DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-05912
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: Thomas J. Minichiello, Jr., Esquire

10/24/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana socially from 1980 to late December 2013, for most of that time while holding a Department of Defense (DOD) security clearance. He falsely denied any illegal drug use when he applied for security clearance eligibility in 2001. His candor about his marijuana use on his January 2012 security clearance application and at his September 2014 security clearance hearing mitigate the personal conduct concerns caused by his 2001 falsification. Yet, while he intends no future drug involvement, it is too soon to conclude that his drug abuse is safely in the past. Clearance is denied.

Statement of the Case

On March 13, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct, and explaining why it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on April 8, 2014. With his Answer, he submitted a signed statement of intent not to abuse any drug in the future with automatic revocation of his security clearance for any future violation. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge if this statement of intent was not sufficient for a favorable adjudication. On April 23, 2014, Department Counsel provided discovery of the Government's potential exhibits to Applicant.[1] On May 13, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 15, 2014, I scheduled a hearing for June 2, 2014.

On May 20, 2014, Applicant requested a continuance to retain legal counsel. On May 28, 2014, counsel for Applicant entered his appearance and renewed Applicant's request for continuance. I continued the hearing at Applicant's request and cancelled the proceeding scheduled for June 2, 2014. Due to DOD travel and budget issues, I delayed rescheduling the hearing pending assignment of other cases in the region. On August 25, 2014, I scheduled the hearing for September 18, 2014. On September 11, 2014, I moved the start time without objection to avoid possible inconvenience to Applicant and his counsel because of unrelated matters.

At the hearing held as rescheduled, two Government exhibits (GE 1-2) and three Applicant exhibits (AEs A-C) were admitted without objection. Applicant and his father testified, as reflected in a transcript (Tr.) received on October 1, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline H (SOR 1.a and 1.b), and cross-alleges under Guideline E (SOR 2.a) that Applicant used marijuana from approximately June 1980 through July 2011, and that he used marijuana after being granted a security clearance around April 2002. Under Guideline E, Applicant is alleged to have falsified his October 2001 security clearance application in that he denied any illegal use of a controlled substance within the last seven years (SOR 2.b) and any illegal drug use ever while possessing a security clearance (SOR 2.c).

In a detailed Answer to the SOR allegations, Applicant admitted the use of marijuana as alleged and the deliberate falsification of his October 2001 security clearance application. In mitigation of the falsification, Applicant cited his disclosure of his "past recreational use of marijuana" on his January 2012 security clearance application. In mitigation of the drug involvement concerns, Applicant cited his disassociation from drug-using associates and contacts; his avoidance of environments where drugs are used; his abstention from illegal drugs; a willingness to attend any rehabilitation or diversion program for his employer or the DOD; and his understanding that his security clearance and

[1] The letter forwarding discovery to Applicant was submitted at the hearing for inclusion in the file. It was not marked as an evidentiary exhibit.

continued defense contractor employer is contingent on his total abstinence from illegal drugs.

Findings of Fact

Applicant's admissions to the drug involvement and to the falsification of his October 2001 security clearance application are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is 48 years old. He and his spouse married in August 1995, and they have two children, now ages 17 and 15. Applicant is an engineering assistant with a defense contractor. He began working for the company as a technician in June 1985, shortly after he earned his associate degree in electronics at a local vocational school. (GEs 1, 2; AE C; Tr. 23-25, 34.) Applicant was promoted over the years through the technician ranks to his current associate staff position. At a "99.6% penetration level," he has reached the end of the pay scale at work for his education level. (Tr. 35.)

Applicant began smoking marijuana as a teenager around June 1980. (GE 1; Tr. 44, 52.) He continued to smoke marijuana recreationally, "maybe four or five times a year" on vacation or on an occasional long weekend (Tr. 46) until the end of December 2013. (Tr. 58.) His use of marijuana occurred usually during large group gatherings when someone passed around a marijuana cigarette as opportunities arose. (Tr. 47.) It was not consistently with the same people. (Tr. 53.)

Applicant applied for his first DOD security clearance in or after 1985 for his work with his current employer. His uncorroborated but also unrebutted testimony is that he disclosed on his security clearance application that he had experimented with marijuana. (Tr. 48.) Applicant was granted a secret-level security clearance.[2] (GE 2.)

Applicant continued to use marijuana while possessing a security clearance, aware at some point that such drug abuse was against the DOD's and his employer's policies (Tr. 53-54), and despite his spouse's disapproval but acceptance. (Tr. 56.) Applicant saw no problem using the drug among gatherings where it was accepted by other people that did not have the same "criteria" as him. Additionally, the drug had limited effects on him in that "[he] didn't feel out of control or out of—out of being able to make a correct judgment in a decision." (Tr. 55-56.)

[2]The record before me contains discrepant information about the date on which Applicant was granted security clearance eligibility at the secret level. Applicant testified at his September 2014 security clearance hearing that he obtained his security clearance in 1985. (Tr. 24.) He gave a date of December 1, 1988, for his clearance on his October 2001 SF 86 (GE 2) and an estimated date of June 1987 on his January 2012 e-QIP (GE 1). The evidence shows that Applicant used marijuana while he held a security clearance for even longer than the April 2002 date alleged in the SOR.

On October 30, 2001, Applicant completed and certified to the accuracy of a security clearance application (SF 86) to update his security clearance eligibility. Applicant responded negatively to question 27, which read as follows:

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

Applicant also answered "No" to question 28 concerning the use of illegal drugs in a sensitive position:

> Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?

(GE 2.) In his Answer, Applicant admitted that he was concerned that disclosure of his drug use on the SF 86 would jeopardize his job. (Answer; Tr. 31.) Yet, when asked on cross-examination at his hearing whether he falsified his SF 86 because he knew he had used marijuana while possessing a security clearance, Applicant suggested that he might not have recalled any instance of drug use within the preceding seven years:

> Well, the way that the question had been termed initially it had asked if it was in the past seven years. And I basically embellished thinking that seven years—in the last seven years. I don't keep track of it. I couldn't remember exactly if there was an exact instance of it. But after I had answered no to that, then the next question was kind of more, I think, more of an embellishment and I had falsely committed myself. (Tr. 49.)

Applicant continued to smoke marijuana after his security clearance was renewed around April 2002. (Answer.)

With the decriminalization of recreational marijuana use in his state,[3] Applicant thought that marijuana use was viewed less critically ("things had been relaxing"). Yet, Applicant made no attempt to notify his employer or security officer that he had not been truthful about his drug involvement on his October 2001 SF 86. (Tr. 50.)

Uncomfortable with the guilt he felt at times because of his false responses to the drug use inquiries on his October 2001 SF 86 (Tr. 32), Applicant was forthcoming about his illegal drug involvement when he completed an Electronic Questionnaire for Investigations

[3] Under § 94C:32L of the state's Controlled Substances Act, effective January 2, 2009, the state decriminalized possession of one ounce or less of marijuana, making possession of one ounce or less a civil offense subject to a $100 fine and forfeiture of the drug. While possession of one ounce or less is no longer a criminal offense under state law, it is still a violation of state law. Moreover, it remains a crime under federal law.

Processing (e-QIP) on January 4, 2012. Applicant responded "Yes" to whether he illegally used any drugs or controlled substances in the last seven years, and he disclosed that he used marijuana from about June 1980 to July 2011, at "social engagements, seldom." He also answered affirmatively to this drug abuse having occurred while he possessed a security clearance. He answered "No" to whether he intended to use the drug or controlled substance in the future, explaining "Didn't like [it] and need to provide example to my children." (GE 1.)

Applicant smoked marijuana on three or four occasions after he completed his e-QIP, including in late December 2013, when he smoked marijuana at a party, "in a comfortable setting away from work and it had just been the wrong place at the wrong time."[4] (Tr. 58-59, 61, 63.) Applicant smoked marijuana on that occasion with individuals with whom he had used the drug in the past. (Tr. 59.)

When he answered the SOR on April 8, 2014, Applicant acknowledged his poor judgment in having used marijuana in the future, stating as follows:

> I lead a quiet and mundane social life, with the exception of having on occasion, socialized with some old friends who still use marijuana recreationally. Since [state name omitted] decriminalized marijuana several years ago, and several states have subsequently legalized its use, the stigma of its use appears to have decreased to a certain extent, and to some, it now appears to be somewhat socially accepted. I acknowledge that it was poor judgment on my part to have partaken in that activity, and vow that I will never again do so in the future.

Applicant expressed his willingness to swear under oath to disassociate from drug-using associates and contacts; to avoid any environment where drugs are used and to take other positive steps to reduce his vulnerability in that regard; to completely abstain from the use of all illegal drugs and marijuana, regardless of its legal status; to submit to random drug testing; and to attend any substance abuse, rehabilitation, or diversion program at his expense for the DOD or his employer. Applicant also indicated that his security clearance and continued employment is conditioned on him not abusing any drugs in the future. (Answer.) He executed a statement of intent not to abuse any drug in the future with automatic revocation of his security clearance eligibility for any violation. (Answer; AE B.)

On August 26, 2014, Applicant volunteered for urinalysis testing, which was negative for any evidence of marijuana metabolite. (AE A.) At his September 2014 security clearance hearing, Applicant expressed his willingness to submit to random drug testing. (Tr. 38-39.) He also expressed remorse about his lack of candor on his 2001 SF 86. (Tr. 31.)

[4] Applicant testified about the circumstances of his marijuana abuse in December 2013, stating "as it was, you know, towards the end of the night and people were staring to disperse and, yes, it had brought itself out." (Tr. 61.)

Applicant has not associated with any persons known by him to abuse any controlled substances, including marijuana, since his last use of marijuana in late December 2013. (Tr. 40, 60.) He has not told the persons with whom he had smoked marijuana that he has ceased all involvement with the drug. He mentioned to them that he was not available "to go or be with them." Applicant has not shared with them the nature of his employment other than that he works with electronics, and he did not think it appropriate to tell them that he could no longer use marijuana because of his job. (Tr. 60.)

Applicant indicates that he decided to stop smoking marijuana, in part, because of his children. He has not shared with them that he has smoked marijuana. (Tr. 45.) Applicant's father corroborates Applicant's testimony that he spends his free time with his family or working around the house. In his opinion, Applicant is "not a party-type guy." (Tr. 68.) Applicant's father cannot explain why Applicant was not candid on his 2001 security clearance application other than he was afraid of losing his job. (Tr. 67.) In his experience, Applicant has been very honest with him throughout his life (Tr. 65, 68). Applicant's father was unaware that Applicant had used marijuana until Applicant shared with him that he had not been candid on his second security clearance application. Applicant told his father that it has been awhile since he used marijuana. (Tr. 71.)

There is no evidence that Applicant's off-duty marijuana use adversely affected his work performance with the defense contractor. His job performance evaluations from 1985 through 2013 reflect his dedication and positive contributions to his employer. Timely and efficient in carrying out his duties, he has met his employer's expectations, and in some areas, exceeded them. He has been consistently rated as a solid performer. (AE C.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. 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 overall adjudicative goal is a fair, impartial, and commonsense 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. 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. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 that the applicant may deliberately or inadvertently fail to 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).

Analysis

Guideline H, Drug Involvement

The security concern for drug involvement is set out in AG ¶ 24:

> 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.

Under AG ¶ 24(a), drugs are defined as "mood and behavior altering substances," and include:

> (1) 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),[5] and
>
> (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Disqualifying condition AG ¶ 25(a), "any drug abuse," applies because Applicant abused marijuana on random occasions, approximately four times a year, from about June 1980 until late

[5]Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance and cocaine is a Schedule II controlled substance.

December 2013. AG ¶ 25(g), "any illegal drug use after being granted a security clearance," is also established because Applicant abused marijuana while possessing a DOD security clearance for many years.

Mitigating condition 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," is clearly not implicated. Applicant's characterization of his marijuana use as "very infrequent" (Tr. 37) is not substantiated when his involvement with the drug is viewed as a whole. Applicant used marijuana, albeit infrequently during any given year, year after year for over 30 years. Moreover, his abuse of marijuana on three or four occasions between January 2012 and December 2013 was not "so long ago."

Under mitigating condition AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future" may be shown by the following:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence;

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant submits that he has disassociated himself from drug-using contacts and avoided situations conducive to his marijuana use since late December 2013. There is no evidence to the contrary. Applicant has also submitted a signed statement of intent triggering AG ¶ 26(b). Yet, Applicant's present nine months of abstinence, even with his negative drug screen in August 2014, is not long enough to guarantee against the risk of relapse. Nine months is of very short duration when compared to his 33 years of drug involvement. Additionally, it is particularly troubling that Applicant abused marijuana on three or four occasions after he told the DOD in January 2012 that he did not intend to use marijuana again because he did not like it and he needed to set an example for his children. His unwillingness or inability to abide by that intent casts considerable doubt about his judgment and whether he can be counted on to abide by his present intent to abstain. Furthermore, nothing about the circumstances of his drug involvement in December 2013 suggests that Applicant is unlikely to find himself in a similar situation in the future. He testified that he was in the wrong place at the wrong time, but that he was also in "a comfortable setting away from work." Apparently someone brought out marijuana towards the end of the night, as people were leaving. Applicant could have left the party instead of choosing to smoke the drug. He has not told the persons with whom he smoked marijuana on that occasion that he can no longer use marijuana.

Applicant's self-report of his marijuana abuse weighs in his favor when assessing his credibility under Guideline E, but it does not preclude a relapse of drug abuse. With his

longtime employment possibly in jeopardy because of his marijuana use, Applicant is willing to swear under oath that he will not smoke marijuana in the future with the understanding that his security clearance and employment are conditioned on no drug abuse. He is also willing to participate in counseling and to submit to urinalysis to prove his ongoing abstention. Applicant's willingness to commit to a drug-free lifestyle and submit proof to the DOD or his employer is evidence in reform. If he can sustain that commitment, he may be able at some future date to avert the negative implications for his security worthiness caused by his drug involvement. For the reasons noted, it is too soon to conclude that his marijuana abuse is safely behind him.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

> 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.

Concerning the Government's case for disqualification under the personal conduct guideline because of Applicant's marijuana use and the fact that he used the drug while holding a clearance (SOR 2.a), the DOHA Appeal Board has held that security-related conduct can be alleged under more than one guideline, and in an appropriate case, be given independent weight under each. *See* ISCR 11-06672 (App. Bd. Jul. 2, 2012). Separate from the risk of physiological impairment associated with the use of mood-altering substances, which is a Guideline H concern, Applicant had an obligation as a clearance holder to comply with DOD policy, including the prohibitions against drug involvement.

Applicant has held a DOD secret-level security clearance throughout most of his employment with the defense contractor. Applicant's concealment of his drug use from his SF86 because he feared the adverse consequences of disclosure shows that he knew by October 2001 that off-duty marijuana use was not condoned, if not expressly prohibited, by the DOD and perhaps also by his employer. He continued to smoke marijuana after his security clearance was renewed, knowing that he had not been candid with the DOD about his drug involvement. The state's decriminalization (although not legalization) of recreational marijuana use does not excuse or minimize his disregard of DOD requirements. He used marijuana for many years while he possessed a security clearance before the state decriminalized possession of one ounce or less of marijuana. AG ¶ 16(c) applies in part in that use of illegal drugs while possessing a security clearance reflects questionable judgment:

> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of

> questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Additional personal conduct concerns arise because of his intentional falsification of his October 2001 SF 86. Applicant admits that he was not candid when he denied any illegal drug use in the last seven years, although he tended to minimize his culpability at his hearing when he claimed he did not keep track of his drug use; could not remember if there was an exact instance within that time frame; and claimed that his negative response to any drug use while he held a security clearance was an "embellishment." (Tr. 49.) Disqualifying condition AG ¶ 16(a) applies because of his knowingly false answers to questions 27 and 28 on his October 2001 SF 86:

> (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.

Furthermore, given that he feared the loss of his security clearance and possibly also his job if he disclosed his marijuana use, AG ¶ 16(e) is also implicated:

> (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.

Applicant's disclosure of his marijuana use on his January 2012 e-QIP was not sufficiently prompt to warrant consideration of mitigating condition AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Applicant's rectification was without confrontation, but he also made no effort to correct the record between October 2001 and January 2012, despite having felt some guilt about his falsification.

Lying on a security clearance application about then recent, if not current, marijuana use is a serious offense. 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," is partially established. Almost 13 years have passed since he falsified his SF 86. AG ¶ 17(c) does not mitigate his recurrent abuse of marijuana after his clearance had been renewed or his delay in correcting the record about his history of drug involvement.

Applicant's candid disclosures of his marijuana abuse on his January 2012 e-QIP and during his September 2014 security clearance hearing constitute some evidence in reform under AG ¶ 17(d) and AG ¶ 17(e), which provide as follows:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant is the sole source of information about his marijuana abuse, and at least with respect to the DOD, he has eliminated the vulnerability concerns about his drug involvement. It is unclear to what extent, if any, Applicant's employer is aware that he used marijuana, albeit at random social gatherings, throughout the duration of his employment. Applicant's father, who testified on Applicant's behalf, appears to be unaware of the full extent of Applicant's drug abuse. Nonetheless, Applicant's recent candor about his drug abuse, which includes his admission on re-direct that his marijuana abuse did not cease in July 2011 but instead continued to late December 2013, largely mitigates the personal conduct concerns caused by his 2001 falsification. Applicant is remorseful for his falsification. The personal conduct concerns raised by his many years of using marijuana while possessing a security clearance are not fully mitigated. Applicant's compliance with the DOD prohibition against marijuana use for the past nine months is not enough to overcome his years of disregard of the DOD policy.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[6] In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's very poor judgment in abusing marijuana while holding a sensitive position with a defense contractor. Applicant exhibited an unacceptable tendency to put his interests first, whether by using marijuana or by lying about that use to protect his job. Citing his more recent disclosure of his drug involvement, Applicant submits there should be no doubt about him following guidelines and recommendations going forward.

Applicant showed a maturity consistent with his age, employment, and life situation as a married father with two teenage children, when he realized he had to come forward about his drug involvement on his latest e-QIP, but not when he abused marijuana after

[6]The factors under AG ¶ 2(a) are as follows:

(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) the 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.

January 2012 in violation of his stated intent to abstain. Asked why he used marijuana, Applicant did not admit to social pressure or personal enjoyment being factors. He responded that the drug had limited effects on him in that he did not feel out of control. Applicant's concern for his job and wanting to set a good example for his teenage children did not prevent him from using marijuana as a party neared its end in late December 2013. While the SOR had not yet been issued, Applicant knew that he had certified to the DOD that he had no intent to use marijuana in the future.

Security clearance decisions are not intended as punishment for past wrongdoing. At the same time, once a security concern arises, there is a strong presumption against the grant or continuation of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). For the reasons discussed under Guidelines H and E, *supra*, it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

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:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge