DATE: June 4, 2003

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-13152

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

Juan Rivera, Department Counsel

Peregrine Russell-Hunter, Chief Department Counsel

FOR APPLICANT

David P. Sheldon, Esquire

SYNOPSIS

Applicant used marijuana with varying frequency between 1988 and 1999, a period in which he held security clearances though his military service and as a defense contractor employee. Applicant deliberately falsified his illegal drug use on three Government security questionnaires and in a written statement he gave to a Government investigator. He disclosed the full extent of his drug use only after being confronted with a Government polygraph examination. He has failed to mitigate concerns about his truthfulness, which further undermines the Government's confidence he will not use drugs in the future. Clearance denied.

STATEMENT OF THE CASE

On September 19, 2002, the Defense Office of Hearings and Appeals (SOR) issued a Statement of Reasons (SOR) to Applicant. The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.[(1)] On November 11, 2002, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on January 14, 2003. On January 23, 2003, I scheduled the case to be heard on February 28, 2003. The Government presented seven exhibits. Applicant presented 12 exhibits, of which 11 were admitted. Applicant also testified and presented the testimony of three witnesses. DOHA received the transcript (Tr) on March 11, 2003.

PROCEDURAL ISSUES

Applicant enclosed 18 documents with his Answer.[(2)] Enclosure 4 to the Answer consisted of the results of a privately-procured polygraph examination; specifically, a summary statement of the polygraph examiner, the charts and graphs from the examination, and the *curriculum vitae* of the polygraph examiner. On February 24, 2003, Department Counsel submitted a *Motion in Limine*, which I understood to be a request to exclude

Enclosure 4.

At the hearing, I allowed both parties to argue their positions on the Government's motion. I then issued a decision from the bench granting the Government's motion and excluding the polygraph results. Applicant offered the exhibit which was marked, but not admitted, as Applicant's Exhibit (AE) A for identification only, and I included it in the file so that it would be available for use in any appeal of this decision.[(3)]

The DOHA Appeals Board most recently addressed the admissibility of privately-procured polygraph evidence in its decisions in ISCR Case No. 96-0785. At the initial hearing in that case, the Administrative Judge denied the Applicant his request for clearance. In so doing, he excluded the results of a polygraph exam proffered by the Applicant because the proffered documents and supporting testimony went to what he felt was his ultimate responsibility; that is, to decide whether the Applicant was credible about any future intent to use illegal drugs. The Appeal Board determined it was error, even under a strict application of the Federal Rules of Evidence, to exclude evidence for this reason.[(4)]

The Appeal Board further found that, absent a DoD directive or policy excluding the use of private polygraph examinations, Applicant may offer such evidence and has the burden of establishing its admissibility. However, the results may not be admitted unconditionally.[(5)] Due to the "unique nature of polygraph evidence," the Board held that the Administrative Judge should examine several issues in deciding admissibility of polygraph results. The Appeal Board listed seven items for consideration in deciding admissibility.[(6)]

Of the seven factors listed in its Remand Order, consideration of the first two - (1) whether the proffered evidence is relevant and material, and (2) whether its probative value outweighs the amount of time and resources required[(7)] to determine its admissibility - supports a conclusion here that Applicant's polygraph evidence should be excluded. The relevance and materiality of the proffered evidence is tenuous at best in light of Department Counsel's admission that there is no evidence contrary to Applicant's proffer that he has not used marijuana since 1999. Further, Applicant also proffered the live testimony of a licensed clinical social worker who would attest to her view that Applicant had not used marijuana since she has known Applicant, and the testimony of Applicant to the effect he has not used since late 1999 and does not intend to use illegal drugs in the future. These witnesses appeared, based on Applicant's proffer, to be sufficient on Applicant's claim of abstinence from drugs and current intentions regarding drugs, especially where there is no allegation before me of drug use since late 1999.

Department Counsel's position in support of its motion is that the Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (OASDC^{3}I) issued a memorandum on October 21, 1992, which excludes as a matter of DoD policy the use of privately-procured polygraph results in DOHA hearings. The same memorandum was submitted for this purpose at the Remand Hearing in ISCR Case No. 96-0785. On appeal from the Administrative Judge's Remand Decision, however, the Appeal Board did not accept the memorandum as authority for Department Counsel's claim it bars admission of a privately-procured polygraph test. The Board concluded Department Counsel had failed to cite or refer "to any ... directive, regulation or DoD memorandum that would provide a basis to conclude the official who signed the October 1992 Memorandum received such a delegation of authority or otherwise was assigned, granted, or succeeded to such authority."[(8)] Therefore, the Board concluded, OASDC^{3}I was not authorized to issue the memorandum and it was not legally sufficient to bar admission of polygraph results.

I agree that the October 1992 memorandum bars the use of privately-procured polygraph tests in personnel security proceedings such as this. A plain reading of this memorandum persuades me that the term "DoD-affiliated personnel" includes employees of private defense contractors. These employees are affiliated both contractually and pragmatically with the DoD. Generally, DoD contracts impose on contractors the same screening processes and regulations as most of their DoD-employee counterparts. In most cases, the contractor employee works along side the Government employee and there is virtually nothing to distinguish one from the other. The DoD has a natural interest in ensuring everyone working with classified information - employees and contractors - are held to a uniform standard of behavior as measured and adjudicated through generally similar means. I do not view the wording of this memorandum as ambiguous nor am I aware of any reason, assuming it was properly issued by someone in authority to do so, not to apply this memorandum in deciding admissibility of polygraphs procured by defense contractor employees as well as by Government employees.

The only remaining question is whether the OASDC^{3}I had the authority to issue this memorandum. In support of its motion, Department Counsel cited to provisions of DoD Directive 5137.1, which clearly delegate to OASDC^{3}I authority to make policy regarding the thereto regarding the personnel security program. The scope of that delegation includes, specifically, matters related to administration and use of polygraph examinations. I am satisfied, therefore, that OASDC^{3}I had the authority to issue the October 1992 memorandum, and that, as the Supreme Court held in *Scheffer* could be done without abridging any due process entitlements, the DoD has instituted a bar to the admissibility of polygraph test results in these proceedings.

At hearing, I asked Department Counsel its views about the Appeal Board's concern in its Remand Order in ISCR 96-0785 that the OASDC^{3}I memorandum was somehow deficient because it is marked "For Distribution."[(9)] The Board apparently felt that, to be effective, it should have included a list of all of the intended recipients. As noted above, OASDC^{3}I clearly is required and authorized to issue such guidance. That guidance applies to any number of organizations involved in the personnel

security clearance process. It would not be unusual for such a policy memorandum to be intended for the widest possible dissemination using the most efficient means available. A designation of "For Distribution" would accomplish that goal, and its use is not necessarily a fatal flaw that renders the memorandum without authority.

I am also guided here by the Directive, which states that OASDC^{3}I is responsible for overseeing the DoD personnel security program.(10) and for issuing "clarifying guidance and instructions as needed."(11) I am, therefore, required to follow the October 1992 OASDC^{3}I memorandum in the same way I am bound by other clarifying memoranda dealing with foreign passports or certain criminal matters. Further, the polygraph results lack sufficient probative value to justify the time and resources required to determine their admissibility. I am also mindful of the Appeal Board's recognition of the need to achieve judicial economy whenever practical.(12)

For all of the foregoing reasons, I have not considered AE A in reaching my decision here.

FINDINGS OF FACT

Applicant is a 31-year-old employee of a defense contractor. He is seeking to regain his Top Secret clearance, which he lost in 1999 and which he needs as part of his employment.

Applicant smoked marijuana with varying frequency from 1988 until sometime on or about Labor Day 1999. His first use was in high school. He used approximately weekly and sometimes daily until 1991, when he enlisted in the Air Force.(13) When he enlisted in the Air Force, Applicant completed a DD FORM 398 Questionnaire to begin processing for a Top Secret/Sensitive Compartmented Information (SCI) clearance. In response to questions whether he had ever used any illegal drug, however, Appellant deliberately falsified his answer by saying no.(14) Applicant was subsequently granted a security clearance, enabling him to complete his training as a linguist and to be assigned to a defense intelligence activity. In 1994 or 1995, while holding a security clearance required so he could perform his assigned duties, Applicant used marijuana at least once.

After leaving the military in January 1997, Applicant continued to work at the same military installation as a civilian employee of a defense contractor. On January 12, 1997, prior to be granted SCI access required for his work, Applicant signed a Personnel Security Policy Advisory whereby he acknowledged that involvement with illegal drugs is prohibited by the military organization Applicant supported through his employment with a defense contractor.(15) However, Applicant also used marijuana about seven or eight times between 1997 and 1999.(16)

To maintain his security clearance, he submitted another security questionnaire in December 1997. In response to similar questions on this form seeking information about his past drug use, Applicant again deliberately omitted the fact he had used marijuana from 1988 until at least 1997. Applicant also deliberately falsified his response to the question whether he had ever been involved with illegal drugs while holding a security clearance.(17)

Applicant's last known use of marijuana was over the Labor Day weekend in 1999. Applicant and his ex-wife were at her family's beach house with several friends. During one evening over that weekend, someone produced marijuana and, when it was offered to Applicant, he smoked along with the others.(18)

On September 14, 1999, Applicant gave a signed, sworn statement to a Government investigator in which Applicant claimed to have twice smoked marijuana and that his use occurred only between spring 1998 and February 1999. He made this statement knowing full well he was deliberately falsifying relevant and material information the Government was seeking to determine his continued suitability to hold a clearance.

Two days later, when confronted with a polygraph examination, Applicant admitted to all of the foregoing drug use. His SCI clearance was subsequently revoked, and he was removed from his position in management.(19)

Applicant made a conscious decision after his first background investigation to perpetuate his falsifications about his drug use because he was confident the Government would not find out about it unless he revealed it. He only fully disclosed his drug use after he was called in for the aforementioned September 1999 interview after a friend had apparently told investigators of Applicant's drug involvement.(20)

Beginning in March 2000, Applicant received counseling from the first of two Licensed Clinical Social Workers (LCSW) he has seen in the past three years. He saw the first LCSW for six weeks to deal with "symptoms of anxiety and depression related to marital problems, unresolved family of origin issues, and work stressors" connected to his workplace difficulties over his drug use.(21) Since February 2001, Appellant has been counseled by a second LCSW almost weekly. The first LCSW opined that Applicant is not likely to use marijuana in the future and that he "self-medicated" with marijuana to cope with the aforementioned issues. The second LCSW, who testified at the hearing, has been helping Applicant understand why he has used drugs and why he lied about it. She, too, is confident Applicant will not use marijuana in the future and feels Applicant has matured a great deal.(22)

Applicant has received numerous awards and other commendations for outstanding on-the-job performance. He also has the confidence of several senior personnel and co-workers at his company who have known him since as early as 1996.[23] Another person, who does not work with Applicant, but who has known him for two years and represents she knows of Applicant's use of marijuana, also expresses confidence Applicant has learned a lesson from his current situation and recommends that his clearance be reinstated.[24]

POLICIES

The Directive sets forth adjudicative guidelines[25] to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against the available adjudicative guidelines as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines here are Guideline E (Personal Conduct), Guideline H (Drug Involvement), and Guideline J (Criminal Conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest[26] for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the Government meets its burden it establishes a case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.[27] A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness to protect the national interests as if they were his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability in favor of the Government.[28]

CONCLUSIONS

Drug Involvement. The Government has established its case as alleged in SOR paragraph 1 that Applicant used marijuana as alleged in the SOR. Applicant does not deny he used marijuana between 1988 and 1999, nor does he deny that he used marijuana while he held a security clearance both during his military service and while employed as a civilian defense contractor. Applicant knew as recently as January 1997 that illegal drug use was prohibited by the DoD agency with which his employer had contracted. These facts are supported by GE 4 and GE 6, and by Applicant's own testimony.

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. Guideline H Disqualifying Condition (DC) 1[29] and DC 2[30] apply on these facts.

Of the Guideline H Mitigating Conditions (MC) only MC 1[31] and MC 3[32] are available to Applicant based on the evidence he has submitted. His last drug use was in September 1999, a period of more than three years' abstinence, which is sufficient to invoke MC 1. Application of MC 3 is more problematic in light of Applicant's repeated falsifications since 1991 about his drug use. Applicant claims that it was his decision to discontinue his drug use,[33] yet it is clear on these facts that Applicant would have continued to use drugs beyond September 1999 had he not been confronted by investigators. It is difficult to reconcile Applicant's long-term and deliberate efforts to hide the fact of his drug use so he could maintain his security clearance with his claim he will not use again in the future.

A question remains, nonetheless, whether Applicant will repeat his drug use in the future now that it has been interrupted. Much of Applicant's explanation for why he smoked marijuana until he was almost 28-years-old, after being in the military, receiving a security clearance and being advised that such conduct was prohibited by DoD agency policy, is that he was dealing in an immature way with poor self-esteem and other issues he has been burdened with since childhood. Applicant asserted at hearing, through his own testimony and that of his LCSW, that his use of marijuana and his lying about it were due in part to factors that have affected him since he was a child. He advances through documents and witness testimony the argument that after his father left Applicant and his mother when Applicant was a young child, Applicant was somehow disadvantaged in his ability to make the right decisions.[34] It was this disadvantage, according to Applicant, that apparently manifested itself in illegal drug use through early adulthood.

This argument is unacceptable because it posits that an Applicant should be excused for repeatedly engaging in unacceptable behavior simply because the behavior was Applicant's way of dealing with those problems. Here, Applicant made a conscious decision to smoke marijuana when he was grown man, knowing it was illegal to do so and that DoD specifically prohibited such conduct. Applicant's behavior represents an unacceptable indifference to the industrial security program.[(35)] It is ironic that Applicant decided to seek counseling for his life issues - a much more effective and reasonable mechanism for dealing with his problems than illegal drug use - only after being confronted by investigators in September 1999. I conclude Guideline H against the Applicant.

Personal Conduct. The Government has established its case as alleged in SOR paragraph 2 that Applicant deliberately falsified relevant and material information about his drug use on two security questionnaires, in an interview with Government investigators, and in a signed, sworn statement given to those same investigators. The security concern here is that Applicant's conduct in deliberately and repeatedly falsifying relevant and material information about his drug use indicates he is unable or unwilling to uphold his fiduciary responsibilities attendant to holding a clearance. A person who is unwilling to subordinate his own interests to those of the Government in difficult circumstances may not have the judgment, reliability or trustworthiness required of one in whom the Government reposes its trust. The Applicant in this case lied about his drug use the first time he was asked about it through the 1991 security questionnaire. He chose to perpetuate that lie in 1997 when he submitted another questionnaire to maintain his clearance as he transitioned to life as a civilian defense contractor. Even when he was approached by investigators in 1999 about information they had obtained about Applicant's possible drug use, Applicant minimized the full extent of his drug use in a signed, sworn statement. Since 1991, Applicant has repeatedly tried to preserve his own interests at the expense of the Government's compelling interest in obtaining all of the information it needed to properly assess the integrity of its personnel security program. Guideline E DC 2[(36)], DC 3[(37)], and DC 5[(38)] apply here.

Of the Guideline MC's listed in the Directive, only MC 2[(39)] could possibly apply because it might be argued that the language in MC 2 dealing with recency of the falsifications would make it available to Applicant because his last falsification occurred over three years ago. However, the language of MC 2 is conjunctive requiring also that the falsification be isolated and the Applicant to have voluntarily provided the correct information about his drug use. Neither of those facets of MC 2 are present here. Rather, the record shows multiple deliberate falsifications of relevant and material information corrected only after Applicant was confronted through subject interview and threat of a polygraph examination. As noted above, Applicant would have continued to withhold information about his drug use indefinitely had he not been so confronted.

It is a well-settled concept that a person must be truthful in dealing with the Government. At some point, subsequent candor will not regain the Government's trust. The Appeal Board has stated it's view on this point:

Applicants are required to be frank and candid with the Government at all times. Telling the truth sheds favorable light on an applicant's candor and honesty, but it does not "immunize" a purveyor of false statements from subsequent security review by the mere expedient of admitting such prior false statements to the Government. Therefore, Applicant's subsequent truthful disclosures to the DIS ... did not negate a finding of a prior knowing and willful falsification under [Guideline E].[(40)]

This Applicant has passed the point where he can be counted on to tell the truth when doing so does is inconsistent with his personal interests. A fundamental aspect of the personnel security clearance program is that persons entrusted with access to classified information enter into a fiduciary relationship with the Government whereby they must guard the national interests as their own. Applicant has repeatedly failed in this regard. I conclude Guideline E against the Applicant.

Criminal Conduct. The Government has established a its case as alleged in SOR paragraph 3 that Applicant engaged in criminal conduct when he deliberately made false statements or representations to an agency of the United States Government in violation of a federal criminal statute.[(41)] The security concern under Guideline J is that a person who is willing to disregard the law and risk possible fines or incarceration may also be willing to disregard rules and regulations governing the protection of classified information. In some cases, the criminal activity does not consist of any serious crimes, but a series of minor offenses. Additionally, it is not necessary that an Applicant actually be arrested and prosecuted for the alleged conduct, only that the information available to the Government be sufficient to show that the alleged conduct occurred. Here, there is ample record evidence that the Applicant used illegal drugs between 1988 and 1999, yet he deliberately omitted this information from a security questionnaire in 1991. He admits that he made a conscious decision to perpetuate his initial falsification on a subsequent questionnaire in 1997 and that he tried to mislead Government investigators during interviews and in a written statement in 1999. The plain language of 18 U.S.C. §1001 makes clear that Applicant's deliberate falsifications are criminal acts punishable by incarceration and/or a substantial fine. Applicant signed his questionnaires after presumably having read such an advisement printed directly above the signature line. Guideline J DC 1[(42)] and DC 2[(43)] apply.

None of the six Guideline J MC's applies here. MC 1[(44)] does not apply here because, by virtue of the fact Applicant's 1999 falsifications in violation of federal law occurred during the Government's most recent investigation of Applicant, they are recent events. Nor can Applicant's

[(45)]

criminal conduct be regarded as an isolated event (MC 2) because it occurred each time his clearance came up for re-evaluation and when twice presented with the underlying adverse information by investigators in 1999. Applicant has presented information from his LCSW and co-workers attesting to his current trustworthiness and reliability, and there is support from the testimony of his LCSW for his claim he has learned a valuable lesson having at last been held accountable for his decisions. However, any conclusion the factors that may have caused Applicant to engage in criminal conduct are no longer a concern (MC 4[(46)]) or that he has been rehabilitated (MC 6[(47)]) is far outweighed by the fact the Government relied to its detriment in granting and renewing at least once his clearance based in part on the apparent absence of adverse information in this regard. One could even question whether the Air Force would have allowed him to enlist had it known Applicant had used drugs the previous three years. I conclude Guideline J against the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Drug Involvement (Guideline H): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Paragraph 3, Criminal Conduct (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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. At the hearing, I severed the documents and returned them to Applicant, because they constituted evidentiary exhibits more properly submitted on the record subject to objection or comment as appropriate.

3. Tr., p. 33 - 42.

4. Appeal Board Decision and Remand Order, ISCR Case No. 96-0785 (September 3, 1998), p. 3.

5. Appeal Board Determination and Remand Order, ISCR Case No. 96-0785 (September 3, 1998), p. 4.; The Board drew much of its reasoning from *United States v. Scheffer*, 523 U.S. 303 (1998).

6. Id., p. 5 - 6.

7. The Supreme Court in *Scheffer* recognized that if a court considers the admissibility of privately-procured polygraph results, because polygraphs are not generally accepted, it must engage in the same analysis considered in *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993). As a practical matter, this would involve a hearing within a hearing to *voire dire* expert witnesses on both sides, and testimony about polygraph testing as a technology, testimony about the test actually administered in this case, and so on. This was certainly the case in the Remand Hearing in ISCR Case No. 96-0785.

8. Appeal Board Decision, ISCR Case No. 96-0785 (June 1, 1999), p. 4.

9. Tr., p. 17.

10. Directive, Section 2.5.

11. Id., Section 5.1.3.

12. Appeal Board Decision and Remand Order, ISCR Case No. 96-0785 (September 3, 1998), p. 4.

13. GE 2, Question 16.

14. Government's Exhibit (GE) 1, Question 22.

15. GE 6.

16. GE 4.

17. GE 2, Question 24.

18. Tr., p. 147 - 148.

19. Tr., p. 99, 138. In his Answer, Applicant claimed that his SCI access had been restored, which, if true, might remove this matter from my jurisdiction per Section 2-203 of the National Industrial Security Program Operating Manual (NISPOM), DoD 5220.22-M, January 1995. However, the agency that revoked his SCI access has not reinstated his access, but has only agreed he may re-apply for access. *See,* GE 7.

20. Tr., p. 125 - 126.

21. AE C.

22. AE B; Tr., p. 59 - 94.

23. AE F, AE G, AE H, AE J, AE K, and AE L.

24. AE I.

25. Directive, Enclosure 2.

26. *See,* Department of the Navy v. Egan, 484 U.S. 518 (1988).

27. *See,* Egan, 484 U.S. at 528, 531.

28. *See,* Egan; Directive E2.2.2.

29. E2.A8.1.2.1 Any drug abuse...;

30. E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

31. E2.A8.1.3.1. The drug involvement was not recent;

32. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;

33. Tr., p. 136.

34. Tr., p. 62 - 63; AE B, AE C.

35. Appeal Board Decision and Reversal Order, ISCR Case No. 01-21285 (September 12, 2002), p. 4 (Applicant's use of marijuana after he knew that his position with a defense contractor required him to have a security clearance demonstrates a reckless indifference about, or defiance toward, the industrial security program.).

36. 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;

37. E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

38. 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;

39. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

40. Appeal Board Determination, DISCR OSD No. 87-1431 (March 10, 1989) at 6.

41. 18 U.S.C. §1001.

42. E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

43. E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

44. E2.A10.1.3.1. The criminal behavior was not recent;

45. E2.A10.1.3.2. The crime was an isolated incident;

46. E2.A10.1.3.4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

47. E2.A10.1.3.6. There is clear evidence of successful rehabilitation.