DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-02906
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: Thomas Albin, Esq.

08/11/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant smoked marijuana at least once, in May 2012, after being granted a security clearance. He was convicted of December 1998 and May 2012 drunk-driving offenses and of illegal possession of marijuana in May 2012. Concerns persist about Applicant's reform of his illegal drug involvement. Clearance is denied.

Statement of the Case

On November 19, 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), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct), and explaining why it was unable to find that it is clearly consistent with the national interest to continue his security clearance eligibility. 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 December 8, 2014, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 24, 2015, 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 April 30, 2015, I issued a Notice of Hearing scheduling the hearing for May 28, 2015.

I convened the hearing as scheduled. The Government submitted five exhibits (GEs 1-5), which were admitted without any objections. Applicant and two of his co-workers testified, as reflected in a transcript (Tr.) received on June 5, 2015.

Findings of Fact

The SOR alleges under Guideline H (SOR 1.a), and cross-alleged under Guideline J (SOR 2.a) and Guideline E (SOR 3.a), that Applicant was charged with operating under the influence of alcohol (OUI) and with possession of marijuana in May 2012, for which he was sentenced to 90 days loss of license and to attend counseling. The SOR also alleges under Guidelines H (SOR 1.b) and E (SOR 3.a) that Applicant used marijuana in May 2012 when possessing a security clearance. Additionally, under Guidelines J (SOR 2.b) and E (SOR 3.a), Applicant is alleged to have been charged with driving under the influence (DUI) in December 1998, for which he paid a $150 fine and attended classes.

When he answered the SOR, Applicant admitted all the allegations without explanation. After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 57-year-old high school graduate. He and his spouse have been married since September 1979. They have two grown children and three grandchildren. (GE 2; Tr. 55-56.) Applicant worked as a pipefitter for his current employer, a defense contractor, from February 1980 to April 1997, when he was laid off for reasons unrelated to his job performance. He worked in shipping at a paper mill for about five years before returning to his current employer around April 2003. (GEs 1, 2; Tr. 50-52, 73.)

Because of the break in his employment, Applicant had to reapply to work with the defense contractor. (Tr. 52-53.) On August 26, 2002, Applicant completed a security clearance application (SF 86) for a secret-level security clearance. In response to the police record inquiry concerning any alcohol or drug offenses, Applicant disclosed a December 1998 DUI arrest, for which he was fined $150 and required to attend alcohol education classes. (GE 2.) Applicant had consumed alcohol at a holiday party, and he crashed his truck into a wall on the way home. (Tr. 69-70.) He refused to submit to a breathalyzer and lost his license for a year. (Tr. 71.) Applicant admits that he was intoxicated on that occasion. He refused the breathalyzer because he did not like how he was treated by the officer, who used pepper spray on him. (Tr. 84.) Applicant was granted a secret-level clearance for his work as a first class pipefitter. (Tr. 54-55.)

To renew his security clearance eligibility, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) on May 10, 2013. In response to the police record inquiries, Applicant disclosed an arrest in May 2012 for DUI and possession of a controlled substance (marijuana). He indicated that he lost his driver's license for 90 days and was required to attend 12 sessions of counseling. In response to whether he had illegally used any drug in the last seven years, Applicant indicated that he had used THC one time in May 2012. He denied any future intent and stated, "I NEED MY SECURITY CLEARANCE AND MY JOB AND WILL NOT RISK LOSING IT." Applicant also responded affirmatively to whether he had been involved in the last seven years in the "illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of a drug or controlled substance." He listed one involvement, which occurred in May 2012, and added that it was a mistake that would not reoccur. Applicant reported his attendance at court-ordered counseling in April 2013 in response to drug and alcohol treatment inquiries. (GE 1.)

Applicant attended substance abuse counseling sessions three times a week from March 26, 2013, to April 18, 2013, in the evenings. (GE 5.) At the time he began treatment, he was drinking "maybe a six-pack or so" on a daily basis. (Tr. 88.) The counseling apparently consisted of individual interactions with the counselor but in a group setting. (Tr. 87, 100.) He was required to submit to a urine test every week and to abstain from alcohol and illegal drugs. (Tr. 87.) Applicant did not have to attend Alcoholics Anonymous (AA) meetings, and he has never attended AA. (Tr. 88.) Applicant did not inform the counselor that he was drinking a six-pack of beer a day. (Tr. 101.)

On June 12, 2013, Applicant was interviewed by an authorized investigator from the Office of Personnel Management (OPM). About his May 2012 arrest, Applicant explained that he had consumed beer and had smoked three puffs of marijuana with, and in the home of, a person from whom he then bought marijuana to use later. On the way home, he was stopped in a spot check and searched. He had a bag of marijuana in his possession and was charged with DUI and possession of a controlled substance. In March 2013, he was ordered to complete 12 sessions of counseling. About his involvement with marijuana, Applicant averred that he smoked marijuana once, in May 2012 with the person from whom he had bought marijuana. His reason for smoking the drug was that he had a very bad week at work. Applicant denied any intent to use marijuana in the future. He admitted that he possessed a security clearance when he used marijuana. Applicant was also asked about his current alcohol use. He reported that he drinks beer, one or two, on a daily basis at home to unwind. He denied drinking to intoxication and any additional alcohol incidents beyond the May 2012 DUI to report. Applicant was then confronted about the December 1998 DUI. He explained that he had not listed it because it occurred more than 10 years ago. (GE 5.)

A criminal records check showed that Applicant was charged with operating under the influence (OUI)[1] and with felony possession of marijuana in May 2012. A misdemeanor

[1] Under §14-227a of the pertinent state's statutes, a person commits the offense of operating under the influence while driving under the influence of intoxicating liquor or any drug or both or while driving with an elevated blood alcohol content of .08% or more.

possession charge was later substituted for the felony drug charge. (GEs 3, 4.) At his security clearance hearing, Applicant fabricated the circumstances of his marijuana use and purchase, claiming a desire to protect the identity of the person who sold him the drug. (Tr. 101.) He testified on direct examination that he was drinking while driving home. (Tr. 60-61, 66.) He had purchased the marijuana in his possession, but he had not consumed any of his supply because the police confiscated it before he could get it home. (Tr. 62-63.)

When asked on cross-examination to detail his drug use and purchase, Applicant reiterated that he smoked marijuana only once, shortly before his arrest in May 2012. He explained that he had "bumped into somebody at the parking lot of the package store," and that he had "maybe two or three hits off of a joint" before he left the parking lot. (Tr. 81-83.) He claimed that he could not recall the identity of the person who provided him marijuana. Applicant later expressed his belief that his supplier was a high school friend from years ago, although he could not recall the person's name. (Tr. 90, 96.) When confronted with his June 2013 discrepant account that he had used marijuana in the home of the person who sold him the marijuana, Applicant testified, "I got it from this guy out in [town omitted], at his house. I'm not going to give you no names." (Tr. 97.) Applicant explained that he had brought some beers with him to the person's home and smoked some marijuana with him:

> We were drinking at the time, and he happened to come up with a bag of weed and says, "You want to buy this?" I said well—can we try a little bit first before I decide. Like I said, I took a couple of hits off the stuff, and I said, "Okay." I was on my way home at the time, and I got nailed. (Tr. 98-99.)

Applicant admitted that his supplier was a friend, but he denied socializing with him since his arrest in May 2012, because they no longer worked together. (Tr. 100.)

Applicant knew when he used and purchased marijuana that it was illegal and prohibited activity by persons holding a security clearance. (Tr. 76-77, 83.) About his rationale for smoking marijuana, Applicant testified that there was stress around his house, and he thought he would try the drug. (Tr. 76-77.) He expressed intent not to use marijuana in the future "because it's against division's policy." (Tr. 76.)

Applicant drinks a couple of beers a day after work at home "in the basement away from the wife." (Tr. 78-79.) His spouse believes he has a problem with drinking. She expresses her concerns in that regard at times on a daily basis, so he drinks out of her presence. (Tr. 85-86.) Applicant denies any recall of the last time that he drank more than a six-pack in a day. He has no plans to stop drinking because he does not want to listen to his wife. (Tr. 86.)

Applicant's general foreman and the shop's operations manager testified on Applicant's behalf. Neither co-worker has socialized with Applicant off the job. Both confirm that Applicant's work is of first-class quality. (Tr. 20-21, 36-38.) Applicant's general foreman knew that Applicant was stopped at a roadblock for DUI around the time of the offense. He later learned that Applicant had used marijuana from conversation in the shop that "[Applicant] got popped for it when he got this roadblock." (Tr. 23-26.) He has never

smelled marijuana on Applicant. (Tr. 26.) The operations manager had no knowledge of any security concerns involving Applicant until he was shown a copy of the SOR a couple of days before the security clearance hearing. (Tr. 43.) When asked to assume that the allegations were accurate, the operations manager indicated that he still considered Applicant to be security worthy. Applicant has been one of his better pipefitters. (Tr. 41, 45.) Applicant did not inform his facility security officer or his supervisors at work about his marijuana use. He did not report his May 2012 arrest to his facility security officer apart from listing it on his May 2013 e-QIP. (Tr. 90.)

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),[2] 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 used marijuana on at least one occasion in May 2012. AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," applies because Applicant purchased the bag of marijuana that was found in his possession in May 2012. AG ¶ 25(g), "any illegal drug use after being granted a security clearance," applies because Applicant held a security clearance when he used and purchased marijuana. He smoked marijuana knowing that it was illegal and prohibited activity by persons with a DOD security clearance.

Applicant claims three years of abstinence from marijuana with no evidence to the contrary. In assessing whether security concerns may have become attenuated by the passage of time to no longer cast doubt on an individual's reliability, trustworthiness, or good judgment, the DOHA Appeal Board has consistently held that it is a question for the administrative judge to resolve based on the evidence as a whole. *See e.g.*, ISCR Case No. 14-01847 (App. Bd. Apr. 9, 2015); ISCR Case No. 11-12165 (App. Bd. Jan. 29, 2014). Applicant denies any abuse of marijuana beyond the single instance in May 2012. AG ¶

[2]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.

26(a) contemplates mitigation when the drug involvement is "so infrequent" to not cast doubt about a person's current judgment:

> (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.

However, the circumstances surrounding Applicant's marijuana abuse reflect adversely on his judgment, trustworthiness, and reliability, and make it difficult to conclude with confidence that there will be no recurrence. Applicant used marijuana with a friend in the friend's home. Applicant would have the Government believe that his friend asked him to purchase some marijuana and that he did not go looking for the drug. Even so, Applicant knew that using marijuana was not only illegal but prohibited conduct while holding a security clearance. He used marijuana and purchased some for later. He likely would have used the marijuana purchased had he not been arrested on the way home and his marijuana confiscated. To the extent that AG ¶ 26(a) applies, it does not address the lingering concerns about Applicant's use and purchase of marijuana to alleviate stress at home and work.

On his e-QIP, during his subject interview, and at his hearing, Applicant denied any intent of future marijuana involvement. Under AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future" can be shown by:

> (1) disassociation from drug-using associates and contacts;
>
> (2) changing or avoiding the environment where drugs were used;
>
> (3) an appropriate period of abstinence; and
>
> (4) a signed statement of intent with automatic revocation of clearance for any violation.

Concerning AG ¶ 26(b)(1), Applicant only reluctantly and after confrontation admitted at his hearing that he had smoked marijuana with a friend from work. He initially fabricated the circumstances of his drug involvement, after being advised that is it a felony offense to make a false statement under Title 18, Section 1001 of the United States Code. He falsely claimed that he had "bumped into" an old high school friend, whose name he cannot now recall, in the parking lot of a package store, and that this friend offered him the marijuana he smoked. After being confronted with the inconsistency in his accounts of his marijuana use, Applicant admitted that he had used marijuana with a now former co-worker. He refused to provide the friend's name and claimed that he has not seen this person since they socialized in May 2012. Under the circumstances, it is difficult to apply AG ¶ 26(b) without some corroboration of his claimed disassociation from drug-using associates, avoidance of the environment where he used marijuana, and abstinence. His expressed reason for not using any illegal drug in the future, in that it is against his department's policy and he needs his security clearance and his employment, did not

prevent him from using and purchasing marijuana in May 2012. He demonstrated an unacceptable willingness to disregard the prohibition against illegal drug involvement. Available facts are not sufficient to adequately rule out the risk of future drug involvement. Applicant continues to experience marital stress. His spouse's complaints about his drinking have led him to drink in the basement, and work and marital stress apparently led him to smoke marijuana in May 2012.

Guideline J, Criminal Conduct

The security concern about criminal conduct is articulated in AG ¶ 31:

> 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.

The criminal conduct concerns are established by Applicant's convictions of the December 1998 DUI and the May 2012 OUI and illegal possession of a controlled substance (marijuana). Two disqualifying conditions are implicated:

> (a) a single serious crime or multiple lesser offenses; and
>
> (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

Applicant's alcohol-related criminal incidents occurred sufficiently far apart to allay concerns about a pattern of drunk-driving that is likely to recur, especially given his present pattern of drinking no more than one or two beers at a sitting. He has shown some rehabilitation by reducing his consumption from the six-pack of beer daily that he had been drinking around the time that he began court-ordered counseling in March 2013. Although his spouse continues to express her concerns about his drinking, his consumption of one or two beers, even on a daily basis, is not considered excessive in the absence of a diagnosed alcohol problem. However, for the reasons already noted under Guideline H, the drug-related criminal activity continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. Furthermore, by lying at his hearing about the circumstances of his drug involvement, be it to protect the identity of the former co-worker or more likely to make it appear that his drug use was happenstance and aberrational, Applicant committed felonious conduct under Title 18, Section 1001 of the United States Code. Under the circumstances, I cannot find that he is successfully rehabilitated of his criminal behavior. Despite the passage of time since his last arrest, neither AG ¶ 32(a) nor AG ¶ 32(d) is adequately established. They provide as follows:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's positive contributions at work weigh in his favor, but they do not overcome the criminal conduct concerns.

Guideline E, Personal Conduct

The security concerns about personal conduct are articulated 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 arrest record and the fact that he used marijuana while holding a clearance, 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). Applicant's drunk-driving and his illegal drug involvement in knowing violation of his obligations as a cleared employee, raise concerns about his judgment generally under AG ¶ 15. It is adverse information, which, when considered as a whole, would support a whole-person assessment of questionable judgment, untrustworthiness, and unreliability under AG ¶ 16(c):

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any 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 classified information.

Moreover, drunk-driving and illegal drug use and purchase are activities, which, if known, may affect his professional standing under AG ¶ 16(e):

(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, my affect the person's personal, professional, or community standing.

AG ¶ 16(e) applies in that Applicant apparently made no effort to timely inform his employer about his May 2012 arrest or his marijuana use. He did not inform his facility security officer. Applicant's general foreman knew only that Applicant had been stopped for DUI at a roadblock. He did not learn until later that Applicant had been "popped" for marijuana. The shop's operations manager, who also testified on Applicant's behalf, learned that Applicant had been arrested and had used marijuana only a couple of days before Applicant's security clearance hearing when he was shown the SOR by Applicant's counsel.

Similar to AG ¶ 26(a) under Guideline H and AG ¶ 32(a) under Guideline J, AG ¶ 17(c) provides for mitigation because of the passage of time, infrequency, or unusual circumstance:

> (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.

Applicant posed a risk to the public and to his own health and safety by operating a motor vehicle while intoxicated in December 1998 and while consuming beer in May 2012. His offenses cannot reasonably be characterized as so minor, although they were infrequent. His use of marijuana, in knowing contravention of the law and his obligations as a cleared employee, is an aggravating factor when considering whether he possesses the sound judgment that must be demanded of those persons entrusted with classified information.

Applicant is credited with disclosing his May 2012 charges and marijuana use on his e-QIP. He apparently completed counseling to the court's satisfaction. Although it is unclear what he learned about substance abuse, he has moderated his drinking since the counseling. There is no evidence that he has abused marijuana since May 2012. Applicant admits that he knew when he smoked marijuana that it was illegal to do so and prohibited while he held a DOD clearance. He shows some reform under AG ¶ 17(d), which provides 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.

At the same time, Applicant undermined his case in rehabilitation by showing that his representations about his drug involvement cannot completely be relied on. His drug use as a cleared employee is conduct that could affect his standing on his job, and while his general foreman and his operations manager are aware that he has used marijuana, there is no indication that either co-worker knew about Applicant's purchase and his obvious intent to use the drug more than the one time in May 2012. While AG ¶ 17(c), AG ¶ 17(d), and AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability

to exploitation, manipulation, or duress," are satisfied in some aspects, concerns persist about Applicant's judgment in abusing marijuana while he held a security clearance.

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).[3] In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's very poor judgment in drinking alcohol while operating a motor vehicle and using marijuana knowing it was contrary to his obligations as a cleared employee. Furthermore, the investigative and adjudicative process requires, and the Government has a legitimate expectation, that applicants for security clearance eligibility will respond accurately to inquiries. By misrepresenting the circumstances of his drug involvement at his security clearance hearing, Applicant raised considerable doubts about his judgment, reliability, and trustworthiness.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). For the reasons noted above, based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant 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 J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

[3]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.

Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge