DATE: July 12, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-18027

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant abused marijuana from 1969 to October 2000, and he drank beer on a regular basis when playing billiards with friends. An arrest for drunk driving and possession of marijuana in 1993 had no impact on his behavior. He deliberately did not disclose his arrest record or his illegal drug use on a January 1999 security clearance application as he feared loss of his employment. Following his arrest for drunk driving and illegal drug possession in October 2000, Applicant ceased his drug use and moderated his alcohol consumption. With the insight gained from his participation in a driver alcohol education program in 2001, Applicant is not likely to relapse into substance abuse. Concerns persist for his judgment, reliability and trustworthiness because of his lack of candor, and exhibited tendency to act in self-interest. Clearance is denied.

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), issued a Statement of Reasons (SOR), dated December 10, 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 excessive alcohol consumption (guideline G) with drunk driving incidents; illegal drug involvement (guideline H) with alleged marijuana use from 1969 to October 2000; and personal conduct (guideline E) and criminal conduct (guideline J) related to deliberate falsification of a January 1999 security clearance application.

On February 1, 2002, Applicant responded to the allegations set forth in the SOR, and by letter dated March 15, 2002, he requested a hearing before a DOHA Administrative Judge. The case was assigned to me accordingly on May 1, 2002. Pursuant to formal notice dated May 8, 2002, the hearing was scheduled for ay 29, 2002. At the hearing, which was held

as scheduled, the Government submitted five documentary exhibits, which were entered without any objection. Applicant's case consisted of his testimony and a record of his completion of a driver alcohol education program. (Ex. A). With the receipt on June 7, 2002, of the transcript of the hearing, this 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 50-year-old facility operator (utility maintenance worker) with a history of illicit marijuana abuse from 1969 to October 2000. He has been employed by a defense contractor since May 1974 and was subsequently granted a Confidential security clearance for his duties.[(1)] He seeks to retain that level of access.

Circa 1967, when he was fifteen or sixteen years of age, Applicant began to drink beer once every few weeks when socializing with friends. His consumption was limited as he did not have the money to buy alcohol. After Applicant tried marijuana in 1969, his involvement with alcohol was limited to occasional social settings when out with friends. Circa the early 1980s, Applicant began to drink beer with friends while playing billiards at least once per month with friends at a men's social club.

Marijuana quickly became Applicant's drug of choice, as he enjoyed its mellowing effects. Applicant smoked marijuana on an almost daily basis from 1969 until 1972 or 1973, purchasing a quarter to half ounce bag once every two weeks. While Applicant bought the drug primarily for personal consumption, he also shared some of his marijuana with friends. Applicant limited his involvement with marijuana to weekends after he commenced work for the defense contractor, and it became more sporadic with the passage of time. Aware of the illegality of marijuana use, Applicant continued to smoke the drug as he did not feel he was harming anyone by doing so. Following his marriage in early 1991, Applicant used marijuana with his spouse primarily at his residence, although occasionally he used it with friends as well.

After drinking three to six beers at the club while playing billiards with friends on an occasion in mid-March 1993, Applicant en route home was stopped by an officer on routine patrol for defective equipment (headlight out on his vehicle). Detecting an odor of alcohol about Applicant as he spoke with him, the officer informed Applicant he would need to submit to a battery of field sobriety tests before he would be permitted to continue home. Based on his observations, the officer was of the opinion Applicant had consumed too much alcohol to safely operate a vehicle. He arrested Applicant for operating under the influence of liquor (OUIL) and defective equipment. During a search of Applicant's vehicle incident to the arrest, the police found a marijuana cigarette. A charge of possession of class D substance (marijuana) was added. At the time of booking, Applicant's blood alcohol content tested at .08% and .09%. Applicant pleaded not guilty to the charges in court. He was found not guilty of the OUIL. The possession of marijuana offense was continued without a finding.

Following his arrest, Applicant continued to drink alcohol and to smoke marijuana. Over the next seven years, from 1993 to October 2000, Applicant used marijuana recreationally, at a frequency which varied from once every two months to four or five times in a month. Approximately once every six months, Applicant purchased quarter to half ounce bags of marijuana for $45.00. He consumed alcohol in quantity of once or two beers at the men's social club on Wednesdays, and on occasional Friday or Saturday nights. On occasion, he imbibed hard liquor at home with his spouse.

In late January 1999, when Applicant's employer was undergoing some downsizing- laying off some employees and closing some manufacturing plants due to recent acquisitions-Applicant was asked to complete a security clearance application (SF 86), EPSQ version.[(2)] With the understanding he was being asked to submit the form to maintain his existing Confidential security clearance, and aware that a knowing and willful false statement on the form could be punished by a fine or imprisonment or both, Applicant answered "NO" to inquiries related to any alcohol and drug abuse, including 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. 3607."]; question 27 ["Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any

controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroine, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?"]and question 28 ["Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?"]. Applicant did not report his 1993 OUIL arrest in response to question 24 as he thought disclosure was not required since he had been found not guilty. Fearing the potential loss of his job should he reveal his illegal drug use, Applicant deliberately concealed his involvement with marijuana, including his arrest for illegal possession in 1993.(3) Applicant was granted in Interim Confidential security clearance in March 1999.(4)

After drinking six or seven beers while playing billiards at the club with friends in October 2000, Applicant was pulled over for crossing the yellow line. After failing several field sobriety tests, he was arrested for OUIL (subsequent offense) and marked lane violation. During an inventory search of Applicant's vehicle, three roaches of suspected burned marijuana cigarettes were found. Applicant had purchased the marijuana for his own consumption. A charge of illegal possession of a class D substance (marijuana) was added. Following his arrest, Applicant resolved not to use any marijuana in the future as the arrest brought home to him that smoking the drug could result in serious criminal penalties.

In early December 2001, Applicant appeared in court on charges of OUIL, possession of a class D substance (marijuana) and marked lane violation. Sufficient facts were found on the OUIL and illegal possession charges, and his case was case was continued to December 2001 without a guilty finding being entered on the condition he complete one year probation, attend and complete a driver alcohol education program, submit to random drug tests, and pay fines totaling $410.00 and program costs. His driver's license was automatically suspended for 120 days due to refusal to take a breathalyser.

A week after his December 2000 sentencing for the OUIL and illegal drug possession charges, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his alcohol and drug involvement, including his arrests in March 1993 and October 2000. Applicant acknowledged his arrest in arch 1993 for OUIL, possession of class D substance and defective equipment, but attributed his inadequacy during field sobriety tests to legs tired from shoveling and to wearing oversized rubber boots when the tests were performed. Applicant told the agent he was found not guilty by a judge on all counts. Regarding his recent arrest, Applicant indicated he had been placed on one year probation, which was scheduled to begin in January 2001, and to complete a 26-week alcohol education program. Applicant admitted he had imbibed "too many beers" to safely drive on the occasion of his recent arrest. He denied smoking any marijuana on that occasion, but acknowledged the police had found marijuana in his vehicle which he had purchased for his own consumption. Applicant detailed his use of marijuana from 1969 to the week prior to his arrest in October 2000 and expressed his resolve, as well as that of his spouse, to abstain from marijuana use in the future. Applicant told the agent he had intentionally omitted his use and purchase of illegal drugs from his security clearance application because he did not want it to interfere with him retaining his security clearance, and he expressed regret at his decision to initially withhold the information. Applicant also detailed his alcohol use, including his pattern for the previous seven years of drinking beer at the club on Wednesday nights and on occasional Fridays and Saturdays. Applicant related no change to his drinking habits as he did not have a drinking problem or a history of drunkenness. Applicant advised his coworkers were aware of his recent OUIL, but he had not informed them of the drug possession charge. Applicant expressed his intent to remain a member at the club but promised not to drink more than one or two beers before driving home. Concerning his failure to list his 1993 arrest on his SF 86, Applicant maintained he was "very surprised" to learn he had not disclosed it on the form. He denied any intentional concealment regarding his arrest history or use of alcohol.

From late December 2000 to late August 2001, Applicant attended a driver alcohol education program consisting of an intake evaluation, sixteen group sessions, a Mother's Against Drunk Driving (MADD) forum meeting, and two self-help meetings. Applicant was an active participant in sessions, and he gained significant insight into the issues of controlled substance and alcohol abuse. On his successful completion of the program, no further treatment was recommended.

As of late May 2002, Applicant was drinking once per month in quantity of four or five beers when playing billiards with friends at the men's club. Applicant no longer drives after drinking in that amount. Approximately once per week,

Applicant was also imbibing a couple of beers when grilling food. Applicant intends to continue this pattern of consumption in the future. Not offered any marijuana nor in the presence of anyone using marijuana since October 2000, Applicant had managed to remain abstinent from illegal drugs since his last arrest.

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:

GUIDELINE G

Alcohol Consumption

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety

GUIDELINE H

Drug Involvement

E2.A8.1.1. *The Concern*:

E2.A8.1.1.1. 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.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A8.1.1.2.1. 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

E2.A8.1.1.2.2. Inhalants and other similar substances

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition)

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

E2.A8.1.3. Conditions that could mitigate security concerns include:

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

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

None.

GUIDELINE J

Criminal Conduct

E2.A10.1.1. *The Concern*: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged

E2.A10.1.3. 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, I conclude the following with respect to guidelines G, H, E and J:

With respect to guideline G, alcohol consumption, Applicant allowed alcohol to negatively impact his judgment and reliability on at least two occasions. When he was pulled over for defective equipment in March 1993, the officer observed signs of possible alcohol abuse sufficient to administer field sobriety tests. With blood alcohol results of .08% and .09% at the time of booking, Applicant was found not guilty of drunk driving. Given his blood alcohol level was almost over the legal limit when tested sometime after he was taken to the police department, Applicant may well have been legally drunk when he was operating his motor vehicle, although based on this record, it cannot be determined for certain that he was legally intoxicated. Clearly, his behavior was impaired to some degree by alcohol. Of the October 2000 incident, Applicant admits he had too much to drink to safely drive, and indeed, sufficient facts were found to support the OUIL charge. On both of the occasions, Applicant was stopped en route home after drinking with friends while playing billiards at a men's social club. Although Applicant was not a habitual drinker to excess, he had established a routine which presented a real risk of future similar incidents if left unchecked. As of December 2000, he was drinking four to five beers at the social club on Wednesday nights. Under the adjudicative guideline pertinent to alcohol consumption, disqualifying condition E2.A7.1.2.1. must be considered in evaluating Applicant's current security worthiness.

To Applicant's credit, the October 2000 OUIL offense served as a wake-up call, as he realized he had to change his behavior. Required to complete a driver alcohol education program for the October 2000 OUIL offense, Applicant went into the program with a positive attitude. A very active participant in group therapy, he attended all sessions, including a MADD forum and two self-help meetings. In the opinion of his counselor, Applicant gained "significant insight" into the issues of substance abuse, and no further treatment was recommended. While Applicant continues to drink as much as four or five beers while playing billiards with his friends, he has reduced the frequency of these outings to once per month, and he no longer drives after drinking. In light of these positive changes in behavior supportive of sobriety (*See* mitigating condition E2.A7.1.3.3.), a favorable outcome is warranted with respect to subparagraphs 1.a. and 1.b. of the SOR.

When arrested for drunk driving in March 1993 and October 2000, Applicant was found to be in possession of marijuana. Applicant admitted in December 2000 to the DSS agent that marijuana was his drug of choice, and his thirty-two years of recreational involvement confirms that. A daily user of marijuana from 1969 to 1972/73, Applicant continued to smoke marijuana on weekends after he started working for his defense contractor employer. After his marriage in 1991, he used marijuana with his spouse. As he aged, his use of marijuana became more sporadic, but it continued to be part of his recreational lifestyle. Although there is no evidence he used marijuana on the day of his

arrest in October 2000, he was in possession of marijuana which he had purchased for his personal consumption. Clearly, neither his defense-related employment nor the laws against such involvement deterred him from activity which he found personally pleasurable. Moreover, Applicant's illegal drug use has security implications which go beyond the issue of drug-related mental and/or physical impairment which could negatively impact his ability to safeguard classified information. Fearing disclosure of his illegal drug use could cost him his clearance and/or defense-related job, Applicant falsely denied any drug use when he completed his SF 86 in January 1999. Applicant may not have been aware of the Department of Defense's zero tolerance policy regarding illicit drug use, but he recognized his employer and the Government would not look favorably on his off-duty marijuana use. Consideration is warranted of disqualifying conditions E2.A8.1.2.1., any drug abuse, and E2.A8.1.2.2., illegal drug possession, including purchase, under guideline H.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (E2.A8.1.3.1.), it was isolated or aberrational (E2.A8.1.3.2.), there is demonstrated intent not to abuse any drugs in the future (E2.A8.1.3.3.), or satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (E2.A8.1.3.4.). Strictly in terms of the passage of time, his drug involvement is not especially recent. However, a determination as to the risk of relapse must take into account not only the date of last use, but also the extent and duration of involvement and the circumstances of use. The more serious or long term the abuse, the stronger the evidence of rehabilitation must be to overcome the negative security implications of that conduct. For some thirty-two years, Applicant saw no problem with the recreational use of marijuana despite its illegality. Although Applicant reported a waning interest in the drug in 2000, he was still purchasing it for personal consumption. Applicant bears a particularly heavy burden to demonstrate not only that he has abstained from marijuana since October 2000, but that he will not relapse into abuse of marijuana in the future. Applicant indicated in his December 2000 interview the arrest was a "wake-up call" which led him to realize smoking marijuana could result in serious criminal penalties for a probation violation. With Applicant subject to random drug testing during his probationary term, there was a significant deterrent to marijuana use through December 2001. A year further removed from his drug use, and with "significant insight" gained during his court-mandated alcohol driver education program into "the issues of CD and SA," Applicant did not return to illegal drug use after his probation ended. The discharge record of the alcohol education program confirms Applicant's testimony that he took responsibility for his alcohol and marijuana abuse and full advantage of the opportunity to educate himself about substance abuse. Applicant's use of marijuana, especially while he had a security clearance, is not condoned, but there is little risk, if any, Applicant will abuse marijuana in the future. Subparagraphs 2.a., 2.b., 2.c., 2.d. and 2.e. are resolved in his favor.

Applicant's lack of candor about his illegal drug involvement raises security concerns independent of whether he will use any marijuana in the future. When Applicant completed his SF 86 in January 1999, he falsely denied that he had used any illegal drug in the last seven years. Applicant was also found to have deliberately omitted from the security clearance application that he had been arrested in 1993 for illegal marijuana possession. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire is potentially security disqualifying (See E2.A5.1.2.2. under personal conduct), as it could indicate that the individual may not properly safeguard classified information.

To Applicant's credit, he detailed his alcohol and drug abuse when he was interviewed by a DSS agent on December 13, 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, E2.A5.1.3.3. (individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) rather than 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. Applicant's effort at rectification came more than a year after the SF 86 misrepresentations, so it cannot reasonably be viewed as prompt. It is also not clear whether Applicant volunteered his involvement with marijuana before he was confronted with the illegal drug possession charges. Moreover, while Applicant admits he lied about his drug use primarily to protect his job, doubts linger for his judgment, reliability and trustworthiness because of his inconsistent explanations for the omission of the 1993 drug charge from his SF 86. During his December 2000 interview, Applicant indicated he had been found not guilty on all counts in 1993 and he expressed surprise that he did not list his arrest on his SF 86 as he thought he had listed it. In answer to the SOR, Applicant indicated he had been found not guilty of the OUIL, but the marijuana possession charge had been continued without a finding. In addressing specifically the omission of the 1993 charges from his SF 86, Applicant related he

thought he had been cleared of all charges (therefore he did not need to list them). Yet, in acknowledging his "mistake" in responding "No" to question 27 (regarding any illegal drug use in the last seven years), Applicant admitted not only his drug use but also his arrest "made matters of [his] future even more uncertain." He continued, "I tried to justify my reasoning in that I was found not guilty of the charges and I believed my use of marijuana use [sic] was diminished." At the hearing, Applicant testified on direct that he answered the inquiry into any alcohol or drug arrests in the negative as he took the not guilty finding as a "no criminal" charge and the question did not apply. Yet, when asked on cross examination whether he responded negatively to the drug arrest in order to protect his job, Applicant affirmed it was his motivation and he just panicked.

By certifying that his statements on his security clearance application were "true, complete and correct to the best of [his] knowledge and belief," Applicant violated Title 18, Section 1001 of the United States Code.[(5)] Under guideline J, criminal conduct, the fact that Applicant has never been formally charged with that statute does not preclude its consideration for security purposes, as any criminal conduct is potentially security disqualifying. E2.A10.1.2.1., allegations or admission of criminal conduct, regardless of whether the person was formally charged, must also be considered in evaluating his current security worthiness. Rehabilitation of serious criminal conduct requires a showing of remorse as well as a demonstrated track record of reform. Although Applicant has expressed regret at his lack of candor on his SF 86, he stressed his "improper answer" was not intended to gain some new benefit, such as a higher clearance, from the Government. The fact that the SF 86 was completed at the behest of his employer rather than on his initiative does not change in any way his obligation to be completely candid with the Government at all times. Unable to conclude with the requisite degree of certainty that Applicant's representations can be completely relied on, subparagraphs 3.a., 3.b., and 4.a. are resolved against him.

In the context of the whole person analysis, Applicant presents many years of dedicated contributions to his defense employer. Yet, in continuing to use marijuana in known disregard of its illegality, and in lying about his drug use to protect his job, Applicant exhibited a tendency to act in self-interest, which is incompatible with retention of a security clearance. With respect to his marijuana use, Applicant justified his failure to adhere to the laws proscribing use on the basis his drug use was not harming anyone else. With regard to the SF 86 falsification, Applicant maintains he was only deceiving himself. At one point, he indicated to the Government he had persuaded himself that his marijuana use was somehow diminished because he had been found not guilty of legal charges filed against him. The Government has a compelling interest in ensuring that those granted access can be counted on to fulfill their fiduciary responsibilities without due regard to their personal needs or desires. The cessation of drug use and his candor during his DSS interview are not enough to fully restore his credibility with the Government.

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 G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline H: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Paragraph 4. Guideline J: AGAINST THE APPLICANT

Subparagraph 4.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. Applicant testified he held a Confidential security clearance for fifteen to twenty years at the time he completed his SF 86 in late January 1999. (Transcript p. 38). Department Counsel confirmed only that Applicant was granted an Interim Confidential security clearance in March 1999. (Transcript p. 20).

2. Applicant is alleged to have falsified a Questionnaire for National Security Positions of January 26, 1999. The only SF 86 of record is an EPSQ version dated by Applicant on January 26, 1999. From experience, these two security clearance application forms are similar in the nature of the inquiries, but not identical. Regarding illegal drug use, question 27 on the EPSQ version is question 24a on the QNSP as revised September 1995. There is no evidence Applicant completed more than one version of the security clearance application on January 26, 1999. Since the questions Applicant is alleged to have falsified are those which appear on the SF 86 EPSQ version, the reference to the QNSP appears to have been inadvertent.

3. During his case in chief, Applicant testified with regard to his omission of the 1993 arrest he believed a not guilty finding equated to no charges against him. As reflected in his response to the SOR, while Applicant was found not guilty of the OUIL, he was aware the marijuana offense had been continued without a finding. In expressing his belief that he thought he had been cleared of the charges, he admitted his nervousness about his future ("While this is no excuse for my behavior in this matter, the notion of my drug use and arrest made matters of my future even more uncertain."). When asked on cross examination whether he answered the inquiry into any drug arrest in the negative because he wanted to protect his job, Applicant answered, "Well, at the time yes, that was my motivation, was to protect my livelihood. . . " (Transcript p. 48).

4. The submission of the SF 86 may well have been in conjunction with a required periodic reinvestigation of Applicant to assess his continued suitability for access, although it is not clear.

5. 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.