

KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant continued to use marijuana and cocaine while he had a security clearance and after he had indicated in 1994 that he did not intend to use illegal drugs in the future. More of a track record of demonstrated abstinence is required to overcome his history of drug use, given he used marijuana in September 2005 after he had purportedly made a conscious decision in August 2003 to cease his involvement as it was incompatible with his career and national security. Personal conduct concerns persist because of the poor judgment exercised over several years in using illegal drugs knowing it was against the law and his employer's policy to do so. Clearance is denied.

CASENO: 06-22784.h1

DATE: 09/25/2007

DATE: September 25, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-22784
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant continued to use marijuana and cocaine while he had a security clearance and after he had indicated in 1994 that he did not intend to use illegal drugs in the future. More of a track record of demonstrated abstinence is required to overcome his history of drug use, given he used marijuana in September 2005 after he had purportedly made a conscious decision in August 2003 to cease his involvement as it was incompatible with his career and national security. Personal conduct concerns persist because of the poor judgment exercised over several years in using illegal drugs knowing it was against the law and his employer's policy to do so. 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 ¶E3.1.2 of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 23, 2007, detailing the basis for its decision—security concerns raised 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. The guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on February 16, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 9, 2007.

I convened a hearing on August 22, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Five government exhibits (Exs. 1, 2, 3, 7, 8) were admitted. The government initially offered as one exhibit several court and police records pertaining to different offenses, including some not alleged in the SOR. The documents were marked separately for identification as Exs. 4-8, and those records that were not relevant to allegations in the SOR (marked as Exs. 4, 5, and 6) were subsequently withdrawn. Applicant's case consisted of his testimony and six exhibits (Exs. A-F). DOHA received the hearing transcript on September 5, 2007.

The record was held open until September 5, 2007, for Applicant to submit the results of a hair sample submitted by Applicant for drug testing on August 16, 2007. Applicant timely forwarded a one-page medical review officer report dated August 29, 2007, to which the government had no objections. Accordingly, the document was marked and admitted into evidence as Exhibit G.

FINDINGS OF FACT

DOHA alleged under Guideline H that Applicant used marijuana with varying frequency from about 1984 to at least September 2005 (SOR ¶ 1.a), purchased marijuana (¶ 1.b), used cocaine with varying frequency from approximately 1987 to at least 2003 (¶ 1.c), purchased cocaine (¶ 1.d), used “mushrooms” in about 1985 (¶ 1.e),¹ was arrested in January 1987 for minor transporting alcohol and possession of class D controlled substance (both dismissed) (¶ 1.f), served six months probation for possession of class D controlled substance following an arrest for minor transporting alcohol, possession of class D controlled substance, and possession of class D controlled substance with intent to distribute in October 1987 (¶ 1.g).² DOHA alleged under Guideline E that Applicant falsified a February 1994 sworn statement in that denied he had used illegal drugs other than marijuana and mushrooms (¶ 2.a). Applicant was also alleged under Guideline E and cross-alleged under Guideline H (¶ 1.h) to have used marijuana and cocaine while he held a security clearance granted in March 2001 (¶ 2.b), used marijuana in September 2005 after he applied for a clearance

¹Both parties understood the reference to be to hallucinogenic mushrooms.

²SOR ¶ 1.g was amended at the hearing to correct the date of his arrest, as reflected in the court records submitted as Ex. 8.

in August 2005 (¶ 2.c), and used illegal drugs after he told a DoD investigator in February 1994 that he had no intent to use marijuana or any other illegal drug in the future (¶ 2.d).

Applicant admitted the allegations with one correction to SOR ¶ 1.b. He indicated he had used marijuana and cocaine while holding a security clearance granted in 1994 instead of March 2001, ceasing all involvement in August 2003 but for smoking a small amount of marijuana on one occasion in September 2005. Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, exhibits, and hearing transcript, I make the following additional findings.

Applicant is a 38-year-old product manager who has worked for his employer, a defense contractor, since April 2003. He seeks to retain the secret-level security clearance that he has held for his present duties.

Applicant began to use illegal drugs as a 15-year-old high school sophomore in about 1984. He first smoked marijuana when socializing with friends from his neighborhood. He was uncomfortable as he knew he wasn't doing the right thing, but succumbed to peer pressure and some curiosity. Applicant did not like the drug's effects. A few weeks later, he tried it again due to peer pressure. He smoked marijuana thereafter about twice a month for one year. During his last two years of high school, he used marijuana two to three times weekly, predominantly on weekends. Applicant was provided the marijuana by friends, but it cost him about \$5.00 a month.

Applicant also experimented with hallucinogenic mushrooms once or twice at age 16. He was given them while he and two friends were out "carousing" in a friend's vehicle. Applicant contributed a nominal amount for the drug. Applicant expected a "mind-altering" experience but the drug's effects fell short of his expectations.

During his junior year of high school, Applicant tried cocaine at a party. He used the drug about ten times total in high school, contributing towards its cost once or twice but he never actively solicited the drug. Applicant was aware his cocaine use was illegal, and he worried about getting caught.

While attending a hockey game in January 1987, Applicant and a companion were invited by a friend to smoke marijuana in his truck. Responding to a complaint of three young males drinking beer in the vehicle, a local police officer stopped them. Applicant and the operator of the vehicle were arrested. Applicant was charged with minor transporting alcohol in a motor vehicle and possession of a class D substance. His case was continued without a finding to August 1987 on payment of \$65 costs on the alcohol charge. Applicant admits he had been smoking marijuana in the truck.

In October 1987, during his first semester in college, Applicant and the same friend were sitting in his friend's parked truck when a local police officer observed Applicant's companion drop a can of beer out of the window. The officer detected a strong odor of alcohol emitting from the truck. The officer confiscated three full cans of beer under the passenger's seat and marijuana from under the driver's seat. Applicant and his friend were both arrested for minor in possession of alcohol. His friend was also arrested on charges of possession of class D substance and possession with intent to distribute class D substance. During the booking procedure, Applicant was also

charged with the marijuana offenses due to his constructive possession. Applicant pleaded not guilty to all three charges. In January 1988, he was convicted of illegal possession of class D substance, and placed on probation to June 1988 on payment of \$15 costs. He was assessed additional costs of \$60 on the alcohol charge. The possession of class D substance with intent to distribute charge was dismissed on motion of the complainant. In June 1988, his case was dismissed.

In college, Applicant's marijuana use declined to once every six months or so at parties with friends. His grades had suffered in high school due to his use of marijuana, and he wanted to make a fresh start. He refrained from any cocaine use in college. Applicant lived on campus his first semester, but commuted from home during the remainder of college due to financial constraints and his father's illness. In June 1992, Applicant earned his bachelor of science in mechanical engineering.

In March 1993, Applicant began working for a defense contractor as a mechanical engineer. In application for a secret-level security clearance, Applicant executed a National Agency Questionnaire (DD Form 398-2) on or about September 21, 1993. In response to whether he had ever been arrested, charged, or cited for any offense, Applicant listed his two previous arrests on marijuana charges, indicating that he had pleaded guilty to 1987 charges of minor in possession of alcohol and possession of marijuana. He also answered "Yes" to drug/alcohol use and mental health inquiries, including question 30.a ["Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish, or any mind-altering substance (to include glue or paint) even one-time or on an experimental basis, except as prescribed by a licensed physician?"], and question 30.b ["Have you ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis?"].

On February 10, 1994, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his arrest record as a minor and his alcohol and drug abuse history. Concerning his illegal drug involvement, Applicant indicated in a signed, sworn statement that he had used marijuana and hallucinogenic mushrooms. Starting at age 15, he smoked marijuana twice monthly with friends. At age 16 or 17, his use increased to twice weekly, but he reported it "subsided significantly" at 18. He disclosed that from age 18 to 23, he smoked marijuana once every six months. Applicant indicated that he used mushrooms once when he was 16 out of curiosity and peer pressure. Applicant denied use of any other illegal drug. He claimed a last usage of marijuana on December 31, 1992 ("I stopped it and no longer get enjoyment from it." Ex. 3), and indicated he did not intend to use marijuana, mushrooms, or any other illegal drug in the future. Applicant denied any involvement in the sale of marijuana and any current, "regular" association with drug users. Applicant did not disclose that he had used cocaine in high school because of the stigma attached to the use of cocaine, his embarrassment and shame over that use, and concern that it could affect his future if his employer learned of it.

In about March 1994, Applicant was granted his secret clearance. Although Applicant had no intent to use any illegal drug again as of February 1994, he used marijuana and cocaine several times while he worked for the defense contractor and knowing that the company had a policy that prohibited illicit drug use by its employees. As to when he resumed his involvement, Applicant recalls with respect to both drugs, "probably one, or two or three years later." (Tr. 98) Applicant used cocaine five times from March 1994 to August 1997, and ten more times until his last use in August

2003. Applicant used the cocaine with some of the friends with whom he had previously used marijuana and with new friends. Applicant used marijuana five times from August 1997 to August 2003. He purchased small amounts of marijuana on two occasions between 1999 and 2001, at least once while he held a security clearance for his work with a previous employer.

From about 1997 to 2001, Applicant worked on a radar program. During the requirements definition stage, he was instrumental in establishing relationships with numerous naval organizations. As the ship integration lead, Applicant was responsible for presenting the design during preliminary and critical design reviews and they were rated as exceptional by the military customer.

From April 2001 to April 2003. Applicant did not require a security clearance. Employed for the first ten months in the development and support of wireless infrastructure, Applicant stayed on after the company was acquired and in February 2002 was given program management responsibilities for his new employer.

Applicant was unemployed from about January 2003 to April 2003, when he returned to the defense sector as a product manager (maritime) for his present employer.³ In early 2003, Applicant's significant other, whom he met in late 1999, moved in with Applicant and his then roommate. She had previously observed Applicant to have an active social life but did not suspect any illegal drug use on his part. He began to spend more time with her, and in August 2003, they purchased a home together in a neighboring state. Applicant then resolved to discontinue any illegal drug use permanently ("Simply put, it was time for a man in his mid-thirties with a wonderful supportive family who depends on him and a successful career to 'grow up'." *see Answer*). His significant other has since seen a "profound shift" in his social habits, almost never seeing any of his old friends (*see Ex. E*).

Applicant completed a security clearance application in September 2004, and on October 29, 2004, signed a release authorizing the government to obtain information related to his activities. Applicant reported that he used marijuana and cocaine within the preceding seven years, marijuana five times from August 1997 to August 2003, and cocaine ten times from August 1997 to August 2003. Concerning any use of illegal drugs in a sensitive position, Applicant indicated that he had used marijuana only the five times but had used cocaine 15 times from March 1994 to August 2003. Applicant responded "Yes" as well to whether he had been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of an illegal drug within the last seven years, but provided no details. The form was incomplete, and it was returned to Applicant for further information. Applicant then added that he had purchased small amounts of marijuana (less than 1/16 ounce) twice during the approximate time frame of 1999 to 2001. Applicant re-signed the form on August 17, 2005.

In September 2005, Applicant smoked marijuana on one occasion with two friends. He has known one of the friends since he was six years of age ("Well, he was smoking it with another friend

³The government alleged that Applicant was granted a security clearance on March 29, 2001 (SOR ¶ 1.b), but there is no evidence that the clearance was granted on that date. Applicant did not need a clearance for his duties from April 2001 until he was hired by his present employer in April 2003. (Tr. 101) It is not clear when his clearance was reinstated. His SF 86 was not even filled out until about September 2004.

of mine that was up for the weekend as well and, you know, in a moment of weakness, I partook in that activity, so he didn't take it out for my expressed purposes." Tr. 128). Applicant knew it was against his employer's policy to smoke illegal drugs. Applicant, who had used cocaine and marijuana with this friend in the past, told him that he hadn't used an illegal drug in two plus years.

In May 2006, Applicant was interviewed by a government investigator. He told the investigator that he had a "don't ask/don't tell policy" with his mother and his significant other about his illegal drug use. He also told the investigator that he could not say that he would not use any illegal drug again, but he did not intend to use any illegal drug.

After that interview, Applicant received the SOR, which led him to realize the "gravity of [his] previous indiscretions." (Tr. 112) He disclosed his past illegal drug involvement to his significant other and resolved to not use any illegal drug in the future. As of August 2007, Applicant and his significant other were planning to have a child and Applicant's career was "really beginning to take off." (Tr. 124). He realizes future drug use is inconsistent with those plans.

In late Spring 2007, Applicant got together with the close friend with whom he smoked marijuana in September 2005. Applicant did not use marijuana and his friend did not offer him any in Spring 2007. Applicant does not know whether this friend is still using marijuana. Applicant intends to maintain a relationship with his "very dear, old friend," whom he sees maybe three times a year, usually in a couples situation. Applicant no longer associates with the others with whom he used cocaine or marijuana in the past. He now looks at illegal drug use as immature and immoral.

On August 16, 2007, Applicant submitted a hair sample for drug testing with the understanding that hair follicle testing covers a lengthier period (three or four months) than a urinalysis ("the last several days, or a week or whatever it is," Tr. 118). The test results were negative for all substances tested, *i.e.*, amphetamines, marijuana, phencyclidine, cocaine, opiates). (Ex. G) Applicant is willing to submit to random drug test and monitoring to verify his continued abstinence. Applicant is subject to drug testing at his current job, but only if he is suspected of substance abuse.

Applicant has been a dependable and reliable employee. He has been willing to stay late to get the job done, and has met his employer's expectations since he started. His recent evaluation for 2006 indicates that he has upheld ethical standards at work and has followed through with his commitments, dependable where the assignment is well-defined.

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 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). (AG ¶ 24(a)(1)). Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24(b)).

Applicant smoked marijuana about once to twice monthly during his sophomore year in high school. During his last two years of high school, he smoked marijuana twice weekly, snorted cocaine ten times, and tried hallucinogenic mushrooms once or twice. In college, he used marijuana about twice a year, including on one occasion during his first semester where it led to his arrest. After he was granted a secret-level clearance in 1994 for his duties with a previous employer, he resumed his cocaine use in a mix of old and new friends, using it five times over the next three years and ten times more from August 1998 to August 2003. He refrained from any use of marijuana until about August 1997, but used it five times to August 2003 and once in September 2005. Applicant contributed to the cost of the cocaine and marijuana he used on occasion. He purchased small amounts of marijuana in 1999 and 2001. 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.

Furthermore, when Applicant was interviewed by a government investigator in May 2006, he could not state that he would never use illegal drugs again, although he denied any general intent to use illegal drugs in the future. While he now suggests that he meant nothing more than he could not be 100 percent sure about anything in life (Tr. 121), it is more likely that Applicant was candidly acknowledging the possibility of future drug involvement on his part when socializing with friends, even though he had no intent at the time to use drugs. When initially confronted at his hearing about his unwillingness or inability to commit to a drug-free future in May 2006, Applicant did not deny telling the investigator that he could not state he would never use drugs again. Instead, he explained

it was no longer his position, and that the clearance appeals process had opened his eyes to the gravity of his previous “indiscretions.” (Tr. 112) His failure to rule out future illicit drug involvement, in the context of a history of drug use after he had expressed an intent to not use any drugs in the future, raises concerns under the second prong of DC ¶ 25(h), *failure to clearly and convincingly commit to discontinue drug use*. Despite the limited evidence of drug abuse in recent years (in the past four years one occasion of marijuana use), Applicant bears a heavy burden to demonstrate that his drug involvement is safely in the past.

Applicant’s case for favorable consideration of mitigating condition ¶ 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*, is not persuasive. Although the heaviest of his drug use occurred when he was a minor, his drug use cannot reasonably be characterized on the whole as infrequent. He used cocaine 15 times after being granted a clearance in 1994. Moreover, his last use of marijuana in September 2005 was relatively recent and casts doubt on his reliability, trustworthiness and good judgment.

Realizing that his conduct has raised legitimate concerns about his commitment to not use illegal drugs in the future (*see Answer*), Applicant took several steps that he submits demonstrate the intent not to abuse any drugs in the future required under MC ¶ 26(b). Applicant has terminated his relationships with those former friends with whom he had used illegal drugs in the past with the exception of a very dear friend whom he has known since he was six. (*see ¶ 26(b)(1) disassociation from drug-using associates and contacts*). He moved away from the old environment and associations in August 2003, purchasing a home with his significant other in another locale and focusing on their life together (*see 26(b)(2), changing or avoiding the environment where drugs were used*). He has been abstinent for the last two years, and for two years more before he used marijuana in September 2005 (*see 26(b)(3), an appropriate period of abstinence*). Going beyond a signed statement of intent (*see 26(b)(4), a signed statement of intent with automatic revocation of clearance for any violation*), Applicant volunteered to submit to a random drug testing program at his own expense under conditions imposed by the Department of Defense to prove his abstinence. His first hair follicle sample taken on August 16, 2007, was negative for the illegal drugs tested.

As noted by Department Counsel, most of the changes in circumstances (friends, relocation) and even dedication to his significant other and career did not preclude him from using the marijuana in September 2005. Applicant indicated that he and his significant other have been attempting to conceive a child for three years (Ex. A), so that also had no impact on his decision to smoke the marijuana when it presented to him in September 2005. Applicant is not willing to give up his friendship with the close friend with whom he smoked marijuana in September 2005, and both marijuana and cocaine before that. He is also not aware whether this “very dear, old friend” (Tr. 130) has given up drugs (Tr. 108). Applicant has failed to provide adequate assurances that his ongoing association with this friend does not present a risk to him remaining drug free. Applicant sees this friend only about three times a year, and no drugs were involved when they got together in Spring 2007. Assuming Applicant was not pressured by his friend to use the marijuana in 2005 (“Well, he was smoking it with another friend of mine that was up for the weekend as well, and, you know, in a moment of weakness, I partook in that activity, so he didn’t take it out for my expressed purposes.” Tr. 128), it is still troubling that his friend used marijuana in Applicant’s presence when he knew Applicant had not used marijuana in some time and had resolved to stop using, as reflected in the following exchange between myself and Applicant at the hearing:

Q When you used marijuana in 2005 did you tell him at that time that you were no longer using any illegal drugs?

A I probably told him that I hadn't used anything in whatever it was at the time, two plus years.

Q Have you told him that you are not using any illegal drugs again or not?

A Yes, yes, he is well aware of my abstinence, Your Honor.

Q And when did you tell him that?

A Probably at varying times over the last four years and he is well aware of the fact that I don't do drugs anymore. (Tr. 127-28)

Concerns persist as to whether this friend can be counted on to respect Applicant's change to a drug-free lifestyle, or whether Applicant can be counted on to do the right thing if drugs are used in his presence. When asked why he simply did not walk away when the marijuana was presented to him in September 2005, Applicant responded, "It was a moment of weakness, Your Honor, I was, it was a holiday party weekend, if you will, and I had a moment of weakness, that's all I can attribute to it." (Tr. 129) Implicit in his decision to use on that occasion was that he wanted to experience the mood-altering effects of the drug.

Applicant's offer of drug testing is consistent with an intent to abstain, but drug testing does not have the same deterrent effect when there is no monitoring of test results, and it was a very recent response to the government's SOR. Based on all the circumstances presented, I am unable to conclude that his drug use is safely in the past.

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). Applicant falsely denied he had used any illegal drugs other than marijuana and hallucinogenic mushrooms in a statement provided to a DSS agent in February 1994, as he feared the negative impact if it became known that he had used cocaine. He also told the agent he had outgrown marijuana and no longer got enjoyment from it, but his subsequent use of the drug on six occasions raises considerable doubts as to the verity of that statement as well. Under Guideline E, DC ¶ 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*, applies.

Applicant also exercised poor judgment, raising concerns about his willingness to comply with rules and regulations, by using both marijuana and cocaine after he had told the DSS agent in February 1994 that he had no intent of future drug use (SOR ¶ 2.d) while he held a security clearance for a previous employer from March 1994 to April 2001 (SOR ¶ 2.c), and by his use of marijuana once in September 2005 after he had applied for his clearance (SOR ¶ 2.c). Applicant also used marijuana and cocaine in at least August 2003, after he had started working for his current employer. While it is not clear whether his clearance had been reinstated—his latest clearance application was not filled out until September 2004 and not submitted until one year later—he used the illegal drugs

knowing that it was against his employer's policy to do so.⁴ DC ¶ 16(e), *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing*, applies. Drug involvement in violation of an employer's policy, if known, could well affect his job in some way. Applicant intentionally concealed his cocaine use when he was interviewed in 1994 because of the stigma attached to cocaine and concern of the consequences to his employment if it became known. Moreover, DC ¶ 16(g), *association with persons involved with criminal activity*, also must be considered in the absence of proof that his close friend no longer uses any illegal drugs.

To Applicant's credit, he was candid about his illegal drug involvement when he applied for his current clearance. He also admitted to a government investigator when he was interviewed in May 2006 that he could not state that he would never use illicit drugs again. These belated disclosures were not prompt enough to mitigate his February 1994 false statements under ¶ 17(a), *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*. Despite the passage of some 13 years since he falsified his February 1994 sworn statement (*see* MC ¶ 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*), it remains relevant in that Applicant made no effort to correct the record for several years while he was in a fiduciary relationship with the government. Moreover, his falsifications in 1994 cannot be viewed in isolation from his repeated abuse of illegal drugs in knowing disregard of the law and policies prohibiting illegal drug use by employees. His excuse for that drug use, that he did not consider it relevant in terms of affecting his ability to adequately safeguard classified information (Tr. 113), compounds the considerable doubt about whether he understands, and can be counted on to fulfill, his fiduciary obligations. It should not have taken the issuance of the SOR for Applicant, an engineer with a college degree and several years of experience in the defense sector, to appreciate that use of illegal drugs was incompatible with a clearance.

Again, you know, this process of appeals and the very real risk of my security clearance being revoked and the implications it has on my life and career has further opened my eyes to the realization that any type of drug use is just a dead end and that there is no, you know, there is no rhyme or reason or motivation for me to ever do it again.

Part of it is facing very real and, you know, very severe or very severe consequences as the result of doing it in the past, so you can chalk it up to a very valuable lesson learned. (Tr. 121-22)

Following his May 2006 interview, Applicant realized at least that he could no longer hide his illegal drug abuse from his significant other, and he has disclosed the facts of his drug abuse to the government, albeit belatedly. MC ¶ 17(e) *the individual has taken positive steps to reduce or*

⁴The evidence is insufficient to prove ¶ 2.b, although Applicant's use of illegal drugs while employed by a defense contractor is certainly relevant to assessing whether he possesses the requisite good judgment that must be demanded of those with access.

eliminate vulnerability to exploitation, manipulation, or duress, applies, but it is not enough to overcome the considerable personal conduct concerns.

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)). Applicant's illegal drug abuse, while at its most frequent when he was a minor, continued beyond the age where it could no longer be attributed to immaturity. His involvement with marijuana and cocaine as a adult while employed by a defense contractor and knowing of its illegality (¶ 2(a)(3) *the frequency and recency of the conduct*), raises considerable doubts as to whether he possesses the good judgment and maturity that must be demanded of those with access (¶ 2(a)(4) *the individual's age and maturity at the time of the conduct*). His current two years of abstinence, accompanied by a sincere resolve to abstain, are not enough to overcome the drug involvement and personal conduct concerns in this case. Even if I was to conclude that there was no risk of future drug involvement presented by his ongoing association with the close friend with whom he used marijuana in September 2005, the combination of circumstances presented in this case supports a whole-person assessment of questionable judgment and unreliability (*see* ¶ 2(d)). It is simply not credible that he could have failed to realize that his ongoing drug use was incompatible with his fiduciary obligations. He held the privilege of classified access knowing that his clearance had been granted based on a lie about the extent of his illegal drug involvement. He made no effort at rectification until he had to regain his clearance for his present duties, and then used marijuana thereafter over Labor Day weekend in September 2005. When asked about his future intent in May 2006, Applicant could not unequivocally state that he would never use drugs again..

FORMAL FINDINGS

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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant ⁵

⁵Applicant used cocaine and marijuana after he had been granted a security clearance in 1994 and denied in February 1994 any intent to use illegal drugs in the future. That use of drugs is covered in ¶ 2.d and an adverse finding is returned as to that allegation. Although Applicant admitted SOR ¶ 2.b, it was not proven that he was granted a

Subparagraph 2.c:
Subparagraph 2.d:

Against Applicant
Against Applicant

DECISION

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

Elizabeth M. Matchinski
Administrative Judge

clearance in March 2001 or that he held an active clearance when he used marijuana and cocaine in August 2003. His use of marijuana in 2005 is covered under ¶ 2.c, and it is not clear whether his clearance had been activated at that point.