

DATE: January 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08089

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant, who used marijuana from about 1976 to at least late 2000, falsely denied on security clearance applications completed in January 1994 and April 2001, and in an October 1994 sworn statement that he had used any illegal drug. At his hearing, he claimed to have used marijuana only once in his life, recanting prior admissions of marijuana use as frequent as once to twice a week. Applicant also did not disclose on his security clearance applications felony charges of breaking and entering in 1978 and assault with a motor vehicle in May 1982 as the charges had been filed and he did not want to hinder his chance of obtaining a security clearance. Applicant's heroism in saving the life of a victim of a crime in 1988 is in his favor, but it is not enough to overcome the risk of future drug abuse and the doubts for his judgment, trustworthiness and reliability caused by his repeated falsifications. 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 May 31, 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 illegal drug involvement (guideline H), because of a history of marijuana use, including after he had been granted a security clearance, and personal conduct (guideline E) and criminal conduct (guideline J) related to deliberate falsification, to wit: omission from a January 1994 National Agency Questionnaire (NAQ) of criminal offenses in the late 1970s and early to mid-1980s and illegal drug involvement from 1976, denial in an October 1994 sworn statement of any involvement whatsoever with illegal drugs, and negative responses to inquiries on an April 2001 security clearance application (SF 86) concerning any felony charges and any illegal drug involvement in the last seven years or ever while possessing a security clearance.

On June 17, 2002, Applicant answered the SOR, denying each of the allegations and requesting a hearing before a DOHA Administrative Judge. The case was assigned to me on August 14, 2002, and pursuant to formal notice dated August 23, 2002, a hearing was held as scheduled for September 13, 2002. At the hearing held as scheduled, the Government's case consisted of eleven documentary exhibits and the rebuttal testimony of a Defense Security Service (DSS) agent. Applicant testified on his behalf and through counsel submitted five documents, which were entered as exhibits. With the receipt on September 24, 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 42-year-old shipfitter who worked for a defense contractor (company A) from 1990 to June 1992 when he was laid off. In February 1994, he returned to work at company A only to be laid off again in 1996. Applicant was rehired by the company in March 2001, where he worked as a shipfitter first class until about June 20, 2002, when he was terminated due to loss of his confidential security clearance. Applicant seeks restoration of his access so that he can return to work at the defense contractor.

Circa 1976 to 1990, Applicant smoked marijuana once to twice weekly with friends, purchasing the drug at a cost of about \$100.00 per year. During his late teens and into his twenties, he was adversely involved with law enforcement, as follows:

- In March 1978, Applicant was arrested for breaking and entering after he and a friend broke into a cabin when ice fishing. [\(1\)](#) This felony charge and some misdemeanor counts, including malicious damage, were filed for one year on the condition of good behavior. At the end of the one year period, the charges were dismissed. Applicant took the dismissal as an expungement of the charges.

lieutenant and a police detective in an unmarked vehicle. Applicant stopped his vehicle down the road, at which time the uniformed officer approached. Applicant ignored the officer's command to stay where he was, and instead drove his vehicle in the direction of the officer. Apprehended after a high speed pursuit, Applicant was charged with assault with a dangerous weapon (motor vehicle), a felony, attempt to elude police, trespassing on posted land, and care of starting from a stop. Pursuant to a plea bargain, he pleaded nolo to simple assault, a misdemeanor, which was filed for one year on payment of court costs. He was adjudged guilty of an attempt to elude police, for which he was fined \$150.00, and the other counts were dismissed. leather coat was in a bag of dirty laundry which his cousin, a patient, had asked him to bring home. Applicant claims he was framed by this cousin, who he reports has a history of criminal activity. There is no proof Applicant stole the coat or knew it was in the bag. The charge of theft was filed for one year. their argument, which took place at his parents' home, Applicant physically assaulted his girlfriend who had been throwing things. She filed a complaint with the police, and he was arrested for assault. In February 1986, the victim appeared in court and withdrew her complaint over the objection of the police. The charge was dismissed on payment of court costs. Applicant and his girlfriend reconciled, and they had a daughter in late May 1986. One year later, in mid-December 1987, they had a second child, a son. They eventually married in May 1989 only to divorce in October 1990.

In November 1988, Applicant acted without disregard for his personal safety, performing an act of heroism which saved another person's life. As he attempted to make a night deposit at a local bank, a young male was attacked by an assailant with a hunting knife. On hearing the victim's cries that he was being stabbed, Applicant, who was working on his truck nearby, grabbed a tire iron while his girlfriend attempted to obtain help. On seeing the victim on the ground bleeding from several stab wounds, Applicant struck the assailant in the head with the tire iron, causing the assailant to drop the knife and flee. When the assailant returned to threaten the victim, Applicant kept the assailant at bay until the police arrived. In recognition of his heroism, Applicant was awarded a Carnegie Medal as well as a citation from his state's House of Representatives.

In July 1990, Applicant went to work for company A as a shipfitter, third class with a company-granted confidential security clearance ("green badge"). Not wanting to risk his job, he limited his marijuana involvement thereafter to once or twice per year. Applicant worked hard at company A and within two years progressed to shipfitter, first class. Following his layoff from company A in June 1992, Applicant was unemployed until

October 1993.

In conjunction with his expected return to work at company A in February 1994, Applicant was issued an interim confidential clearance in early January 1994. On January 31, 1994, he completed a National Agency Questionnaire (NAQ), responding "NO" to whether he had an arrest record ["18. Have you ever been arrested, charged, cited, held, or detained by Federal, State, or other law enforcement or juvenile authorities regardless of whether the charge was dropped or dismissed or you were found not guilty?"], as the charges against him had been dismissed or filed for one year, he had never served any time in jail, and he considered the incidents to be insignificant and of the past. Applicant falsely denied any illegal drug involvement, responding "NO" to questions 20.a. ["Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), even one-time or on an experimental basis, except as prescribed by a licensed physician?"] and 20.b. ["Have you ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis?"].

The Defense Security Service (DSS) conducted a subsequent investigation into Applicant's background during which one of Applicant's coworkers reported Applicant had used marijuana. Confronted with that information during an October 12, 1994 interview, Applicant denied ever using any marijuana or other illegal drug and he swore to and signed a written statement to that effect.

Granted a confidential security clearance for his duties, (2) Applicant smoked marijuana on at least one occasion in February or March 1995 when he was on a temporary duty assignment out of state. Applicant returned from his temporary duty assignment with \$10,000.00 in extra wages which he used to purchase a home with his new wife, who he had married in May 1993.

On June 1, 1995, Applicant was interviewed during the course of a polygraph examination. During the pre-test phase of the polygraph, Applicant detailed use of marijuana from about 1976 or 1977 to 1990 once or twice per week at a cost to him of about \$100.00 per year. In a post-polygraph interview, Applicant admitted he had continued to use marijuana once or twice per year after 1990 with a last use about three months before when a coworker offered to share a joint with him. Applicant admitted to the DSS agent that he had lied about his illegal drug involvement "because [he] was embarrassed and did not think it was important." Applicant expressed his intent to keep his involvement with marijuana to the level it had been since 1990, *i.e.*, once or twice per year. (3)

Applicant managed to avoid a layoff at company A in 1995 when his supervisor had him shifted to the hanger department where he worked for about a year until he was laid off in October 1996. He smoked marijuana once or twice between June 1995 and October 1996.

Following his layoff, Applicant went to work in the commercial fishing industry. Applicant smoked marijuana once every two weeks with friends to late 2000, buying small amounts of the substance for personal consumption when he was not provided to him by his friends.

In March 2001, Applicant was rehired by company A as a shipfitter. He completed a security clearance application (SF 86) sometime that month, which he signed on April 3, 2001. Applicant responded "NO" to question 21 regarding whether he had ever been charged with or convicted of any felony offenses as he did not want to harm his chance of obtaining a security clearance. Applicant also falsely denied any illegal drug involvement, responding negatively to questions 27 regarding any illegal drug use in the last seven years and 28 concerning any use ever while possessing a security clearance. Applicant was granted a security clearance for his duties.

On January 18, 2002, Applicant was interviewed about his arrest record and illegal drug use. Applicant indicated he had been arrested for felony breaking and entering in March 1982. While he admitted breaking into a cabin that had been closed for the winter, he denied taking anything from the cabin. Since he understood this offense to have been expunged, he elected not to list it on his April 2001 security clearance application as he did not want it to hurt his chances of getting a security clearance. He related he had been arrested on two other occasions for

misdeemeanors- trespassing and "some charge related to the policeman I went around" when ice fishing in his early to mid 20s, and for assault on his then girlfriend (now exwife) when he was in his mid 20s.

On February 1, 2002, Applicant was reinterviewed by the same DSS agent about his arrest for attempted theft of the leather coat from the hospital in the mid 1980s, and his involvement with illegal drugs since June 1995. Applicant disclosed he had continued to use marijuana after his June 1995 interview, only once until his layoff in October 1996 but more frequently (once every two weeks) with friends until late 2000 or early 2001. Applicant related he stopped all marijuana involvement before his return to work for the defense contractor in March 2001 as he knew he had to submit to urinalysis testing. Applicant indicated he would not use marijuana in the future as long as he worked in a job that required a security clearance as he didn't want to lose his job. Asked why he had answered "NO" to the questions on his security clearance application regarding his use of illegal drugs, including while he had a security clearance, Applicant claimed he misunderstood the questions.

On May 31, 2002, DOHA issued an SOR to Applicant based on his involvement with marijuana and deliberate falsification of his January 1994 and April 2001 security clearance applications and his October 1994 sworn statement for failing to disclose relevant and material facts concerning his criminal record and/or illegal drug involvement. Applicant's clearance was revoked and he was terminated from his employment with the defense contractor in June 2002. Instead of transferring to a first step pipefitter position at another facility where he would not need a clearance, Applicant elected for economic reasons to work in the commercial fishing industry. He is subject to recall at company A should his clearance be restored.

At his hearing in September 2002, Applicant was not candid about his drug use or his reasons for the omission of his drug use. Applicant denied any use of marijuana apart from one occasion at a party after his October 1996 layoff from company A. Asked why he had not reported that use of marijuana on his SF 86 signed in April 2001, Applicant claimed he had completely forgotten about it.

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

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.A10.1.3. 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, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines H, E and J:

With respect to guideline H, drug involvement, Applicant smoked marijuana on a regular basis, purchasing it on occasion, from about 1976 to 1990 when he went to work for the first time at company A. Aware his employer and the Department of Defense disapproved of marijuana use, Applicant continued to use marijuana while in possession of a security clearance, albeit on a limited basis (once or twice per year). Applicant continued to smoke marijuana at that reduced rate following his layoff in June 1992, and after his recall to company A in February 1994. On at least one occasion in spring 1995, when he was on a temporary duty assignment for his employer and while he had a confidential clearance, Applicant smoked marijuana with a coworker. While working in the fishing industry, Applicant smoked marijuana with friends once every two weeks until late 2000 or early 2001, purchasing small amounts on occasion when it was not provided by friends. 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 while he held a confidential security clearance, Applicant 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.). There is no evidence Applicant has used any illicit drug since late 2000/early 2001. In February 2002, Applicant indicated he had no intent to use marijuana in the future as long as he worked in a job which does not require a security clearance. He testified at his hearing that he has no intent whatsoever to use marijuana in the future. While Applicant's credibility is suspect because of his disavowal at the hearing of prior admissions of marijuana involvement, ongoing drug use cannot be inferred simply on the basis of negative credibility. However, the concerns about his veracity make it all the more necessary that his intent be demonstrated by concrete actions in reform. As of September 2002, Applicant was working as a lobster fisherman. Following his October 1996 layoff from company A, Applicant worked in commercial fishing and he smoked marijuana on the order of once every two weeks with friends. (4) There is no evidence Applicant has terminated his relationships with those friends with whom he used marijuana in the past. While he claims at the hearing to have disliked marijuana (Tr. p. 61), his involvement with the drug from about 1976 to at least late 2000 indicates otherwise. Unable to conclude from the record that there is little risk of future marijuana abuse by the Applicant, adverse findings are returned as to subparagraphs 1.a., 1.b., 1.c. and 1.d. of the SOR. (5)

Significant personal conduct (guideline E) concerns persist because of Applicant's failure to be completely candid about his marijuana involvement and arrest record. When Applicant completed his security clearance application in January 1994, he falsely denied that he had ever been arrested for a criminal offense. While the felony charges of breaking and entering and assault with a dangerous weapon were certainly dated by the time Applicant completed his recent April 2001 SF 86, he was still required to disclose them. He elected not to list the offenses on this SF 86 because he did not want them to hinder his chance of obtaining the security clearance needed for him to retain his defense job. Having smoked marijuana once to twice per week from about 1976 to 1990 and once to twice per year after going to work for the defense contractor, Applicant denied in a sworn statement presented to a DSS investigator in October 1994 that he had ever used illegal drugs. After detailing his marijuana use history during polygraph interviews of June 1995, Applicant was transferred to the pipe shop until he was laid off in October 1996. While working in the commercial fishing industry, Applicant smoked marijuana once every two weeks. Yet, when he completed his SF 86 in April 2001, he falsely denied any marijuana use within the seven years preceding the completion of the SF 86 and any involvement ever with illegal drugs 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, given his lack of candor about his drug use when questioned by a DSS agent in October 1994, 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.

The intentional misrepresentations reflected in SOR subparagraphs 2.a., 2.b., 2.c., 2.d. and 2.e., 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. At the time Applicant completed his January 1994 NAQ and when he was interviewed by a DSS agent in October 1994, he was still involved with marijuana, albeit on a reduced basis of once or twice per year. Although Applicant was not using marijuana by April 2001 when he executed his recent SF 86, he had abstained for at most three months. His use of marijuana was clearly relevant and material. While Applicant admitted during a February 1, 2002, subject interview that he had used marijuana to late 2000/early 2001, the disclosure cannot reasonably be viewed as prompt. The ameliorative impact of his belated candor is significantly undermined, moreover, by his false claim at the hearing that he had used marijuana only once in his life. In now maintaining that the account of his drug use, which he signed and swore to in February

2002 is nothing more than misinformation, Applicant has given ample reason for the Government to distrust his representations.

Applicant's deliberate false statements on his security clearance applications, in his October 1994 sworn statement and at his hearing, all under advisement of Title 18, Section 1001 of the United States Code, raise security significant criminal conduct issues as well as personal conduct concerns (*see* E2.A10.1.2.1.). ⁽⁶⁾ 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. Applicant's willingness to lie about his drug use at his hearing in September 2002 indicates a lack of reform and casts serious doubt as to whether he can be counted on to place his obligations to the Government, which include being completely frank at all times, ahead of his self-interest. Accordingly, subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e., 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 H: 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. At the hearing, Applicant admitted illegal entry to the cabin, but he denied breaking down the door ("we didn't break down the door. The door was down in the winter." Tr. p. 72). However, in a sworn statement of January 2002, Applicant indicated he and his friend had been "just messing around and broke into a seasonal cabin that

was closed up for the winter." (Ex. 6).

2. The Government alleged that Applicant continued to use marijuana after he was granted a confidential security clearance in early December 1995 (SOR subparagraph 1.c.). Applicant testified he needed the confidential clearance for a four month temporary duty assignment in a distant state (Tr. p. 38). On June 1, 1995, Applicant told the DSS agent that he last smoked marijuana three months before when he was on the temporary job. There is no Letter of Consent or other documentation indicating the date on which Applicant was granted his confidential security clearance. The evidence of record tends to indicate the clearance was granted in about December 1994.

3. At his hearing, Applicant testified he had used marijuana only one time, which was at a party after he had been laid off in 1996. (Tr. p. 56). Asked why he had signed a statement in June 1995 indicating he had smoked marijuana once or twice per week to 1990 and once or twice per year thereafter if his marijuana use was limited to one occasion after October 1996, Applicant responded, "Well, the way I was getting questioned was I had to give him something, because I says well, what if I don't know-what if it-well it could hinder your clearance." (Tr. pp. 122-23). Applicant also signed a February 2002 written statement indicating use of marijuana on the order of once every two weeks from late 1996 to late 2000. His recent efforts to discredit these earlier statements ("he kind of fudged the words I put in his mouth." Tr. p. 125; "I've got to give this guy an answer or I'm not getting my badge." Tr. p. 124; "What was I, a Colombian drug dealer? He's got me down there worse than my cousins." Tr. p. 84; "I couldn't even see there was so much sweat in my eyeballs." Tr. p. 85) are not persuasive. If Applicant had used marijuana on only one occasion, it is not reasonable that he would tell a DSS agent that he had used the drug once or twice a week until 1990 and once every two weeks from 1996 to late 2000. Furthermore, he admitted at the hearing that the agent's recording of his arrest history was "pretty close," (Tr. p. 136), which undermines his assertion that the agent engaged in misrepresentation.

4. urinalysis testing has not been completely effective as a deterrent, as Applicant used marijuana in the past while employed in the defense and in the commercial fishing industries.

5. The Government alleged in subparagraph 1.d. that Applicant may continue to use marijuana in the future if he did not need to possess a security clearance. When he was interviewed by the DSS agent in February 2002, Applicant indicated he would not use marijuana in the future as long as he works in a job that requires a security clearance. This does not necessarily mean that the inverse is true (that Applicant would use marijuana in the future if his job does not require a security clearance). However, since the risk of future abuse cannot be ruled out, Applicant **may** use marijuana in the future.

6. 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.