DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04303
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana approximately a dozen times between late 2000 or early 2001 and December 2012. He exhibited poor judgment by using marijuana while holding a Department of Defense security clearance. The drug involvement and personal conduct concerns are mitigated by the passage of time and by his intent not to use any illegal drug in the future. Clearance is granted.

Statement of the Case

On October 14, 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 November 3, 2014. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On December 11, 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 December 17, 2014, I scheduled a hearing for January 13, 2015.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and three Applicant exhibits (AEs A-C) were admitted without objection. Applicant testified, as reflected in the hearing transcript (Tr.) received on January 23, 2015.

Summary of SOR Allegations

The SOR alleges under Guideline H (SOR 1.a) and cross-alleges under Guideline E (SOR 2.a) that Applicant used marijuana on occasion from approximately January 2000 to December 2012; that he held a secret and then top-secret security clearance with interim sensitive compartmented information (SCI) access; and that he continued to use marijuana after his SCI access was denied, in part, because of his drug use. When he answered the SOR, Applicant admitted that he used marijuana recreationally, on a very limited basis, from approximately 2000 to 2003. He expressed regret at also having used marijuana once each in December 2010 and December 2012. He indicated that he was willing to submit to random drug testing for as long as necessary to prove that marijuana was no longer part of his life. In response to the Guideline E concerns, Applicant expounded in mitigation that he had denied any illegal drug use on his security paperwork but that he had been honest about his drug use during subsequent background investigations.

Findings of Fact

Applicant's admissions to the drug involvement 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 a 33-year-old financial analyst. He has never married. He started with a defense contractor (company X) as an intern (engineering trainee) in college in May 2001 (Tr. 23), and he transitioned to a full-time permanent position in June 2003, shortly after he earned his bachelor's degree in finance. Applicant was promoted to a position at another facility for the same corporate parent in July 2009.[1] (Tr. 28.) He has an offer to return to company X contingent on favorable adjudication of his security clearance eligibility. (GE 1; Tr. 6, 47.)

Applicant began his undergraduate studies in late August or early September 1999. Sometime during his sophomore year, around early 2001, he first smoked marijuana. He was with his roommates in the dormitory. He used another time at a social setting in college, once with a close college friend (Mr. Y) while they were studying abroad during the

[1] Applicant testified that all of the finances for his current employer "roll through" company X and that his current supervisor is employed by company X. (Tr. 28.)

spring semester in 2002, and then once in 2003 before he graduated from college in May 2003. Applicant was given the marijuana by friends. He did not purchase it or contribute funds toward its purchase. (GE 6; Tr. 29-31, 67.)

Applicant worked as an intern (engineering trainee) with company X during the summers and the winter semester breaks in 2001 and 2002. (GEs 1-4; Tr. 23-24.) Applicant was granted a DOD secret-level security clearance in July 2001 (GEs 1-3, 5; Tr. 26), after he submitted a May 22, 2001 security clearance application (SF 86), on which he had responded negatively to inquiry concerning whether he had used any illegal drug since the age of 16 or in the last seven years. (GE 4.) There is no evidence that he smoked marijuana during his semester breaks when he was working as an intern with company X. Applicant has no explanation for why he did not list any marijuana use on his first security clearance application other than that he cannot recall when he first used marijuana, so he does not know if he used the drug before he completed his SF 86. (Tr. 37.) Previous admissions to having used marijuana as a college sophomore cannot be reconciled with his negative response to the drug inquiry on his May 2001 SF 86, however.

In May 2003, Applicant was awarded his bachelor's degree. In late June 2003, he was hired full-time by company X. On June 14, 2004, Applicant completed a security clearance application (SF 86), for an upgrade of his security clearance to top secret and for eligibility to SCI. (Tr. 26.) Applicant responded "NO" to inquiries concerning whether he had used any illegal drug since the age of 16 or in the last seven years, and whether he had ever illegally used a controlled substance while possessing a security clearance. (GE 3.) Applicant knowingly falsified his SF 86 by not disclosing that he had used marijuana. His father and stepmother held senior managerial positions in company X and were directly involved in the hiring process. He feared that they would have access to his security clearance paperwork and was embarrassed that they would find out about his drug use. Additionally, he did not know whether there would be any repercussions for his parents because of his marijuana use. (GEs 5, 6; Tr. 37-38.) Around November 2004, Applicant was granted interim eligibility for SCI. (GE 2.)

On June 6, 2005, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his illegal drug use and failure to disclose it on his SF 86. According to the OPM investigator, Applicant disclosed that he had smoked marijuana four times in college: twice during his sophomore year; once in 2002 while studying abroad; and once in 2004 [sic] after he returned from abroad.[2] Applicant denied any illegal drug use during semester breaks while working for company X or since June 2003, when he became a full-time permanent employee. When asked whether he had any intent to use marijuana in the future, Applicant responded that there was a chance he might smoke marijuana again, although he would not seek out the drug. Asked to explain his negative response to the drug inquiry on his SF 86, Applicant indicated that he did not

[2] The investigator's summary of the interview contains discrepant information in that Applicant reported four-time use of marijuana in college: twice during his sophomore year, one time abroad in 2002, and one time during 2004, when back from abroad, but also that he denied any use since commencing his full-time employment with the defense contractor in June 2003. (GE 6.) Applicant completed college in May 2003, so the reference to 2004 was either typographical error or a misstatement by Applicant.

want the information to be seen by personnel at work. He feared that his application for security clearance eligibility would not be processed if he listed his marijuana use. (GE 6.)

On August 30, 2005, Applicant was denied eligibility for access to SCI, partially because of his marijuana use; conflicting information about his last use (2004 but also denied use since June 2003); his failure to convincingly commit to no future drug involvement; and his falsification of his June 2004 SF 86 by responding "No" to any illegal drug use in the last seven years and any drug involvement while holding a security clearance. (GE 7.) Applicant was moved to another position with company X after he was denied SCI access eligibility. (GE 5.) Around that time, he disclosed to his father and stepmother that he had used marijuana. (Tr. 39.) In hindsight, Applicant "wholeheartedly" agrees with the decision to deny him a top-secret security clearance. He was "young and naive" and not responsible enough at the time to have access to top-secret information. (Tr. 43.)

Applicant smoked marijuana a few more times before November 2007, when he used it a concert with a friend's sister. He knew that his drug use was illegal and prohibited while he worked for a defense contractor. (Tr. 31.) He now asserts that during those times that he smoked marijuana after his SCI access was denied, he knew that he held no security clearance. He had been told that he had no security clearance by security personnel at work.[3] (Tr. 40, 42.)

On February 2, 2009, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) for a secret-level security clearance.[4] In response to the drug inquiries, Applicant admitted that he had used marijuana in the last seven years; that he had illegally used a controlled substance while possessing a security clearance; and that he had illegally possessed a controlled substance in the last seven years. He indicated that he used marijuana nine times between January 2001 and November 2007. Applicant also disclosed on his e-QIP that his eligibility for clearance or access had been denied in August 2005. (GE 2.) He was granted security

[3] When asked whether he continued to smoke marijuana while holding a security clearance after he had been denied access eligibility, Applicant responded:

> I abstained for quite a bit of time. I don't recall in that time frame. It was very infrequent. If I did—to the best of my knowledge I was told that there was [sic] many times where I was going back and forth with the security department at [company X]. They couldn't give me a clearance or [indicate] whether I had a clearance or no clearance. I know for a fact I did walk around that facility with a "no clearance" badge for quite some time. If I did smoke marijuana in that timeframe, it would have been when I had a "no security" clearance. (Tr. 39-40.)

GE 7 shows the denial of eligibility for access to SCI by the military adjudication facility. There is no evidence that the DOHA, who would have had jurisdiction over his collateral clearance, denied him eligibility for access to top secret or revoked his secret security clearance eligibility. This would not prevent company X from administratively removing his badge and denying him access to classified information at the facility, however.

[4] Under the additional comment section, the following statement appears: "THIS PAPERWORK IS SUBMITTED TO SATISFY OFFICIAL REQUIREMENT REQUEST DATED 1/30/2009. SECRET CLEARANCE IS REQUIRED. TOP SECRET IS NOT NEEDED."

clearance eligibility at the secret level following an investigation completed in March 2009. (GE 1; Tr. 27-28.)

In July 2009, Applicant was promoted to work as a manager of financial planning and analysis at another company owned by the same corporate parent. (GE 1; Tr. 28-29.) He did not require a security clearance for that job. (Tr. 44.) In August 2009, Applicant moved to an apartment in his new area. Six months later, he moved to another address. In December 2010, Applicant used marijuana with a neighbor. (Tr. 44.) The neighbor offered him the marijuana, and he used it to be social. (Tr. 64.)

Applicant next used marijuana in December 2012, at a social gathering at a friend's house. He was intoxicated and took one "hit" from a marijuana cigarette. The marijuana was provided by his friend's brother-in-law. (GE 5; Tr. 32-34.) Applicant attributes his "lapse in judgment" to having had a few drinks, to the social situation, and to him going through a difficult time because of the suicide that year of one of his former roommates. (Tr. 34.)

Around June 2013, Applicant was offered a position back at company X, contingent on him being granted a DOD secret security clearance. (Tr. 6.) In conjunction with his pre-employment screening, Applicant completed and certified to the accuracy of an e-QIP on June 27, 2013. Applicant disclosed that he had used marijuana in the last seven years, recreationally, "MAYBE ONCE A YEAR," between approximately January 2000 and December 2012.[5] He indicated that he had used marijuana while possessing a security clearance. He denied any intent to use the drug in the future. (GE 1.)

In early July 2013, one of the personal references listed by Applicant on his e-QIP passed away from cancer. (Tr. 35, 71-72.) Applicant dealt appropriately with the stress of the death of this friend by talking to lots of friends. He did not use any illegal drug. (Tr. 35.)

On July 18, 2013, Applicant was interviewed by an OPM investigator partially about his drug use. Applicant indicated that he used marijuana three times in his townhouse dormitory in college between January 2000 and May 2003, and three or four times after college between May 2003 and December 2014. He recalled using marijuana once at a concert, but he otherwise used it with friends at their homes. Applicant averred that he stopped using marijuana in December 2012, while admitting that he still associates with friends who use marijuana and has contact with them on weekends when he comes home. Applicant denied any use of marijuana by these friends in his presence, however. (GE 5.)

[5] Applicant asserts that it was only an estimate and that he used marijuana three times total in the last seven years: at the concert in November 2007, with a neighbor in December 2010, and while socializing at a friend's home in December 2012. When asked why he then indicated on his e-QIP that he used marijuana about once a year from 2000 to 2012, Applicant responded:

> I've had a year and a half to relive that statement and wish I could take that back, but as you can see, in the other application I said about nine times. I did quick math and said , ah, about ten years, nine times, that's about once a year. Terrible—terrible response. (Tr. 45-46.)

In the summer of 2014, Applicant went to a party held by "a friend of a friend." When he arrived, he saw that others were smoking marijuana, so he left immediately. He had no prior knowledge that marijuana would be present. (Tr. 36-37.)

Applicant still associates with the friends involved in some of his past marijuana use, including in 2012. (Tr. 70.) He socialized with them at a holiday party in December 2014. There was no marijuana at that party. (Tr. 36.) Applicant has made it clear to his friends that he cannot be around any marijuana. (Tr. 65, 71.)

Applicant denies any intent to use marijuana in the future. (Tr. 52.) Citing his maturity and desire to be a role model for his brother, who is a high school freshman, and for his sister, who is in eighth grade, he testified that he knows that he will not use marijuana in the future. (Tr. 48-49.) He is willing to prove his abstention by submitting to random drug screens. (Tr. 54-55.) At his security clearance hearing on January 13, 2015, Applicant executed a signed statement of intent to abstain from marijuana in the future with automatic revocation of a security clearance for any violation. (AE C.)

Applicant has a girlfriend since mid-October 2014, and he assumes that she does not use marijuana from her comment when he told her his drug use was an issue in him obtaining a security clearance. Applicant has not shared with her the details of his marijuana use, including how many times he used the drug or that he used it in December 2012. (Tr. 52, 68-69.)

As of January 2015, Applicant was residing with college friend Mr. Y and Mr. Y's spouse during the workweek. Mr. Y presented a character reference letter attesting to Applicant's strong sense of responsibility and duty. He considers Applicant trustworthy. (AE A.) Although Applicant used marijuana with Mr. Y when they were studying abroad in 2002, Applicant is unaware of any other illegal drug use by Mr. Y. (Tr. 67-68.)

Applicant also presented a reference letter from the manager of accounting for his current employer. This manager has worked with Applicant for over five years. He considers Applicant to be an asset to their finance department. Applicant's work has been "very accurate, organized and trustworthy." He has exhibited dedication, initiative, and reliability in fulfilling his duties. The accounting manager opined, in part: "I can honestly say that he will be greatly missed. Any company that hires [him] should consider themselves very lucky." (AE B.)

Applicant testified that he told "basically everybody" at his current employment that he has used marijuana. (Tr. 50.) He also informed company X's facility security officer (FSO) and the company X manager who will be his supervisor if he returns to work at company X. (Tr. 72-73.)

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 articulated 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),[6] 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."

Applicant indicated on his February 2009 e-QIP for security clearance eligibility at the secret level that he used marijuana nine times from approximately January 2001 to November 2007. He used marijuana after he completed that e-QIP once each in December 2010 and in December 2012. While his June 2013 e-QIP account of marijuana use "MAYBE ONCE A YEAR" was inaccurate in that he did not use marijuana every year between January 2000 and December 2012 or before the fall of 2000, when he started his sophomore year in college, Applicant used marijuana almost a dozen times total between the fall of 2000 or early 2001 and December 2012. Disqualifying condition AG ¶ 25(a), "any drug abuse," applies.

AG ¶ 25(g), "any illegal drug use after being granted a security clearance," is established in that he used marijuana while he held security clearance eligibility. Applicant was first granted secret-level security clearance around July 2001 for his duties as an intern with company X. His use of marijuana in college was during academic semesters and not during the summers or winter breaks of 2001 and 2002 when he was employed as an intern, so he did not use marijuana when he either accessed or was in a position to access classified information. However, there is also no evidence that his security clearance eligibility had been revoked during this timeframe.

After Applicant became a full-time employee in June 2003, he applied for a top-secret clearance and SCI access eligibility in June 2004. During his subject interview in June 2005, he reported that he used marijuana in college four times, and he denied any use of marijuana after June 2003. (GE 6.) If Applicant did not use marijuana during his first two years of full-time employment with company X, and he used marijuana a total of nine times as of November 2007 as he reported on his February 2009 e-QIP (GE 2), then he used marijuana around five times between June 2005 and November 2007, when he was employed by company X. Applicant denies that he held a security clearance after his SCI access eligibility was denied in August 2005. He testified that he was told he had no clearance, and that his badge was changed to a "no clearance" badge. (Tr. 39-40.) His

[6]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.

February 2009 e-QIP was submitted to fulfill an official request. It was noted on his application that he needed a secret but not a top-secret clearance. He was granted secret-level security clearance eligibility following a background investigation that was completed around March 2009. (GE 1.) It is unclear whether the DOD ever denied top-secret security eligibility or revoked his secret-level clearance. Company X would not be precluded from reassigning him to duties that did not involve classified information, even if he maintained his secret clearance. In any event, in July 2009, Applicant began his current employment, where he has not required access to classified information. His security clearance eligibility would have lapsed by the time he used marijuana in December 2012, if not also in December 2010. To the extent that AG ¶ 25(g) applies, there is no evidence of recent marijuana use by Applicant while possessing a security clearance.

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," applies in that Applicant used marijuana only twice after he used it at a concert in November 2007. Although his use has been infrequent in the last seven years, it is difficult to mitigate completely the drug involvement concerns under AG ¶ 26(a), given he used marijuana while possessing a security clearance and knowing it was illegal.

In June 2005, Applicant told an OPM investigator that there was a chance that he might use marijuana again, but that he would not seek out the drug. He smoked marijuana up to seven or eight times thereafter, including in November 2007, December 2010, and December 2012. By his June 2013 e-QIP, he had resolved not to use any marijuana in the future. He reiterated in July 2013 that he did not intend to use marijuana or any other illegal drug. Under 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; and
>
> (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant still associates with the friends involved in some of his past marijuana use. He socialized with them in December 2014, only weeks before his security clearance hearing. AG ¶ 26(b)(1) does not apply. Applicant shows some compliance with AG ¶ 26(b)(2) in that he left a party immediately in the summer 2014 when he realized illegal drugs were present. Additionally, he has also told his friends that he cannot be around marijuana, and they have not used any marijuana in his presence since then, including when he socialized with them in December 2014.

Three years passed between Applicant's marijuana use at the concert in November 2007 and his next use, which was with a neighbor in December 2010. Under those circumstances, his current abstinence of two years does not alone guarantee against relapse. However, consistent with his resolve not to use any illegal drug in the future, he acted appropriately by leaving the party in 2014 when he saw drugs were present. He has taken proactive steps to ensure that he is not placed in a situation conducive to drug use by informing his friends that he cannot be around illegal drugs. His maturation and his willingness to submit to random urinalysis to prove his abstention are additional evidence in reform. Moreover, Applicant has provided the statement of intent required under AG ¶ 26(b)(4), acknowledging and agreeing to the automatic revocation of his security clearance eligibility for any future illegal drug use.

In contrast to when he initially applied for security clearance eligibility in college, Applicant has informed the DOD; his father and stepmother; company X's FSO; his future supervisor at company X if he is granted a clearance; and some current co-workers that he has used marijuana. Applicant is not likely to risk his employment or the personal regard of his family and co-workers by using any illegal drug in the future. Any illegal drug involvement while possessing a security clearance is not condoned, but Applicant has mitigated the security concerns by demonstrating his commitment to a drug-free lifestyle.

Guideline E, Personal Conduct

The security concern for personal conduct is 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 marijuana use and the fact that he used the drug while holding a clearance (SOR 2.a),[7] 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.

[7] The evidence shows that Applicant knowingly falsified his June 2004 SF 86, if not also his May 2001 SF 86, by denying any illegal drug involvement. Presumably, because of Applicant's voluntary disclosures of his marijuana use, starting with his June 2005 interview, the Government did not allege deliberate falsification, so it cannot provide a basis for disqualification.

Applicant has held a DOD secret-level security clearance during at least some of his employment with company X. AG ¶ 16(c) applies in that while his use of illegal drugs may not now warrant disqualification under Guideline H, his use after being granted security clearance eligibility is an aggravating factor that raises separate concerns about his 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.

Yet, for reasons already discussed under Guideline H, the personal conduct concerns are mitigated. 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 established in that his use of marijuana while possessing a security clearance was not recent.

Applicant's commitment to a drug-free lifestyle is evidence of reform that implicates AG ¶ 17(d) in that he is not likely to use marijuana or any other illegal drug while holding a security clearance in the future:

> (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.

About whether Applicant fully acknowledges that he used marijuana while possessing a security clearance, he responded affirmatively on his February 2009 e-QIP to inquiry concerning whether he had ever illegally used a controlled substance while possessing a security clearance. On his June 2013 e-QIP, he listed his marijuana use, and he checked "Yes" about whether his use occurred while he possessed a security clearance. Yet, the summary report of his July 2013 interview indicates discrepantly that he did not use marijuana while possessing a security clearance. At his hearing, Applicant testified that he knew that he did not possess a security clearance on the occasions of his marijuana use after his SCI access was denied in August 2005. He was told that he had no clearance and his badge was changed to reflect no clearance. Presumably, the Government could have produced evidence of the status of his collateral clearance after August 2005. While he used marijuana in 2010 and 2012, after he had been granted a secret clearance in 2009, he ceased working at the facility only a few months after that clearance was granted, and he did not need a clearance in his new job. The evidence shows that he used marijuana after he was granted security clearance eligibility. For the most part, however, Applicant was not working in a position that required a security

clearance when he used marijuana. He does not appear to be minimizing or justifying his marijuana use. AG ¶ 17(d) applies.

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).[8] In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's poor judgment in abusing marijuana, knowing that it was illegal and prohibited by his then defense contractor employer. Youth and immaturity were factors, but he exhibited an unacceptable tendency to put his interests first by falsely denying any drug use when he applied for his secret clearance. Applicant showed some reform by disclosing his drug use when he was interviewed for SCI access eligibility, but it does not justify or excuse his marijuana use, however infrequent and unplanned. Whether or not Applicant maintained his security clearance eligibility throughout his employment with company X, he knew that using marijuana was illegal. In July 2009, he began his current position in finance at another facility under the same corporate parent. He showed very poor judgment by using marijuana twice thereafter.

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). Even so, a determination of an applicant's eligibility for a security clearance is not made as punishment for past conduct. Applicant is now 33 years old, and he has put his marijuana use behind him. For the reasons discussed under Guidelines H and E, *supra*, it is 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

[8]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.

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski
Administrative Judge