KEYWORD: Drugs; Personal Conduct; Criminal Conduct; Alcohol

DIGEST: Applicant consumed alcohol at times to intoxication from about 1970 to December 2003, and was caught driving drunk in November 1987. He also used marijuana more than 100 times from 1971 to at least 1983 and at least three times in March 1998 while he held a security clearance. He cultivated marijuana in March 1998 and was arrested for cultivation as well as possession. On security clearance applications completed in June 1984 and June 1991, he reported limited marijuana involvement (used only a couple times, "tried" it) in 1982. Criminal Conduct, Personal Conduct, and Drug Involvement concerns persist where he shows little appreciation for his obligation of candor and justifies his use and cultivation of marijuana. Clearance is denied.

CASENO: 06-18412.h1

DATE: 06/29/2007

DATE: June 29, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 06-18412
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI

APPEARANCES

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

FOR APPLICANT
Peter W. Rotella, Esq.

SYNOPSIS

Applicant consumed alcohol at times to intoxication from about 1970 to December 2003, and was caught driving drunk in November 1987. He also used marijuana more than 100 times from 1971 to at least 1983 and at least three times in March 1998 while he held a security clearance. He cultivated marijuana in March 1998 and was arrested for cultivation as well as possession. On security clearance applications completed in June 1984 and June 1991, he reported limited marijuana involvement (used only a couple times, "tried" it) in 1982. Criminal Conduct, Personal Conduct, and Drug Involvement concerns persist where he shows little appreciation for his obligation of candor and justifies his use and cultivation of marijuana. 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 September 22, 2006, detailing the basis for its decision–security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on October 6, 2006, and elected to have a hearing before an administrative judge. The case was assigned to Administrative Judge Charles Ablard on January 16, 2007, and transferred to me due to workload considerations on March 26, 2007. Counsel for Applicant entered his appearance on April 26, 2007.

With the consent of the parties, I convened a hearing on April 27, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Of the nine Government exhibits identified for the record, seven were admitted (Exhibits 1, 3, 4, 5, 7, and 8 over Applicant's objection). Proposed exhibit 2 was withdrawn. Applicant's objection to Exhibit 9, a report of investigation, was sustained due to lack of an authenticating witness pursuant of ¶ E3.1.20 of the Directive. Applicant testified on his behalf and submitted two state statutes (Ex. A and B) for consideration. At the request of the Government, the parties agreed to submit closing argument in writing. Department Counsel submitted his closing on May 14, 2007.[1] Applicant's counsel filed his closing argument on May 24, 2007. A transcript of the hearing was received by me on May 14, 2007.

FINDINGS OF FACT

DOHA alleged under Guideline H that Applicant used marijuana from at least 1971 to at least 1983 and in at least March 1998 (¶ 1.a), cultivated marijuana in at least 1998 (¶ 1.b), was arrested in about March 1982 for possession of marijuana (¶ 1.c) and in March 1998 for cultivation and possession of marijuana (¶ 1.d), and that Applicant continued to smoke marijuana after he had been

[1]Department Counsel attempted to fax his closing argument on May 14, 2007, but due to transmission error, not all pages were received. A complete copy of his closing argument (absent signature) was sent by electronic mail on that date. On May 16, 2007, Department Counsel faxed his signed signature page.

granted a SECRET clearance (¶ 1.e). Applicant was alleged under Guideline E to have falsified his June 1984 (¶ 2.a) and June 1991 (¶ 2.b) security clearance applications by disclosing marijuana use only in 1982, and to have used marijuana while he had a clearance (¶ 2.c). DOHA alleged under Guideline J the 1982 marijuana possession (¶ 3.a) and 1998 marijuana cultivation and possession (¶ 3.d) offenses, a 1983 criminal trespass offense (¶3.b), drunk driving offenses in November 1987, August 1991, and February 1992 (¶ 3.c), a December 2003 arrest for driving while intoxicated (convicted of reckless driving) (¶ 3.e), and a violation of 18 U.S.C. § 1001 for not fully disclosing his drug usage on his clearance applications (¶ 3.f). In addition to including the alcohol-related arrests in November 1987, August 1991, February 1992, and December 2003 (¶¶ 4.b, 4.c, 4.d, and 4.e), DOHA alleged under Guideline G that Applicant consumed alcohol at times to intoxication from approximately 1970 to at least 2003 (¶ 4.a).

In his Answer, Applicant admitted the use, cultivation, and drug-related arrests as alleged, but claimed his cultivation was "an experiment for biology class." He denied the intentional falsification of his security clearance application ("I was not aware that I had to list every single use of marijuana."). He admitted that he drank at times to intoxication and had been arrested as alleged although noted that the August 1991, February 1992, and December 2003 charges had been dismissed.

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

Applicant is a 51-year-old senior designer who has worked for his current employer (defense contractor X) as a direct hire since February 1984. He had worked for an outside contractor at the facility from June 1983 until he was hired as a full-time employee. Applicant seeks to retain the SECRET security clearance that he has held since November 1984.

Applicant began drinking alcohol and smoking marijuana as a teenager. A caddy at a local country club in 1970, he consumed a quart of beer on three occasions that summer. He continued to drink beer, sometimes wine, on holidays through high school. From 1975 to 1983, he drank beer in quantity of a six-pack at keg parties with friends, occasionally to intoxication. He smoked marijuana from 1971 to 1983, varying from weekly to monthly when out with his friends at street corners or at keg parties, although there were times when he refrained from using marijuana, such as when he was playing basketball during his sophomore year of high school. Applicant estimates he smoked it more than 100 but fewer than 200 times during that 12-year time span. The drug was provided free at first, but he eventually bought it at $5 per quarter ounce. In March 1982, he was arrested for marijuana possession ("two marijuana roaches in the bag," Tr. 134), and given a three-month sentence (suspended).[2] Applicant enjoyed marijuana when he used it, but stopped in 1983 as he tired of it.

In June 1983, Applicant relocated for his contract job at his present place of employment. On complaint of a security officer employed by the defense contractor, Applicant was arrested for criminal trespass on December 18, 1983, after he and a companion were observed climbing the

[2]The Government alleged in ¶ 1.c that the charge was dismissed at arraignment. It is not clear where the Government got that information. Applicant indicated on his 2004 SF 86 (Ex. 1) that he had been given a three months suspended sentence.

center mast of a docked ship at around 3:35 a.m. He had consumed a few beers and did not consider that he was on private property. Applicant was placed on accelerated rehabilitation.

In February 1984, he was hired as a full-time senior draftsman by the defense contracting firm, and given a company-granted CONFIDENTIAL clearance. In about June 1984, he was told to fill out an application for a SECRET clearance and to complete it to the best of his ability. On the Personnel Security Questionnaire (PSQ) that he executed on June 26, 1984, he listed an arrest for possession of marijuana on February 2, 1982, in response to question 14.a concerning whether he had ever been arrested. He also responded affirmatively to questions 15.a ["Have you ever used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) or Cannabis (to include marijuana or hashish) except as prescribed by a licensed physician?"] and 15.b ["Have you ever been involved in the illegal purchase, possession, or sale of any narcotic, depressant, stimulant, hallucinogen, or Cannabis?"], but indicated only that he smoked marijuana "a couple times" and bought a couple of marijuana cigarettes from a friend, both the use and purchase occurring on approximately February 2, 1982. Applicant was granted his SECRET clearance on November 24, 1984.

Applicant's consumption of alcohol increased after he started working for the defense contractor. In November 1987, he was stopped for weaving, although Applicant contends he was lost and looking for a street sign. After a breathalyser showed a .11% blood alcohol content, he was arrested for driving while intoxicated (DWI). He was placed in an accelerated rehabilitation program. On completion of one year probation and attendance at alcohol awareness classes at a cost to him of $260, the charge was dismissed.

In May 1988, Applicant totaled his vehicle in a one-car accident. He had consumed a few beers before the arrest, but attributed the accident to driving too fast for road conditions. He reduced his consumption of alcohol to three or four beers weekly, in part because of the expense of drinking. Applicant's medical insurance had lapsed and he incurred almost $6,000 in medical expenses from the accident that he had to pay.

In renewal of his SECRET clearance, Applicant executed a National Agency Questionnaire (NAQ) on June 21, 1991. Applicant signed a typewritten form that included "NO" responses to question 18, concerning whether he had ever been arrested, and question 20.a, concerning whether he had ever tried or use or possessed any narcotic, depressant, stimulant, hallucinogen, or cannabis, "even on a one-time or on an experimental basis." On a two-page attachment, Applicant responded "Yes" to the arrest record (question 18), illegal drug use (question 20.a), and alcohol use (question 20.b) inquiries. He listed arrests in December 1982 for possession of marijuana and November 1987 for DWI. Applicant added with respect to the drug use, "I tried marijuana in 1982. It was given to me by a friend. I got caught with it in my possession." As for his DWI, Applicant stated, "I just made a mistake to do someone a favor and drive them home after I had a couple of drinks."

In August 1991, Applicant was stopped by the state police after he was observed driving in and out of the breakdown lane. He was given field sobriety tests and charged with operating under the influence (OUI). Applicant was found not guilty in November 1991. Applicant submits he had nothing to drink before his arrest on that occasion and the Government presented no evidence to rebut his statement.

In November 1991, Applicant was interviewed by a Defense Security Service (DSS) special agent, in part about his alcohol and illegal drug use and related arrests. Applicant admitted he had been placed on probation and required to attend an alcohol awareness class for the November 1987 DWI, but denied that he had been weaving ("all I was doing was looking for a street sign and street I would recognize."). Applicant denied he had been drinking on the occasion of his recent arrest for OUI in August 1991. He admitted he had been fined for possession of marijuana in 1982 and for trespassing in 1983. Applicant detailed his consumption of about a six-pack of beer at keg parties with friends from 1975 to 1983 and in increased amounts after he began work with the defense contractor until his accident. Applicant indicated that he had since reduced his drinking to three to four beers weekly. He also admitted he had smoked marijuana weekly to twice monthly from 1971 to 1983, but stopped when he got tired of it. Applicant averred he had "no intention to use, sell, manufacture, purchase or possess mj [sic] or any other illegal drugs now or in the future."

Applicant was arrested in February 1992 for DWI. The charge was dismissed. Applicant denies he had been drinking before his arrest and there is no evidence of record proving he had been intoxicated on that occasion.

Applicant attended a local college from about 1997 to 2003, earning credits toward his bachelor's degree in nursing. He was unable to complete the clinical requirements due to his full-time job with the defense contractor so stopped pursuing that degree. Applicant was disciplined at work for storing some of his academic product on his work computer.

In March 1998, Applicant was charged with cultivation and possession of marijuana in his apartment. He had been cultivating the plants from about December 1997 from seeds he claims he found in a bag on the property. Applicant presumed that a firefighter, who had accessed his apartment without his permission to repair a problem on the premises, had tipped off the local police. Applicant was sentenced to 80 hours of community service on the marijuana possession charge. Applicant, who had returned to college, claims he had cultivated the marijuana as a personal (*i.e.*, not school sponsored) biology experiment ("it actually demonstrated a lot of the principles that are used in reproduction for sexual plants. Genetics. It demonstrated lighting, all the use of fertilizer, chemicals, and stuff like this." Tr. 93). On at least three occasions before his arrest, Applicant smoked some of the marijuana he had cultivated.[3] He did not destroy the plants after he smoked the marijuana. He has not used any marijuana since his arrest. He was aware his conduct was illegal but he did not consider it serious ("I certainly didn't even consider it to be an infringement on my secret clearance." Tr. 125).

On December 12, 2003, Applicant was stopped at a sobriety checkpoint and arrested for DWI after a field sobriety test. He was prosecuted for, and convicted of, misdemeanor reckless driving in

[3]Applicant claims he smoked the marijuana only to see if his experiment worked. Asked why he had to smoke it three times if that was his purpose, Applicant responded, "Cause there was [sic] three plants." (Tr. 162)

April 2004.[4] His operator's license was suspended and he was fined. Applicant denies he had been drinking before his arrest, and there is no proof he was drunk.

In an update of his SECRET clearance, Applicant executed a security clearance application (SF 86) on October 28, 2004. In response to question 24 concerning alcohol/drug offenses, Applicant listed the following arrests and convictions: January [vice March] 1982 for possession of marijuana, three-month suspended sentence; February 1988 [vice November 1987] DWI, driving school; August 1990 [vice 1991] DWI, not guilty after trial; March 1998 cultivation and possession of marijuana, charges dismissed; December 2003 DWI, charges dismissed—traffic violation. In response to question 27 concerning any illegal drug use in the last seven years and to question 28 concerning any illegal drug use while possessing a security clearance, Applicant indicated he used marijuana in March 1998 three times.

Applicant considers himself an avid reader and stock trader as well as a music historian. He reads two, sometimes three newspapers a day. He testified that if he could afford it, he would resume academic studies, probably in music. He denies any current association with known drug users or that he had criminal intent when he cultivated the marijuana in 1998. Applicant denies that he had any intent to falsify his earlier security clearance application or that he consumes alcohol to the extent where he is not in control. His most recent consumption was over the weekend before his hearing when he consumed two or three beers. In the past year, Applicant has consumed as many as five beers at home but he did not drive.

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 revised 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 determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication

[4]State criminal history records reflect Applicant was charged and convicted of reckless driving. (Ex. 6) Had Applicant been charged with operating while under the influence or while having an elevated blood content (.08% or more), the prosecution would have been required to state in open court the reason for the reduction to misdemeanor reckless driving. Conn. Gen. Stat. § 14-227a. The available criminal record does not indicate that the reckless driving charge was reduced from DWI.

the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline H—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. (AG ¶ 24) 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). (¶ 24(a)(1)) The use of a controlled substance such as marijuana is considered drug abuse under the Directive (¶ 24(b) *drug abuse is the illegal use of a drug*). Drug involvement disqualifying conditions (DC) ¶ 25(a) *any drug abuse*, ¶ 25(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia*, and ¶ 25(g) *any illegal drug use after being granted a security clearance*, apply. Applicant smoked marijuana on more than 100 occasions during the 1981 to 1983 time frame, continuing to use the drug after he was convicted of a March 1982 illegal possession offense. More recently, while in possession of a SECRET clearance and employed by a defense contractor, he cultivated marijuana from December 1997 until he was arrested in March 1998 on charges of cultivation and possession. He smoked the product of his cultivation at least three times in about March 1998, and did not destroy the plants after he smoked (Tr. 165), casting doubt on his claim that it was grown solely for a biology experiment ("It was purely an experiment, that I still regret." Tr. 128).[5]

The Government presented no evidence to rebut Applicant's claim of a last use of marijuana in March 1998. Yet despite his limited involvement in the past 20 years, mitigating condition (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*, does not apply. Applicant did not just happen to be at a social function in 1998 and accept an offer of marijuana passed to him. He exercised extremely poor judgment over about a four-month period when he brought the marijuana seeds to germination and eventually enjoyed the fruits of his illegal labors. By his own admission, his "experiment" was personal and had not been sanctioned by lawful authority.

A demonstrated intent to refrain from any future illicit drug use may yet mitigate the security concerns presented by illegal drug involvement, although Applicant bears a heavy burden in this regard given, if he is to be believed, he used, possessed, and cultivated marijuana after about 15 years of no involvement. Under MC ¶ 26(b), among the factors that may demonstrate that intent are: *(1) disassociation from drug using associates and contacts, (2) changing or avoiding the environment*

[5]Applicant had no reasonable explanation for retaining the plants once he had tested the fruits of his "experiment" ("Actually, I don't know. It was like remnants of it in the pot. No particular reason."). He subsequently admitted he had kept some marijuana leaves in the top of a box. Asked why he kept those leaves once he tested the plant, Applicant responded, "There as no particular reason; was just still there." (Tr. 165-66)

where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation. While he now expresses regret over his cultivation and use in 1998, and denies any ongoing association with drug users, I am unable to affirmatively conclude that his drug use is safely in the past. There is no evidence that he was associating with, or influenced by, other drug users when he decided to cultivate marijuana in 1997/98. His regret is likely in getting caught, rather than in cultivating the marijuana, as he shows little appreciation for the illegality of his conduct ("you know, smoking pot or whatever this–you know–hasn't hindered my life or made it a turmoil of neglect." Tr. 127), and continues to justify his behavior:

> I used it as a biology experiment between Biology 1 and Biology 2, and it actually demonstrated a lot of the principles that are used in reproduction for sexual plants. Genetics. It demonstrated lighting, all the use of fertilizer, chemicals, and stuff like this.
>
> So it was an experiment that, to this day, I regret that I had ever done. And that's–you're going to say why did I smoke it? Well, I guess the real reason was to see if the experiment worked. And obviously, I'll never live it down. (Tr. 93)

Applicant's explanation for growing the marijuana as opposed to another plant ("Again, it's a sexual plant. You can't do it with cactus or tomatoes, for instance. You can do it with corn but you can't grow corn indoors." Tr. 154) does not excuse his illegal conduct. His denial of any intent to use marijuana in the future is not persuasive since he cultivated marijuana from late 1997 to March 1998 and smoked it in March 1998, after he had told a DSS agent in November 1991 that he had no intent to use, sell, manufacture, purchase or possess marijuana or any other illegal drug in the future.

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. 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. AG ¶ 15. In addition to the judgment concerns raised by Applicant's use of marijuana while he held a SECRET clearance (*see* Guideline H, *infra)*, the Government submits Applicant was less than fully candid about his illegal drug use on the security clearance applications completed for his initial SECRET clearance in June 1984 and on renewal of that clearance in June 1991. The evidence shows Applicant responded affirmatively to the drug use inquiries, but he disclosed on his June 1984 PSQ only that he had used marijuana "a couple times" on approximately February 2, 1982, on his June 1991 NAQ that he had "tried marijuana in 1982. . . and got caught with it in [his] possession." Applicant admits he used marijuana more than 100 times from 1971 to 1983, and attributes the substantial under reporting to the lack of assistance in filling out the first questionnaire (Tr. 76), to not being aware that they wanted to know every single usage of marijuana in his history (Tr. 77), to his employer not taking drug use seriously:

> I think that's also a particular reason why I didn't call attention to it on the application, is because they never called a serious attention to it because of the fact that most of the employees that worked in the yard used it on the property of

> [company name omitted], and I saw no, no actual importance to them for the usage. The park lot had all the people in the yard drinking, smoking pot out there. So how was I supposed to know that that [sic] was so important to them, every single use? I just didn't see it. (Tr. 84, see also Tr. 92-93, 147)

He also attributed his responses to the security clearance applications themselves ("No one–it wasn't an issue before. It wasn't outlined like it is now–every–how many times exactly? You know, it's much more intense now, the questionnaires." Tr. 92). Concerning his 1991 NAQ, Applicant intimated that he was merely updating the information provided from the previous application (Tr. 144). When it was pointed out to him that he had indicated that he had "tried marijuana," Applicant indicated it was "a generality" ("I've heard people say they tried things, after doing 'em a 100 times, and they're talking about having to do something." Tr. 146).

While a good-faith mistake as to what was required could negate the willful intent required for application of ¶ 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,* his denials of any intentional misrepresentation are not convincing. Applicant was asked on question 15.a of the PSQ whether he had used any narcotic, depressant, stimulant, hallucinogen, or cannabis except as prescribed by a licensed physician, applicants, and directed to explain any "Yes" answer in accord with the detailed instructions. Although those detailed instructions are not of record,[6] he certified that his responses were "true, complete, and accurate to the best of [his] knowledge and belief." Having used marijuana more than 100 times, it was clearly misleading for Applicant to state, "I have smoked marijuana a couple times." Similarly, Applicant's response on his June 1991 NAQ, "I tried marijuana in 1982," leads one to falsely conclude that his use of marijuana was experimental or limited to only a few occasions at or around the time of his arrest in 1982.

To his credit, Applicant disclosed his drug use when he was interviewed by a DSS agent in November 1991. He admitted he had enjoyed marijuana weekly to twice monthly between 1971 and 1983. The Guideline E concerns raised by his knowing falsification of his security clearance applications may be mitigated by a prompt good-faith effort at rectification (*see* ¶ 17(a) *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*). Applicant maintains he volunteered the information ("I voluntarily gave him everything he wanted to know in most cases. He didn't even ask questions. I just told him." Tr.79), but it appears that the admissions of drug abuse were in response to direct inquiry from the agent ("He says, Are these, in fact, the only times that you used it? I says no, it's not." Tr. 78; "He asked, so I told him." Tr. 92). Whether or not he volunteered the information up-front, his rectification in November 1991 was not reasonably prompt with respect to the 1984 false statement.

[6]Applicant's counsel argued in closing that Applicant was never given the detailed instructions. Applicant testified he was given the application, and because he answered yes to use of marijuana, "a couple blank sheets of paper and an envelope, to fill out, to the best of [his] ability, what [he] thought [he] should put down as far as [his] usage." (Tr. 76) Whether or not he was given any detailed instructions, he falsely certified that his answer was "true, complete, and accurate."

Mitigation is available where so much time has passed that it is unlikely to recur (see ¶ 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*). Although it has now been about 16 years since he made a false statement on his 1991 security clearance application, his denial of any intentional falsification of his 1991 and 1984 clearance applications casts continuing doubt on his judgment, reliability, and trustworthiness. There is no pertinent mitigating condition for his cultivation of marijuana while he held a SECRET clearance and in knowing disregard of the laws against such drug involvement.

Criminal Conduct—Guideline J

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. AG ¶ 30. Applicant has been arrested at least seven times since 1982, most recently for DWI in December 2003. The Government can consider criminal conduct that has been dismissed by a court (*see* DC ¶ 31(c), *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*), but not all the charges have been sufficiently substantiated to warrant an inference that he engaged in the criminal conduct charged. Culpability was proven with respect to the March 1982 possession of marijuana (¶ 2.a), the December 1983 criminal trespass (¶ 3.b), the November 1987 DWI (¶ 3.c), the March 1998 cultivation and possession of marijuana (¶ 3.d), and the December 2003 reckless driving (¶ 3.e). DC ¶ 31(a), *a single serious crime or multiple lesser offenses*, and DC ¶ 31(c) apply because of these offenses. Furthermore, Guideline J DC ¶ 31(c) is also implicated because of his lack of candor on his security clearance application (*see* Personal Conduct, *supra*). Applicant committed a felony violation of § 18 U.S.C. § 1001 by deliberately omitting relevant information concerning his illegal drug involvement from his 1984 PSQ and his 1991 NAQ.[7] However, no negative inferences are warranted because of his arrest for OUI in August 1991 where he was found not guilty or his arrest in February 1992 for DWI that was dismissed (*see* MC ¶ 32(c) *evidence that the person did not commit the offense*). Applicant testified as to the latter that he thinks he received a traffic ticket, but he never saw the ticket. (Tr. 149)

Applicant's criminal conduct includes drug offenses, deliberate false statements, drunk driving, and misdemeanor reckless driving, all but the first offense occurring after he relocated to his present locale to work as an outside contractor for his present employer. Only the March 1982 DWI and December 1983 criminal trespass offenses were committed before he became a direct employee of the defense firm. In evaluating his criminal conduct as a whole, I cannot favorably consider MC ¶ 31(a) *so much time has elapsed since the criminal behavior happened, or it happened*

[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.

under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant has not successfully mitigated the security concerns raised by his repeated disregard of the law in several different areas. He remains unwilling to accept responsibility for making a false statement on two security clearance questionnaires. He has also not credibly demonstrated that he can be counted on to refrain from all illegal drug involvement in the future. Applicant's contributions to his employer over the past 20 years are appropriately considered in his favor (*see* ¶ 32(d) *there is evidence of successful rehabilitation; including but not limited to the passage to time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*), but it is also noted that he apparently was disciplined in about 2005 for storing personal academic data on his work computer.

Guideline G—Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. AG ¶ 21. Applicant admits he drank at times to intoxication from approximately 1970 to at least 2003, and he was caught driving drunk in November 1987 DWI. Drunk driving is potentially security disqualifying (*see* ¶ 22(a) *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*). The government failed to prove that Applicant was legally intoxicated on any of the three subsequent occasions when he was arrested for drunk driving. Although Applicant has consumed as many as five beers over the course of four hours, he did not drive after drinking in that quantity. The Government did not present any evidence of a diagnosis of alcohol abuse or dependence where drinking five beers could present a problem. With the evidence of abusive drinking limited in this case, I find MC 23(a) *so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*, applies.

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." AG ¶ 2(a). During his teens and into his mid-twenties, Applicant used marijuana with some frequency. Although he showed good judgment in stopping his illegal drug use, he lied about his involvement in 1984 to gain a SECRET clearance. While holding a fiduciary position with the Government by virtue of his clearance, he was caught driving drunk at age 31, lied on his second clearance application at age 37, cultivated and used marijuana when he was in his early 40s, and drove recklessly when he was 47 (¶ 2(a)(1) *the nature, extent, and seriousness of the conduct;* ¶ 2(a)(3) *the frequency and recency of the conduct;* ¶ 2(a)(4*) the individual's age and maturity at the time of the conduct*). Applicant has not shown reform (¶ 2(a)(6) *the presence or absence of rehabilitation and other permanent behavioral changes*) of the Drug Involvement, Personal Conduct, and Criminal Conduct concerns where he externalizes blame (others were using drugs and his employer looked the other way, had

no help in filling out his clearance applications) and attempts to justify his misconduct (drug cultivation as a biology experiment).

FORMAL FINDINGS

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

Paragraph 1. Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3. Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	Against Applicant
Paragraph 4. Guideline G:	FOR APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	For Applicant
Subparagraph 4.c:	For Applicant
Subparagraph 4.d:	For Applicant
Subparagraph 4.e:	For 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