

DATE: January 14, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06148

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Timothy C. Spayne, Esq.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4 and implementation of the provisions of Title 10, Section 986 of the United States Code), issued a Statement of Reasons (SOR), dated August 9, 2001, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) illegal drug involvement (guideline H) due to Applicant's use of marijuana from approximately 1974 to at least March 2000 with arrests for illegal possession in 1974, 1975, 1990 and intent to continue use; Applicant's purchase of marijuana over the past few years; and Applicant's use of cocaine during a six-month period in 1997/98; on 2) personal conduct (guideline E) related to Applicant's use of marijuana and cocaine after he had been granted security clearance and to his falsification of a January 1999 security clearance application; and on 3) criminal conduct (guideline J) as deliberate falsification of a security clearance application violates Title 18, Section 1001, of the United States Code. Applicant's marijuana involvement to at least March 2000 with intent to continue use was alleged to disqualify him from having a security clearance granted or renewed pursuant to Title 10, Section 986 of the United States Code. [\(1\)](#)

On August 31, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on October 3, 2001. Pursuant to formal notice dated October 11, 2001, a hearing was held as scheduled on October 21, 2001. At the hearing, the Government submitted five documents, which were admitted into the record, as well as the testimony on rebuttal of the Defense Security Service (DSS) special agent who interviewed Applicant on March 6, 2000. Applicant tendered his testimony as well as that of five coworkers on his behalf. With receipt of the transcript on November 5, 2001, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 46-year-old pipefitter who has been employed by a defense contractor (company A) since November 1976. Granted a Confidential security clearance for his duties as a pipefitter, Applicant held that clearance until he was laid off in March 1998. After two weeks of unemployment, he commenced work as an assembler for company A at a nearby facility.

In connection with his work as an assembler, Applicant on or before January 28, 1999, completed a security clearance application (SF 86) on which he responded affirmatively to question 24 ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3507."].⁽²⁾ Applicant disclosed adverse legal involvement related to illegal possession of cannabis in May 1974, June 1975 and April 1990, and two alcohol-related offenses, including driving while intoxicated in 1985. Applicant responded negatively to inquiries thereon concerning whether he had illegally used any controlled substance in the last seven years (question 27) and whether he had 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" (question 28).

Circa March 1999, Applicant returned to a first class pipefitter's position at company A's facility where he had worked prior to his layoff. On March 18, 1999, he was granted an Interim Secret security clearance for his duties.

On March 6, 2000, Applicant was interviewed by a Defense Security Service (DSS) special agent. During the course of that interview, Applicant disclosed use of marijuana on his part from 1976 to present (March 2000) on average three or four times per month when socializing with "his drinking buddies." Admitting it was "pretty hard to refuse joining them," Applicant described the extent of his use when out with friends as only a few puffs, which "takes the edge off and makes [him] relaxed." Regarding his future intent, Applicant stated, "In the future I will keep my marijuana use to this level and might even reduce it." He indicated he was trying to keep his marijuana involvement from his children. Applicant related that over the past few years, he had purchased about one ounce of marijuana every six months at a cost of \$200.00. Applicant also disclosed limited involvement with cocaine on four occasions over a six-month period two to three years before. He denied any intent to use cocaine in future. Applicant also discussed his marijuana and alcohol-related arrests, providing the following detail:

- Sometime in the early 1970s, Applicant and a friend were caught swimming in a pond on private property. On noticing an open beer in Applicant's friend's car, the police conducted a search of the vehicle and found a knife and a bag of marijuana seeds. Applicant and his friend were arrested for illegal possession of cannabis. At his arraignment, Applicant posted bond of \$100.00 or \$200.00. To his recollection, Applicant and his friend both forfeited bond. The marijuana did not belong to Applicant. the police, friends who were in his vehicle dropped marijuana which they had in their possession. When none of his friends claimed ownership of the marijuana, Applicant was arrested for illegal possession. Applicant spent a night in jail and paid a fine of \$60.00 or \$70.00. fine for the violation. friends. Arrested for driving while intoxicated, Applicant was ordered to undergo counseling for a couple of months and to pay a fee. The charge was dropped after a year. around a little pipe in the vehicle, the local police investigated and found marijuana in the pipe as well as a small amount loose in the vehicle. Applicant was arrested for possession of marijuana but the charge was eventually nulled as the marijuana was not his.

Asked during his interview why he did not list his involvement with illegal drugs on his security questionnaire, Applicant responded that it was the first time he had filled in the form and he failed to fully understand the "depth of it and how much interest there was in [his] responses." Embarrassed over his drug use, Applicant related he did not want to get into it unless necessary and he figured he could provide the information during his interview if asked. Applicant told the agent he was being as honest as he could be to the extent of having admitted some things he had never told anyone in a position of authority. Applicant executed a signed, sworn statement containing the aforesaid representations.

On August 9, 2001, unable to find it clearly consistent with the national interest to grant him access to classified

information, DOHA issued an SOR to Applicant, alleging, in part, his involvement with marijuana to March 2000 with intent to continue use in the future, his use of cocaine in 1997/98, his lack of candor on his SF 86 about his use of marijuana and cocaine within the last seven years, and his use of both marijuana and cocaine while he possessed a security clearance. Applicant's Interim Secret security clearance was subsequently withdrawn and Applicant terminated from his job at company A, pending recall if his clearance should be restored.

In response to the SOR, Applicant denied any use of marijuana after 1974 to 1975, any purchase of marijuana in recent years, any intent to continue use, and any use at any time of cocaine. He also denied any intentional falsification of questions 27 or 28 on his SF 86. Addressing his accounts of illegal drug involvement during his DSS interview, Applicant stated:

When interviewed by the FBI on behalf of DIS, I was repeatedly questioned as to whether I smoked marijuana during the period of the green badge. When I replied no, I was continuously asked the same question over and over as it was inferred that I was not telling the truth. The truth is that although I was charged with this in 1990, there was no evidence that I had used this substance and the charges were nolle pro-se-qui.

The repeated accusations of my questioner frustrated me to the extent that I replied back in anger that I did it all of my life and will do it till I am 65 and that I also claimed I had used cocaine. As this was far from the truth. I know now this was not the proper response to give. The truth is: I have not smoked any illegal substance since 1975 and at no time have I ever used cocaine. When pressured with this type of questioning and the nature of these questions being asked repeatedly about a phase of my life that I would have preferred to remain in the past as it has no bearing on my present life. I hope this helps to clarify my responses at the earlier interview.

At his hearing, Applicant admitted on direct examination to use of marijuana only in the 1970s. He denied any involvement with cocaine, testifying he told the DSS special agent that he had used cocaine "because the guy made me nervous over the questioning and stuff. I felt I was just being sarcastic and stuff, and he wrote it down anyhow." Claiming he felt "overly badgered" by the questions, Applicant subsequently added, "He [the agent] was implying that even though I admitted to using it [marijuana] back then that I still use it now and would not take no for an answer." (Transcript pp. 52-53). Applicant maintained on direct that he answered question 27 on the SF 86 correctly, since he had not used any illegal drug in more than twenty years. As to why he responded negatively to question 28 regarding use of any illegal drug while in possession of a security clearance, Applicant testified, "the question seemed kind of confusing, and it seems to me like they want me to be a public official or police officer or courtroom member or something like that, which I'm none of those." (Transcript p. 55). Concerning his arrest in 1990 for possession of marijuana, Applicant testified on direct he was only sitting in the back seat of the car eating his lunch and had no idea the marijuana was there.

On cross-examination, Applicant indicated he was last in possession of marijuana in 1975, when it was found in his car on the occasion of his arrest, others having hid it in his vehicle. Asked about his answer wherein he had indicated he had been interviewed by the FBI, Applicant responded, "I don't know if he was FBI or not. I guess he might have been. He seemed like he was. I don't know if I seen his credentials or not." (Transcript pp. 62-63). Asked what it was about the interviewing agent's demeanor which led him to feel intimidated, Applicant complained of the one-sided nature of the questions and testified, "Just repeating the questions over and the continued thing about the drug use and this and that, and everything was pertaining to drug use. Seeing as how I hadn't done it in over years, 20 years or whatever, that I felt that the questions were of a badgering nature." (Transcript p. 63). As for the fact that he signed a statement containing the representations of current marijuana use and past cocaine involvement, Applicant indicated he just wanted to get back to work so he didn't read what the agent had typed out ["I just initialed each paragraph and was out of there." (Transcript p. 66)]. Asked by Department Counsel whether he had told the agent that he had bought an ounce of marijuana every six months or so, Applicant responded, "I was talking about things in the past. He kept going from the past to the future and back and forth, it was a confusing way he did the interview." (Transcript p. 73). Applicant also did not deny telling the agent that he used marijuana about three or four times per month, but claims he was referring to the time back in the '70s. Applicant acknowledged telling the agent in the interview that he was going to try and cut down on his marijuana use because of his kids, but again maintained, "I was only talking about in the past. I don't do it anymore." (Transcript p. 74). Confronted with the fact that his March 2000 statement does not contain any representation to the effect he would use marijuana "all [his] life until [he was] 65," Applicant responded, "I was still

being sarcastic, making the whole stuff up and I was blatantly felt like I was being pressured." (Transcript p. 79). With regard to whether he ever told the agent that he was trying to be as honest as he could be, Applicant testified, "Alls I know is that I did get interviewed by him and that I tried to keep everything open on the honest part. But when he was badgering me over and over, I felt like I was being intimidated and pressured, and that's why I said some of the things I did say." (Transcript p. 88).

After consideration of the evidence of record, Applicant is found to have been forthright about his illegal drug involvement and arrest history when he was interviewed by a special agent of the Defense Security Service in March 2000. Applicant signed, and swore to the truth of, a statement in which he admitted to then current marijuana use with an intent to continue, and to relatively recent cocaine involvement. There is nothing in his sworn statement which would indicate the DSS special agent doubted Applicant's candor during the interview.⁽⁴⁾ Applicant's sworn statement contains representations which are difficult to reconcile with his present claim that he was angry enough to provide false reports of drug use ["I am trying to keep that (marijuana use) away from my children completely . . . ; There are things told (the special agent) today that I have never told anyone in a position of authority, but I am trying to be as honest as I can be for this security clearance."].

Rather, it is Applicant's hearing testimony which lacks the ring of truth. When asked on cross-examination whether he had told the agent he was going to try and cut down on his marijuana use because of his children, Applicant did not deny making that statement and did not state it was made in sarcasm. Instead, he responded, "I told him that. I was only talking about in the past. I don't do it (use marijuana) anymore." (Transcript p. 74). It is noted that Applicant's daughters were born in 1985 and 1987--some years after his marijuana use had ceased, if his hearing testimony is to be believed--so his explanation does not make sense. Moreover, he initially denied on cross-examination that he had ever purchased marijuana. Yet, when asked later whether he had told the agent he had bought about an ounce of marijuana every six months or so, Applicant did not deny it. Rather, he responded:

I was talking about things in the past. He kept going from the past to the future and back and forth, and it was a confusing way he did the interview. I thought he was talking about in the past when I did get arrested for it what we were doing then and I was describing that to him at that time.

(Transcript p. 73). Applicant's admission to purchase even back at the time of his arrest is in direct contradiction to his earlier denial.

In addition, if Applicant had been badgered as he claims, it stands to reason he would have complained to the agent at the time of the interview, or thereafter to the Department of Defense or his employer's security officials as to the conduct of the agent. He made no effort to do so or to correct his sworn statement, which if his testimony is to be believed, contains numerous false statements. Presented the opportunity to provide a consistent, rational explanation for his inaction, Applicant gave several different responses, further undermining his credibility ["Because I figured it was none of their (company A employees) business" (Transcript p. 97); "But I didn't know they were going to write it all down and take note of it" (Transcript p. 98); "Like I said, I didn't even get to read the statements" (Transcript p. 99); "Like I said, I didn't have any idea of the scope of the nature of the interview and what was going to be used and what wasn't going to be used" (Transcript p. 99); "Well, I didn't know that you could make amendment to the thing (statement)" (Transcript p. 101)]. Although Applicant claims to have been "blatantly sarcastic" during his interview, he also acknowledged that some of the information reported in his signed statement was in fact true. His selective denials of only the most damaging information are viewed as a desperate attempt to revise his personal history in the hope of getting his clearance.

Applicant, who used cocaine on four occasions during a six month period in 1997/early 1998 and marijuana three or four times per month from 1976, is found to have deliberately omitted his illegal drug involvement from his SF 86 which he completed on or before January 28, 1999, and signed on February 16, 2001. He falsified not only question 27, but also question 28, which asks whether he had ever illegally used a controlled substance while possessing a security clearance.⁽⁵⁾

Applicant never allowed his drug use to impact his work performance for company A. Applicant's job requires him to be familiar with blueprints. Known as an employee who takes responsibility, Applicant has exhibited technical competence

and reliability.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case: [\(6\)](#)

GUIDELINE H

Drug Involvement

The Concern:

a. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

b. 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); and

(2) Inhalants and other similar substances.

c. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

a. Any drug abuse (see above definition); [\(7\)](#)

b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

e. . . .Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

Conditions that could mitigate security concerns include:

None.

GUIDELINE E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material 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.

E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

GUIDELINE J

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgement, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

a. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged

Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated

upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of witnesses, including Applicant, I conclude the following with respect to guidelines H, E and J:

With respect to guideline H, Applicant smoked marijuana with varying frequency, estimated by him to average out at three to four times per month since 1976. Already involved with marijuana at the time he commenced his employment with company A, Applicant continued to smoke the drug when socializing with his friends after he was granted a Confidential security clearance in November 1976, and more recently after he was granted an Interim Secret security clearance in arch 1999. He purchased marijuana in recent years, spending about \$200.00 for a six month supply. In addition, he used cocaine on four occasions in the 1997 to March 1998 time frame. Any drug abuse and/or purchase is potentially security disqualifying under the adjudicative guidelines (See disqualifying conditions a., b.), as it raises questions regarding an individual's willingness or ability to protect classified information. When one is under the influence of mood-altering substances such as marijuana and cocaine, there is an increased risk of unauthorized disclosure of classified information. Given his use of marijuana for more than twenty years while he held a security clearance, and his expressed intent to continue use, he falls within disqualifying condition e. (recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination).

None of the corresponding mitigating conditions apply. While there is no evidence he has used cocaine since early 1998, his involvement with drugs cannot be evaluated piecemeal. Applicant used marijuana for more than twenty years while he was in possession of a security clearance, and he expressed in March 2000 his intent to continue to smoke marijuana ("In the future I will keep my marijuana use to this level and might even reduce it."). Applicant now claims he has not used any marijuana since 1974/75, but this is regarded as a desperate attempt on his part to retract those admissions of illegal drug involvement which led to a withdrawal of his Interim Secret clearance. While the DOHA Appeal Board has long held that adverse credibility determinations are not a substitute for record evidence (see, e.g., ISCR 97-0765, December 1, 1998), it is reasonable to find that he has continued his involvement with marijuana subsequent to his DSS interview, consistent with his stated intent. It is evident even from his hearing testimony that Applicant continues to enjoy socializing with friends he has known since the 1970s, if not before. (8) In his March 2000 sworn statement, he commented favorably on the relaxing effects of marijuana. He presented no credible evidence that he has made any effort to change his recreational activities or social relationships. There being a very real risk of future use and purchase of illegal drugs by Applicant, subparagraphs 1.a., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i. and 1.j. are resolved against him. Subparagraphs 1.b. and 1.c. are found in his favor, as although Applicant was arrested for illegal possession of cannabis on those occasions, the record evidence reflects the marijuana belonged to his companions.

The Department of Defense, pursuant to Title 10, Section 986 of the United States Code, is prohibited from granting or renewing a security clearance to an individual who "is an unlawful user of, or is addicted to" a controlled substance such as marijuana. The Government's position is that Applicant falls within the statutory prohibition, based on his record of marijuana use to at least March 2000 and his stated intent to continue that involvement. In the absence of credible evidence of a demonstrated change to a drug-free lifestyle, Applicant is held to be an unlawful user of marijuana, and as such is ineligible for a security clearance under the provisions of Title 10, Section 986 of the United States Code. An adverse finding is thus returned with respect to subparagraph 1.k. of the SOR.

The Government's case under guideline E, personal conduct, stems, in part, from the concerns raised by Applicant's involvement with illegal drugs while in possession of a Confidential clearance from November 1976 to March 1998, and of an Interim Secret security clearance from March 1999 to about August 2001. There is no evidence Applicant was aware of the specific Department of Defense policy against involvement with controlled dangerous substances.

However, recognition that illicit drug use would not be accepted or condoned may be inferred from Applicant's intentional falsification of the drug inquiries on his SF 86. In continuing to use marijuana on a regular basis (three or four times per month) and to snort cocaine on four occasions while in possession of a security clearance, Applicant exercised extremely poor judgment,⁽⁹⁾ which warrants an unfavorable outcome with respect to subparagraph 2.a. of the SOR.

The doubts for his security worthiness engendered by his involvement with marijuana and cocaine after he had been placed in a position of trust are compounded by his false denials on his SF 86 in response to whether he had illegally used any controlled dangerous substance within the last seven years, and whether he had ever used any illegal drug while possessing a security clearance. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire raises significant personal conduct concerns (see DC E2.A5.1.2.2.).

To Applicant's credit, he detailed his illegal drug use when he was interviewed by a DSS special agent on March 6, 2000. The DOHA Appeal Board reaffirmed in ISCR 01-06166 (decided on October 25, 2001), that where a case involves disclosures by an applicant that are corrections of an earlier falsification, MC E2.A5.1.3.3. (individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) rather than MC E2.A5.1.3.2. (falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily) is proper for consideration. C E2.A5.1.3.3. requires that the disclosures be prompt as well as before confrontation. There is no evidence Applicant made any effort to correct the record before he was interviewed in March 2000, which is more than a year after he filled out his SF 86. Applicant's denials at the hearing of any marijuana use after 1975 and of any cocaine use whatsoever constitute recent false statements. Applicant having placed his personal interest ahead of his obligation to be candid during the adjudicative process, he has fatally undermined the ameliorative effect of his admissions during the investigative interview.

By providing to the Government in January 1999 (and signing in February 2001) an SF 86 which he knew to contain false responses to questions 27 and 28, Applicant violated Title 18, Section 1001 of the United States Code.⁽¹⁰⁾ His deliberate false statements fall within the ambit of the criminal conduct guideline, specifically disqualifying condition a. (allegations or admissions of criminal conduct, regardless of whether the person was formally charged). His criminal behavior was not only recent, but very serious. A deliberate false statement has the potential to impact the Government's investigative as well as adjudicative decisions. Applicant has shown little remorse or rehabilitation, choosing instead to lie repeatedly during the hearing when confronted with his prior admissions of illegal drug involvement.⁽¹¹⁾ Significant doubts persist as to whether Applicant's representations can be relied on, notwithstanding the testimony of coworkers in his favor. Subparagraphs 2.b., 2.c. and 3.a. are concluded against him.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. With the issuance of the SOR, Applicant was given a copy of the Federal statute, which states in pertinent part:

§986. Security clearances: limitations

(a) Prohibition.--After the date of the enactment of this section, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

(b) Covered Persons.--This section applies to the following persons:

(1) An officer or employee of the Department of Defense

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) Persons Disqualified From Being Granted Security Clearances.--A person is described in this subsection if any of the following applies to that person;

... (2) The person is an unlawful user of, or is addicted to, a controlled substance {as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)}.

2. The SF 86, which bears a generation date of January 28, 1999, was apparently not signed by the Applicant until February 16, 2001.

3. Criminal history information of record (Ex. 4) reflects the arrest as occurring in August 1975.

4. Applicant testified he gave the agent "a little bit too much lip that [he] probably shouldn't have." (Transcript p. 75). Yet, when asked how the agent would know he was being sarcastic, Applicant responded, "I mean, he probably wouldn't

know or not." (Transcript p. 72). On the one hand, he claims he was polite, on the other that he gave too much lip. Given this was a DSS agent with eighteen years of experience who interviewed the Applicant, it is likely the agent would have detected sarcasm, anger or frustration. While he could not recall the interview with Applicant specifically, the agent testified if he thought information was being provided in jest, he would treat it as falsification and impress upon the individual the importance of being truthful. (Transcript p. 117). There is nothing in the statement taken from Applicant which indicates the agent thought the Applicant was not being candid.

5. Applicant's claim that he thought an affirmative response was required only by those court officials who had used illegal drugs is rejected as not worthy of belief. The question clearly sets forth three categories of persons who must respond affirmatively if they have ever used illegal drugs: 1) those who used while employed as a law enforcement officer, prosecutor or courtroom official; 2) those who used while possessing a security clearance; and 3) those in a position directly and immediately affecting public safety.

6. The adjudicative factors considered most pertinent are identified as set forth in guidelines H and J following the implementation of 10 U.S.C. §986. For example, the disqualifying condition for any drug abuse is cited as DC a. as opposed to DC E2.A8.1.2.1.

7. Under the provisions of 10 U.S.C. 986, any person who is an unlawful user of, or is addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.

8. Asked how he knew these individuals, Applicant initially responded, "Just growing up with them." In response to whether these were people he grew up with in the '70s, Applicant answered "no." When it was pointed out to him that he would have been in his 20s in the 1970s, Applicant testified, "I probably just met them and then we worked on cars together or something like that." (Transcript pp. 70-71). The first response is the most credible one, before Applicant had the chance to realize he had admitted he still socializes with individuals who had been around at the time he started using drugs.

9. Applicant testified he was unaware he had been granted an Interim Secret clearance. It is not clear that the Letter of Consent (Ex. 5) was ever provided to the Applicant or that he had been advised of the clearance. Applicant testified he thought he still had a Confidential clearance ("green badge"). Whether or not Applicant realized he had been granted an upgrade, the fact still remains that he used marijuana and cocaine knowing he held a position of trust with the Government by virtue of his security clearance.

10. Title 18, Section 1001 of the United States Code provides in pertinent part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years or both.

11. Acceptance of Applicant's hearing testimony would place him in no better position with respect to his request that his clearance be restored, as it would mean he made very serious misrepresentations to the DSS agent during the course of his subject interview, and he swore to the truth of a statement knowing it to contain false entries.