduct), the Government has established its case. Applicant was arrested for over fifteen incidents dating as far back as 1977 in a pattern that continued up through July 2005. He was found not guilty in one instance and a couple of charges were ultimately dismissed; many of the incidents were heard at the municipal court level. He still denies the basis of several of the charges. Taken as a whole, however, such facts give rise to significant security concerns and invoke Criminal Conduct (CC) Disqualifying Conditions (DC) 1, ¶31(a) (*a single serious crime or multiple lesser offenses*), and CC DC 3, ¶31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*). Consequently, the burden shifts to Applicant to mitigate such concerns.

In July 2005, Applicant was with some acquaintances at a public event. Marijuana and paraphernalia related to its ingestion were in use in the presence of Applicant as they gathered. Applicant did not attempt to distance himself from these individuals until the police became involved. He was ultimately arrested and charged under a criminal code for possession of marijuana/hash under 50 grams and possession of drug paraphernalia in the summer of 2005. Under these facts, CC Mitigating Condition (MC) 1, AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment*) does not apply.

There is no evidence in any of the instances involving criminal conduct that Applicant was pressured, coerced, forced, or otherwise inveigled to committing the acts for which he was arrested and charged, obviating application of CC MC 2, AG ¶ 32 (b) (*the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life*). Moreover, although Applicant has argued his innocence as to the facts underlying some of the charges raised and pleas entered, no evidence was proffered that he did not commit the offenses cited, except perhaps with regard to an instance in which he was ultimately found to be not guilty. Similarly, while he has stated that some of his arrests were in error, with him being incorrectly cited as the accused, there is no evidentiary proffer supporting such claims. Therefore, CC MC 3, AG ¶ 32(c) (*evidence that the person did not commit the offense*) does not apply.

The facts show certain charges were dismissed in a few instances, and he was found not guilty in another. He maintains his innocence with regard to some charges, based on circumstances or confusion with another individual. Casting aside even those acknowledged arrests, Applicant's history of criminal conduct is lengthy. His proximity to illegal conduct, illegal substances, and those who use them is pervasive. Applicant states that his 1996 arrest turned his life around. This may be true and it may have helped turn his energies toward his employment, community, and family. It has not, however, extracted him from situations in which criminal or illegal behavior is being manifested. Such continued behavior and interactions, especially following such an extensive period of criminal conduct, creates doubt about his judgment, reliability, and trustworthiness. I have considered the remaining CC MCs and find that none of them apply. Consequently, security concerns remain.

**Guideline H, Drug Involvement**

Use of an illegal drug such as marijuana[18] can raise questions about an individual's reliability, trustworthiness, and ability or willingness to comply with the law. Marijuana is an illegal drug and is specifically referenced in Guideline H. Applicant admittedly used marijuana from at least the early 1980s through at least 1996, when he turned over the marijuana he shared with his girlfriend to the police. Since that time, Applicant states he has been drug free, despite the fact he has been arrested in the presence of drugs, in the presence of those using drugs, and in possession of both drugs and drug paraphernalia. Regardless, Drug Involvement (DI) DC 1, AG ¶ 25(a) (*any drug abuse*) and DI DC 3, AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) apply. With disqualifying conditions thus established, the burden shifts to Applicant to mitigate related security concerns.

Applicant stated he has not used drugs in over a decade. In 2005, however, he was found guilty of possession of marijuana/hash and drug paraphernalia. His recent proximity to the drug, however, sustains the cloud of doubt as to the extent of his current involvement with drugs, thereby raising concerns regarding his trustworthiness and willingness to comply with the law. Consequently, DI MC 1, AG ¶ 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*) does not apply.

In December 2006, Applicant signed a sworn statement before an OPM investigator indicating he had not used drugs since 1978. His testimony at the November 2007 hearing showed he turned over marijuana that he and his girlfriend used to the police a number of years after 1978, indicating he did not quit using drugs in 1978. Consequently, it is difficult to assess his veracity when, at the hearing, Applicant stated he does not currently use drugs and referenced his intent not to use drugs in the future. Indeed, the available mitigating conditions demand more than flat statements: DI MC 2, AG ¶ 26(b) actually requires a demonstrated intent not to abuse drugs in the future, such as: 1) disassociation from drug-using associates and contacts; 2) changing or avoiding the environment where drugs are used; 3) an appropriate period of abstinence; 4) a signed statement of intent with automatic revocation of clearance for any violation. Applicant has not shown he has disassociated himself with any of his former drug-using friends or venues, nor has he shown that he has signed a statement of intent with automatic revocation of clearance for any future violation(s). Finally, he was last involved in a drug-related criminal incident which could be indicative of drug use in the summer of 2005. Consequently, DI MC 2, AG ¶ 26(b) does not apply, nor does DI MC 3, AG ¶ 26(c) or DI MC 4, AG ¶ 26(d). As a result, security concerns remain unmitigated.

[18] Guideline H cites to the Controlled Substance Act of 1970, as amended, in its reference to marijuana and cannabis as mood and behavior altering substances.

**Guideline E, Personal Conduct**

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Here, Applicant certified a security clearance application and signed a sworn statement before an OPM investigator indicating he had not used drugs since 1978. The facts show that he was involved in some manner with drugs from 1978 through 2005 and, with regard to the actual use of drugs,[19] he admitted that he turned over to police in 1996 the marijuana he and his girlfriend then used. Moreover, Applicant swore before the OPM investigator that he had no adverse law enforcement contact after 1996. Both in 2004 and 2005, however, he was arrested; in the latter instance, he was arrested while attempting to leave the scene of a drug related incident. Consequently, Personal Conduct (PC) DC 1, AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) and PC DC 2, AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*) apply[20] Consequently, the burden shifts to Applicant to mitigate the related security concerns.

The available PC MCs under Guideline E have been considered in light of the facts. In December 2006, Applicant stated he had not used drugs since 1978 and had not had adverse contact with law enforcement since 1996. The facts show that Applicant did not cease using drugs – including marijuana or what is commonly referred to as "pot" – in 1978. They also show that he had two instances of adverse contact with law enforcement, specifically two arrests and resultant charges. The inaccuracy of these statements subsequently came to light during the investigative process. Given these factors, neither PC MC 1, AG ¶ 17 (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*), PC MC 2, AG ¶ 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being aware of the requirement to cooperate or provide the information, the individual cooperated fully and*

[19] In testifying with regard to his 1996 arrest, Applicant conceded he was "still doing drugs back then, you know, smoking pot." In so stating, Applicant demonstrated that he does not necessarily distinguish between illegal drugs and marijuana, despite his present argument that illegal drugs denote to him "hard drugs" and exclude marijuana or "pot." This distinction is particularly troubling given the frequency of his arrests for infractions of the law related to marijuana, a substance commonly known to be illegal, and his interaction with those possessing and using illegal drugs over the span of about 25 years.

[20] This is especially true given the guideline's statement – "[o]f special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

*truthfully*), nor PC MC 3, AG ¶ 17(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*) apply. Based on the facts of record and testimony offered, there is insufficient basis to find that PC MC 5, AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) applies. Consequently, personal conduct security concerns remain.

**Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the applicable guidelines and both the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant is a mature professional. He has worked in his area of expertise for several years. Starting as a teen through his late 40s, he was arrested and charged with numerous crimes and infractions. These arrests were for incidents involving a variety of charges ranging from trespass and drunk driving to drug and drug possession. The resulting pattern raises genuine security concerns regarding his ability or willingness to comply with laws, rules, and regulations.

Applicant stated, however, that the drug-related arrest in 1996 turned his life around and that he quit using drugs at that time. Yet in 2005, he was still associating with people who possess and use marijuana in public places. His relative ease in such circumstances and continued association with such individuals again raises questions about his appreciation of the law and his own willingness to comply with the law, rules, and regulations. This is particularly true given his continued attempts to distinguish marijuana as somehow exempt from classification as an illegal drug, a term he defines as being limited to "hard drugs."

Applicant's misleading sworn statement before an OPM investigator and his extensive criminal and drug involvement record raise significant security concerns. Combined, they show an established pattern of violations concerning both rules and the law, and demonstrate questionable judgment. The recency of his last drug-related

arrest extends the cloud of doubt created by his past drug use and criminal behavior; his lack of veracity with OPM investigators compounds this doubt with a recent display of untruthfulness.

The burden is squarely on Applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the *prima facie* case raised by the existence of criminal conduct, drug involvement, and personal conduct disqualifying conditions.[21] Additionally, he has the ultimate burden of persuasion to obtain a favorable clearance decision.[22] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[23] This resolution is not necessarily a determination as to the loyalty of an applicant,[24] but is an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. Inasmuch as Applicant has failed to meet his burden and mitigate security concerns arising under the guidelines for criminal conduct, drug involvement, and personal conduct, doubts linger as to his fitness to maintain classified information. Consequently, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

## 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:

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| Paragraph 1, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.t | Against Applicant |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |
| Subparagraph 2.a - 2.b | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraph 3.a - 3.c | Against Applicant |

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

[22] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

[23] *Id*.; Directive, Enclosure 2, ¶ E2.2.2.

[24] Executive Order 10865 § 7.

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

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ARTHUR E. MARSHALL, JR.
Administrative Judge