

KEYWORD: Personal Conduct; Drugs; Criminal Conduct

DIGEST: Applicant smoked marijuana from 1970 to 1983 and from June 1997 to at least December 1999. As a result of serious health problems, he has ceased his involvement and has no intent to resume use. While his change to a drug-free lifestyle mitigates his illegal drug involvement, doubts persist for his judgment, reliability and trustworthiness because of his lack of candor with the Government about his past drug use. Applicant deliberately falsified a March 2000 security clearance application by denying any illegal drug use within the last seven years as well as any drug involvement while he held a security clearance. In an October 2001 sworn statement, he falsely claimed his last marijuana use was in 1983. Clearance is denied.

CASENO: 02-04926.h1

DATE: 09/25/2002

DATE: September 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04926

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant smoked marijuana from 1970 to 1983 and from June 1997 to at least December 1999. As a result of serious health problems, he has ceased his involvement and has no intent to resume use. While his change to a drug-free lifestyle mitigates his illegal drug involvement, doubts persist for his judgment, reliability and trustworthiness because of his lack of candor with the Government about his past drug use. Applicant deliberately falsified a March 2000 security clearance application by denying any illegal drug use within the last seven years as well as any drug involvement while he held a security clearance. In an October 2001 sworn statement, he falsely claimed his last marijuana use was in 1983. 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 April 9, 2002, 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), because of a history of marijuana use, including after he had been granted a security clearance; 2) personal conduct (guideline E) and criminal conduct (guideline H) related to deliberate falsification about his illegal drug use in a November 1997 interview with a probation officer, on a March 2000 security clearance application, and in an October 2001 sworn statement provided to the Defense Security Service; and 3) criminal conduct because of a conviction of interfering with a police officer in September 1997.

On April 29, 2002, Applicant 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 July 1, 2002. Pursuant to formal notice dated July 12, 2002, a hearing was held as scheduled on August 2, 2002. At the hearing, the Government submitted seven documents, which were admitted into the record, Exhibit 4 over Applicant's objection, and called Applicant as an adverse witness. Applicant submitted one exhibit, a character reference authored by a coworker, and he testified on his behalf. On the Government's motion, subparagraph 2.a. of the SOR was amended to reflect use of marijuana by Applicant to about

December 1999, and subparagraph 2.b. was withdrawn, Department Counsel having found credible Applicant's testimony that he last used marijuana sometime during the Christmas week of 1999. With receipt of the transcript on August 13, 2002, 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 48-year-old machinist who has been employed by a defense contractor since May 1974, with the exception of five months in 1975 when he was on strike. Applicant has held a company granted Confidential security clearance throughout his employ. He is seeking a Secret security clearance for his defense-related duties.

Applicant began to smoke marijuana in about 1970. For the next ten years, he continued to smoke marijuana as often as it was available, for the most part daily but with weeks of no use at times. Applicant purchased about an ounce of marijuana monthly for his personal consumption. On his initial application for a security clearance for his duties as a machinist with a defense contractor, Applicant deliberately did not reveal his marijuana use as he wanted the job.

In about October 1977, Applicant was arrested for possession of marijuana after he had purchased an ounce of marijuana for \$40.00 from a marijuana dealer who happened to be under police surveillance at the time. Applicant cooperated with the police and when he appeared in court, he was fined \$50.00.

Following his marriage in September 1980, Applicant no longer had the financial resources to buy marijuana. During his marriage with his first wife, which lasted until July 1983, Applicant's use of marijuana was limited to twice per year on special occasions when the drug was offered to him by friends.⁽¹⁾ Applicant abstained from marijuana after his divorce from his first wife in 1983, and throughout his marriage to his second wife, which lasted from July 1985 to June 1997.

After the dissolution of his second marriage, Applicant began to associate with individuals who used marijuana. From about June 1997 to July 1999, he smoked marijuana approximately once to twice per year when the drug was offered to him by friends. Applicant lacked the funds to buy marijuana, as his wages were being attached to satisfy court-ordered child support and/or alimony.

In early September 1997, Applicant learned money was going to be garnisheed from his wages for alimony. Angry at his ex-spouse, Applicant went to her attorney's office where he informed a legal secretary the monies would not be forthcoming because he was going to quit his position with the defense contractor. As he approached a local bridge on foot after leaving the lawyer's office, Applicant declined the offer of a ride from a friend. Applicant left both this friend and the legal secretary with the impression that he planned to jump off the bridge. They reported this to the local police. As the officers approached Applicant and questioned him about his intentions, Applicant ran, and as he did so, he clipped an officer who fell on his back. (2) After Applicant struggled physically with the two other officers, he was arrested for breach of peace and two counts of felony assault on a peace officer and transported to the local hospital for a psychological evaluation. After telling his version of events to a member of the hospital staff when he was still in the emergency room, (3) Applicant was discharged with no treatment recommended. In court in mid-October 1997, Applicant was sentenced on a misdemeanor charge of interfering with a police officer to one year in jail, suspended, and two years probation with payment of a \$100.00 charitable contribution, continuation on medication, if any, and participation in any counseling deemed necessary. During an interview with a probation officer in November 1997, Applicant indicated he used marijuana weekly when it was available. Depressed at the time, he wanted to see what effect this would have.

In July 1999, Applicant had a heart attack. He resolved not to smoke marijuana or cigarettes in the future. Over the Christmas holiday in 1999, a friend asked Applicant to smoke marijuana with him. Applicant "fell off the wagon" and shared a bowl of marijuana with this friend.

On March 28, 2000, Applicant completed a security clearance application (SF 86). Applicant responded negatively to question 21 ["Have you ever been charged with or convicted of any felony offense?"]. He did not disclose his arrest for felony assault on a peace officer because he thought he was only required to report offenses where he was convicted of a felony. Applicant reported his 1997 misdemeanor conviction in response to inquiry concerning other offenses within the last seven years, listing in answer to question 26 that he had been fined \$100.00 for disorderly conduct in 1997. Applicant did not indicate on his SF 86 that he had been brought to the local hospital for evaluation in 1997 after his arrest as he did not think he spoke with a psychiatrist at the hospital. In response to whether he had ever been charged with or convicted of any offense(s) related to alcohol or drugs (question 24), Applicant disclosed his October 1977 possession of marijuana. Fearing loss of his job, Applicant elected to conceal his recent marijuana involvement, and he responded negatively to questions 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, heroin, 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 was frank with respect to financial matters, listing on his SF 86 debts as well as a Chapter 7 bankruptcy.

On October 18 and 22, 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Applicant candidly discussed the financial issues which led to him filing for bankruptcy. He also detailed the events which led to his arrests for possession of marijuana in 1977 and for assaulting a police officer in 1997. While he admitted using marijuana for the most part daily between 1970 and September 1980, and to experimenting with LSD once in the late 1970s and cocaine once in the early 1980s, he falsely denied any use of marijuana since about 1983.

Asked why he answered "NO" on his SF 86 to any use of illegal drugs while he possessed a security clearance, Applicant claimed he did not think about his drug use as having been while he had a company granted Confidential security clearance "because it was so long ago." On October 22, 2001, Applicant executed a signed, sworn statement containing these misrepresentations.

On October 30, 2001, Applicant was reinterviewed by the special agent. Confronted with the discrepancy between what he had reported to the probation officer in 1997 about his drug use (weekly when available as of 1997) and what he had indicated in his prior DSS interview (no use since 1983), Applicant admitted he had lied in his prior statement to the DSS when he had sworn he had not used marijuana since 1983. He executed a sworn statement in which he detailed his recent marijuana involvement as once or twice yearly since his divorce in 1997 to Christmas eve 2000 [sic].⁽⁴⁾ Applicant did not deny having told the probation officer in 1997 that he used marijuana weekly when it was available, but he indicated he "just said it for the effect." Nor did Applicant dispute that he told the probation officer he had used mescaline once, which he explained was given to him back when he was in high school. Applicant denied any intent to use any illegal drug in the future.

At his hearing in August 2002, Applicant admitted he "fell off the wagon" during Christmas week in late 1999, and smoked marijuana with a friend who had offered it to him. Applicant denied any intent to use any illegal drug, including marijuana, in the future, while volunteering that he felt the world would be a better place and everybody would get along if "everybody would put their guns down, roll a joint, fire it up and hand it to the next person."

Applicant has proven to be a good worker for the defense contractor. Circa early 1986, he was suspended for five days without pay for violation of company rules and regulations following a dispute at work with his supervisor.

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 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.A8.1.3.1. The drug involvement was not recent

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.A5.1.2.3. 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

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

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

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

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

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

E2.A10.1.3. Conditions that could mitigate security concerns include:

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

* * *

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 the Applicant, I conclude the following with respect to guidelines H, E and J:

With respect to guideline H, drug involvement, while Applicant tried cocaine, LSD and mescaline, marijuana was clearly his drug of choice. He smoked marijuana for the most part daily from 1970 to September 1980, with some weeks of no use, purchasing it monthly for his personal consumption. Due to the lack of financial resources to buy marijuana, his involvement declined dramatically thereafter to twice per year when he socialized with friends on special occasions. Following his divorce from his first wife in 1983, Applicant refrained from the use of marijuana for almost fourteen years, only to relapse when his second marriage failed. From about June 1997 to July 1999, he used marijuana with friends. Resolved to abstain after suffering a heart attack in July 1999, Applicant used the drug on at least one occasion thereafter, when a visiting friend brought with him a bowl of marijuana. Drug abuse and/or purchase are potentially security disqualifying under the adjudicative guidelines (*see* E2.A8.1.2.1. and E2.A8.1.2.2.) 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, there is an increased risk of unauthorized disclosure of classified information. Given he continued to use marijuana for years while he held a company granted Confidential security clearance, he bears a particularly heavy burden to demonstrate he is security worthy.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (MC E2.A8.1.3.1.), it was isolated or aberrational (MC E2.A8.1.3.2.), there is demonstrated intent not to abuse any drugs in the future (MC 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 (MC E2.A8.1.3.4.). With respect to Applicant's experimentation with cocaine, LSD and mescaline, his involvement with these drugs was so limited in nature and so distant in time to raise little, if any, current security concern. In contrast, Applicant, who clearly enjoyed the relaxing effects of marijuana, resumed use of that drug in June 1997 after his second marriage failed. To his credit, Applicant resolved to abstain in the future following a heart attack in July 1999. While Applicant smoked marijuana on one occasion in December 1999 when he was depressed, he did not seek out the drug, but was offered it by a visiting friend. While Applicant's present abstinence of some thirty-two months is brief when compared to the almost fourteen years he spent drug-free from 1983 to June 1997, health problems not manifest in 1997 now serve as a significant deterrent to future marijuana involvement. Although his past use of illicit substances when he was in possession of a security clearance is not condoned, Applicant's demonstrated commitment to a drug-free lifestyle warrants a favorable finding with respect to subparagraph 2.a. of the SOR.

Significant personal conduct (guideline E) concerns persist because of Applicant's failure to be completely candid about his marijuana involvement. Assuming Applicant was telling the truth at his hearing, when he was interviewed by a probation officer in November 1997, he exaggerated "for effect" the extent of his marijuana abuse. The quality of his judgment is called into question by his failure to accord his intake interview the seriousness it merited. When he completed his security clearance application on March 28, 2000, he falsely denied that he had used any illegal drug in the seven years preceding the date of the application, and that he had ever used any illicit substance while possessing a security clearance. 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.). Furthermore, when he was interviewed by a DSS special agent on October 22, 2001, Applicant falsely maintained, as reflected in a signed, sworn statement, that he last used marijuana in 1983. He also fabricated an excuse for his failure to list his illegal drug use on his security clearance application, claiming he had not thought about his drug use as having been while he had a company Confidential security clearance "because it was so long ago." Disqualifying condition E2.A5.1.2.3. (deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination) must be considered as well. His record of false statements constitutes a pattern of dishonesty under E2.A5.1.2.5. However, the Government did not prove that Applicant also deliberately failed to disclose an admission to a local hospital for a psychological evaluation following his September 1997 assault on a peace officer. The Government presented no evidence to rebut Applicant's account that he merely talked with a woman in the emergency room about the events which lead to his arrest. Subparagraph 1.e. is resolved in his favor.

The intentional misrepresentations reflected in SOR subparagraphs 1.a., 1.b., 1.c., and 1.d. are potentially mitigated under the Directive where the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (E2.A5.1.3.1.); the falsification was isolated, not recent, and the individual has subsequently presented correct information voluntarily (E2.A5.1.3.2.); the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (E2.A5.1.3.3.); or the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.). None of these mitigating conditions apply in this case. Applicant executed his security clearance application only three months after his admitted last use of marijuana, so the drug use was clearly relevant and material. While Applicant eventually admitted in his October 30, 2001, subject interview that he had relapsed into marijuana use in June 1997, the disclosure was in the context of him being asked to explain the discrepancies in his accounts of his marijuana use to the probation officer in 1997 and to the DSS agent in the interviews held on October 18 and 22, 2001.

In submitting a security clearance application to the Government, knowing it contained false responses to questions 27 and 28, and in providing a sworn statement to a Government investigator on October 22, 2001, knowing it contained a false claim of no drug use since 1983, Applicant violated Title 18, Section 1001 of the United States Code.⁽⁵⁾ His deliberate false statements, made to protect his job, fall within the ambit of the criminal conduct guideline (*see* E2.A10.1.2.1.). Conduct involving a false statement has very serious security implications. Furthermore, although different in kind, the Government alleged as also raising criminal conduct concerns, Applicant's conviction of interfering with a police officer in September 1997. Disqualifying condition E2.A10.1.2.2., a single serious crime or multiple lesser offenses, is likewise apposite.

Although there is sufficient evidence to conclude Applicant assaulted the police in September 1997, there has been no recurrence of similar behavior since. He exhibited poor judgment in exaggerating the extent of his marijuana use to a probation officer in November 1997, but he fulfilled the terms of his probation. With Applicant's wages no longer being garnisheed to pay alimony to his ex-wife, the circumstances which led to his unquestionably poor judgment on that occasion no longer exist. There is little risk in his present circumstances of Applicant engaging in similar conduct in the future. Hence, a favorable finding is returned as to subparagraph 3.b. of the SOR.

To his credit, Applicant has apologized for his lack of candor from as far back as 1974 when he went to work for his employer. Although not alleged by the Government, Applicant admitted he had not been frank about his drug use when he completed security clearance applications in 1974 and 1984 as well as in arch 2000. Reform of such repeated criminal conduct requires taking responsibility for making the false statements, and demonstrating compliance with laws and regulations for a sufficient period of time to conclude one's representations can be relied on. As recently as April 29, 2002, Applicant denied his intentional falsification of his October 22, 2001, sworn statement to the DSS agent. While he now admits his lack of candor to the agent, he continues to justify his conduct in his own mind ["The reason I lied was I felt I was lying to a bunch of liars . . . The government is one big lie." (Transcript p. 82)]. Applicant's contributions to his employer are viewed favorably, but it is too soon to conclude that he can be counted on place his obligations to the Government, which include being completely frank at all times, ahead of his self-interest. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., and 3.a. are resolved 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 E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2. Guideline H: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: Withdrawn

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: For 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 at his hearing that he had lied about his drug use in connection with his application for a clearance in 1984. (Transcript p. 110).
2. Applicant testified he had no intent to commit suicide, but he was angry because his paycheck was being "raped." (Transcript p. 66).
3. The credentials of this staff person are not of record.
4. As reflected in the Government's motion to amend SOR subparagraph 2.a., Department Counsel accepted as credible Applicant's explanation that he recalled his last use of marijuana to be at the end of 1999, approximately five months after his heart attack in July 1999. There is no independent evidence undermining Applicant's claim that he recalled using marijuana when he was on vacation from work over the last week of 1999 into 2000.
5. 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.