

ÿWPCÈ ÄqæáÄæ...&=YÖ5KOYË·B;PY+æø,J@r°\_50fIXÈ=±ÖTçA^ùdè-¯ Äa\_ËioAúÀŠÄ”I P.O&pY)¾³ce)â~‡TMS7µ•ÉÄ3IG,É£,,wHv:”:ÄÄMöTMËÿr.¥ (Äko%”9TM÷”èÑ(7)äy,Š> 5%Šz\$Sÿüüý[ŠÈ”ÏB<+ ð#de:Ûil t”ž k 2Kú1 •+= JC\_üP 9ö ÌNcXN5x5S”UNÿ %MNS B>U^”wY4É·Æ(ÿÿ\$;j;dyU.ÿÄÄÄ”IBM Infoprint 11250(ÖÄ9 Z<6Times New Roman RegularX:web3dhrz160€€dÿÿÿdÉ”04 3|xÿ fyÿ!YÿYÿÖ ÖKEYWORD:€Drugs;€Personal€Conduct€ DDIGEST:€Applicant€has€a€history€of€use€of€illegal€substances€ (marijuana)€over€a€four-year€period€spanning€1997€and€2000,€involuntary€terminations€stemming€ ï ðfrom€inferred€judgment€lapses, €and€multiple€misstatements€and€omissions€in€this€security€clearance€applications€and€DSS€interviews€about€the€extent€of€his€drug€use,€neither€his€D Ä Ä Dmisstatements€and€omissions€nor€his€involuntary€employment€terminations€are€under€any€of€the€pertinent€mitigation€guidelines€for€personal€conduct€and€raiseD Dcontinuing€security€concerns€about€Applicant’s€judgment€and€reliability.€€Clearance€is€denied.D æ æ DÖ\_ ÖCASENOÖ\_ Ö:€02- 13519.h1D DDATE:€01/26/2005D t t DD DDATE:€€January€26,€2005D 8 8 Dß A€ ) ° ° x dtExE 2AßD \$ \$ D€In€re:€D DD DÏ-----D Ø Ø DÖ\_ ÖSSNÖ\_ Ö:€-----D Ä Ä DD DÏApplicant€for€Security€ClearanceD ^ ^ DD DÏB A€ ) ° ° x dtEx’ 2AßD L L D€Ö ÖISCRÖ Ö€Case€No.€02-13519€D < < Dò òDECISION€OF€ADMINISTRATIVE€JUDGEó óD Dò òROGER€C.€WESLEYó óD DD DD DD DÏò òAPPEARANCESó óD æ æ DD DÏò òFOR€GOVERNMENTó óD ` ` " DStephanie€Hess,€Department€CounselD L L # DD DÏò òFOR€APPLICANTó óD # #& Dò òPro€Seó óD ü#ü#’ DD DD DD DÏò òSYNOPSISó óD ~ (~, DD DÏApplicant€has€a€history€of€use€of€illegal€substances€(marijuana)€over€a€four-year€period€spanning€1997€and€2000,€involuntary€terminations€stemming€fromD \+/\ Dinferred€judgment€lapses, €and€multiple€misstatements€and€omissions€in€this€security€clearance€applications€and€DSS€interviews€about€the€extent€of€his€drug€useD H,H,0 Dand€employment€terminations.€€While€his€drug€use€is€mitigated€by€the€passage€of€time€and€demonstrated€intent€not€to€resume€marijuana€use,€neither€hisD 4-4-1 Dmisstatements€and€omissions€nor€his€involuntary€employment€terminations€are€under€any€of€the€pertinent€mitigation€guidelines€for€personal€conduct€and€raiseD .2 Dcontinuing€security€concerns€about€Applicant’s€judgment€and€reliability.€€Clearance€is€denied.D / /3 DD DÏò òÓ ÖSTATEMENT€OF€CASEó óD D1D16 DÓ ÓD DÖ\_ ÖD DÏOn€November€20,€2003,€the€Defense€Office€of€Hearings€and€Appeals€(DOHA),€pursuant€to€Executive€Order€10865€and€Department€of€Defense€DirectiveD Ä Ä D5220.6€(Directive),€dated€January€2,€1992,€issued€a€Statement€of€Reasons€(SOR)€to€Applicant, €which€detailed€reasons€why€DOHA€could€not€make€theD Dpreliminary€affirmative€finding€under€the€Directive€that€it€is€clearly€consistent€with€the€national€interest€to€grant€or€continue€a€security€clearance€for€Applicant,D æ æ Dand€recommended€referral€to€an€administrative€judge€to€determine€whether€clearance€should€be€granted,€continued,€denied€or€revoked.D ^ ^ DD DÏApplicant€responded€to€the€SOR€on€January€23,€2004€and€requested€a€hearing.€ €The€case€was€assigned€to€me€on€July€27,€2004,€and€was€scheduled€for€hearing€onD L L DAugust€3,€2004.€ €A€hearing€was€convened€on€August€3,€2004,€for€the€purpose€of€considering€whether€it€is€clearly€consistent€with€the€national€interest€to€grant,D 8 8 Dcontinue, €deny,€or€revoke€Applicant’s€security€clearance.€€At€hearing,€the€Government’s€case€consisted€of€four€exhibits;€Applicant€relied€on€one€witnessD \$ \$ D(himself) €and€one€exhibit.€€The€transcript€(R.T.)€of€the€proceedings€was€received€on€August€10,€2004.D DD DD DD DD DÏÓ Öò òSUMMARY€OF€PLEADINGSó óD - - DÖ\_ ÖD DD DÏUnder€Guideline€H, €Applicant€is€alleged€to€have€used€marijuana€approximately€200€times€between€June€1997€and€May€2000.€€D DD DÏUnder€Guideline€E, €Applicant€is€alleged€to€have€(a)€been€denied€a€clearance€in€June€1999€with€another€agency€for€falsification€of€an€application€in€which€heD \$ \$ Ddenied€any€marijuana€use,€(b)€been€fired€from€a€prior€defense€contractor€position€in€June€1999€for€failing€to€show€up€for€work€(ineligible€for€rehire),€(c)€been€D Dfired€from€a€job€in€February€1994€for€refusing€to€identify€a€co-worker€who€falsified€a€time€card,€(d) €been€fired€from€a€job€in€August€1993€for€failing€to€report€toD ü ü Dwork€for€one€week€without€notice€to€his€employer€and€(e) €falsified€his€security€clearance€application€(SF-86)€of€March€2001€by€understating€his€illegal€drug€useD è è Dand€denying€he€had€ever€been€fired€from€a€job.D Ö Ö DD DÏFor€his€response€to€the€SOR, €Applicant€admitted€each€of€the€allegations€with€explanations.€€He€claimed€he€did€not€use€marijuana€200€times€despite€previouslyD ~ ~ Dsaying€he€did€in€an€interview€in€which€he€was€confused,€intimidated€and€quite€frightened.€€He€claimed€to€have€misrepresented€his€lack€of€drug€use€in€his€JuneD ,, ,, D1999€SF-86€out€of€fear€of€losing€his€security€clearance€and€to€have€understated€his€drug€use€in€his€more€recent€March€2001€SF- 86€due€to€a€lack€of€understandingD p p ! Dof€the€importance€of€telling€the€truth€about€his€drug€use.€ €Applicant€claimed€to€have€omitted€his€involuntary€job€terminations€in€1993€and€1994€due€to€his€beliefD \ \ " Dthe€terminations€occurred€beyond€the€assigned€ten-year€range€in€the€SF-86€question.D H H # DD DD DD DD DÏÓ Öò òFINDINGS€OF€FACTD äsä\$( DÓ Óó óD DD DÏApplicant€is€a€34-year- old€telecommunications€technician€for€a€defense€contractor€who€seeks€a€security€clearance.€€The€allegations€covered€in€the€SOR,€andD ”(”, Dadmitted€to€be€by€Applicant,€are€incorporated€herein€by€reference€and€adopted€as€relevant€and€material€findings.€€Additional€findings€follow.D (€)- DD DÏFrom€June€1997€to€about€May€2000,€Applicant€used€marijuana€approximately€200€times€(see€ex.€2;€R.T.,€at€34-35).€€He€assures€he€has€not€used€marijuana€forD D,D,0 Dany€illegal€substances€since€his€last€use€in€May€2000€and€has€no€intention€of€resuming€use€in€the€future€out€of€concern€of€losing€his€job€and€clearance€(R.T., €atD 0-0-1 D49).€€€He€has€shown€reluctance€in€the€past,€however,€to€discuss€his€marijuana€use, €acknowledging€his€1997€to€2000€use€to€an€interviewing€agent€in€1999€onlyD . 2 Dafter€submitting€to€a€polygraph€test€(R.T.,

at€31,€47)€and€trimming€on€his€more€recent€use€acknowledgments€in€an€ensuing€DSS€interview€(see€ex.€2)€before€ / 3  
Dconfirming€anew€his€use€range€and€quantity€at€the€hearing€(R. T., €at€33-34).€€Because€of€this€historical€reluctance€to€come€forward€with€the€details€of€his€drug  
ò/ò4 Duse€and€repeated€omissions€in€his€security€clearance€applications,€his€credibility€is€open€to€question.€  
€Absent€any€probative€evidence€to€counter€Applicant's€ D àà05 Ddrug-free€claims,€however,€his€assurances€are€accepted.€€€D 1116 DD  
DIn€Applicant's€initial€attempt€to€obtain€a€security€clearance€(in€June€1999),€he€was€denied€a€clearance€by€another€agency€because€he€falsified€his€security  
Ø Ø Dclearance€application€by€denying€any€drug€use.€€€Applicant€attributes€his€omissions€to€concerns€about€losing€his€clearance.€  
€His€assigned€reasons€for€omitting€his€ D Á Á Ddrug€use€in€this€prior€application€warrant€drawn€inferences€he€knowingly€and€will€fully€falsified€the€application.  
€D ° ° DD DBetween€August€1993€and€June€1999,€Applicant€was€terminated€for€cause€from€various€employers€he€worked€for.€  
€He€was€fired€from€Company€A€in€August€ D t t D1993€for€failing€to€report€to€work€for€one€week€without€notice€to€his€employer.€  
€He€attributes€his€termination€to€his€youth€and€desire€for€better€employment.€€In€ D February€1994€he€was€terminated€from€Company€B€for€refusing€  
€to€identify€a€coworker€who€had€falsified€a€time€card.€€He€had€enrolled€his€management€that€he€ D L L Ddidn't€  
€want€to€be€a€part€of€telling€on€a€coworker€and,€by€doing€so,€risk€retaliatory€actions€on€himself€and€his€family.€€Applicant€was€terminated€from€Company€ 8 8  
D€€in€June€1999€for€failing€to€show€up€for€work€one€day€and€failing€to€notify€his€supervisor€of€his€decision€to€work€full€time€elsewhere.€  
€He€attributes€his€absence€ D \$ \$ Dto€working€two€jobs€and€failing€to€notify€his€Company€C€supervisor€of€his€conflict€with€his€second€job.€  
€He€acknowledges€he€is€not€eligible€for€rehire.€ DD DD DWhen€completing€his€SF-86€in€March€2001,€Applicant€(a)  
€understated€the€range€of€his€drug€use€€when€he€represented€he€used€marijuana€from€only€1997€to€1998€ D Ò Ò Dand€(b)  
€denied€he€had€ever€been€fired€from€a€job.€€His€claims€of€confusion€and€uncertainty€over€whether€his€1993€and€1994€terminations€fell€outside€the€10-year€  
Á Á  
Drange€of€inquiry€are€unpersuasive€in€light€of€his€acknowledged€concerns€about€losing€his€job€and€clearance€were€he€to€disclose€the€truth€about€his€drug€use€and€  
- - Djob€terminations€(R. T., €at€30).€ DD DD DPrior€to€completing€an€SF-86€for€his€current€company€in€August€2003,€Applicant€  
(in€June€2003)€was€Applicant€was€interviewed€by€a€DSS€agent€in€connection€ \ \ \\  
Dwith€a€pending€clearance€application€for€another€company€he€was€then€employed€(see€ex.€2).€€In€the€signed,€sworn€statement€he€gave€to€Agent€A€after€D  
H H Dcompleting€the€interview,€Applicant€acknowledged€using€marijuana€about€200€times,€albeit€over€a€one€year€period,  
€but€failed€to€correct€his€earlier€misstatements€ D 4 4 Dabout€his€employment€terminations.€€Whereas,€in€the€SF-  
86€he€executed€in€August€2003,€he€trimmed€considerably€on€the€extent€of€his€marijuana€use€conveyed€  
Dto€Agent€A€earlier€when€answering€question€27€(admitting€to€using€marijuana€only€several€times)€and€continued€to€deny€ever€being€fired€from€a€job.€D  
DD DD DApplicant€acknowledges€he€falsified€his€August€2003€SF-  
86€as€well€by€understating€both€the€range€and€quantity€of€his€marijuana€use€over€a€three-year€period.€ D D  
DAs€someone€familiar€with€the€importance€of€the€clearance€process€(having€been€recently€been€denied€a€clearance€for€lack€of€candor€in€describing€his€drug€use),€D  
¼ ¼ Dhe€admits,€too,  
€to€falsely€denying€he€had€ever€been€fired€for€involuntarily€terminated€from€a€job€within€the€previous€10€years€when€answering€question€20.€ " "  
DApplicant's€imputed€reasons€for€his€misstatements€are€virtually€identical€to€the€reasons€he€assigned€for€previous€misstatements€in€the€SF-86s€he€executed:€D  
" " Dconcern€over€losing€his€clearance€and€job.€ D € € DD  
DApplicant€doesn't€remember€if€he€was€ever€interviewed€again€after€completing€his€August€2003€SF-86€(R. T., €at€43-46).€€Without€any€produced€documentation€  
D D # Dfrom€either€Applicant€or€the€Government€that€he€was,€inferences€are€drawn€that€he€wasn't.€ D 0!0!\$ DD  
DApplicant€is€considered€a€dependable€employee€and€an€asset€to€his€current€company€(Company€D)€by€his€project€manager€(see€ex.€A).€€His€project€manager€  
ò#ò# Doffers€nothing€negative€about€Applicant€in€his€assessment€but€doesn't€indicate€any€knowledge€of€the€drug€and€falsification€issues€in€the€SOR€either.€D  
àà\$( DD DD DD DÌÓ Óò òPOLICIESD )))- DÓ Óò òD DD  
DThe€Adjudicative€Guidelines€of€the€Directive€(Change€4)€list€Guidelines€to€be€considered€by€judges€in€the€decision€making€process€covering€DOHA€cases.€D  
-1 DThese€revised€Guidelines€require€the€judge€to€consider€all€of€the€"Conditions€that€could€raise€a€security€concern€and€may€be€disqualifying"€(Disqualifying€  
. 2 DConditions),€if€any,€and€call€off€the€"Mitigating€Conditions,€"€if€any,€before€deciding€whether€or€not€a€security€clearance€should€be€granted,  
€continued€or€denied.€D / 3 DThe€Guidelines€do€not€require€the€judge€to€assess€these€factors€exclusively€in€arriving€at€a€decision.€  
€In€addition€to€the€relevant€Adjudicative€Guidelines,€judges€ D ò/ò4  
Dmust€take€into€account€the€pertinent€considerations€for€assessing€extenuation€and€mitigation€set€forth€in€E.2.2€of€the€Adjudicative€Process€of€Enclosure€2€of€the€D  
ÜÜ05 DDDirective,€which€are€intended€to€assist€the€judges€in€reaching€a€fair€and€impartial€common€sense€decision.€ D ÈÈ16 DD  
Dò òÓ ÓDrug€Involvementó òD Ø Ø DÓ ÓD DD DThe€Concern:  
€Improper€or€illegal€involvement€with€drugs€raises€questions€regarding€an€individual's€willingness€or€ability€to€protect€classified€information.€Drug€ D ^ ^  
Dabuse€or€dependence€may€impair€social€or€occupational€functioning,€increasing€the€risk€of€an€unauthorized€disclosure€of€classified€information.€D t t  
DD DD Dò òDisqualifying€Conditions:ó óD 8 8 DD DÌDC€1€€Any€drug€use.€D ü ü DD DD DÌDC€2€€  
€Illegal€drug€possession,€including€cultivation,€processing,€manufacture,€purchase,€sale,€or€distribution.€D Á Á DD DD DÌM€3€€  
Dò òMitigating€Conditions:ó óD " " DD DIM€1€€The€drug€involvement€was€not€recent.€D H H DD DD DÌM€3€€  
€A€demonstrated€intent€not€to€abuse€any€drugs€in€the€future.€D DD DD DÌÓ Óò òPersonal€ConductD D D  
DÓ Óó òD DD DÌThe€Concern:€conduct€involving€questionable€judgment,€untrustworthiness,€unreliability,€lack€of€candor,€dishonesty,

...willingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Disqualifying Conditions: (1) Disloyalty, (2) Security Information, (3) Incompetence, (4) Excessive Consumption of Alcohol, (5) Unfavorable Information Provided by Associates, (6) Falsification or Misrepresentation of Relevant and Material Facts from Any Personnel Security Questionnaire, (7) Personal History Statement or Similar Form Used to Conduct Investigations, (8) Determine Employment Qualifications, Award Benefits or Status, (9) Determine Security Clearance Eligibility or Trustworthiness, (10) Award Fiduciary Responsibilities. (11) 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. (12) Mitigating conditions: (a) None. (b) Burden of Proof (16) Decision to grant or continue an Applicant's security clearance may be made only upon a threshold finding that the individual is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture. (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) It must demonstrate that the facts proven have a material bearing on the Applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information. Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the Applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. CONCLUSIONS Applicant brings a praiseworthy civilian work record to these proceedings, in addition to a considerable history of marijuana use, job terminations and inferred deliberate falsification of several SF-86s he executed in 1999, 2001 and 2003. Applicant's historical involvement with marijuana over a four-year, numerous job terminations for cause, and repeated falsification of security applications about his drug use, and involuntary employment terminations (only some of which was corrected in ensuing DSS interviews) raise security significant issues his judgment, reliability and trustworthiness required for eligibility to access classified information. Applicant's marijuana use, while considerable over a four-year stretch, was never carried to addictive or abusive levels. His admitted use is concentrated over a four-year time period (i.e., June 1997 to May 2000) and has not been repeated in the four-plus years that have since elapsed. Applicant's considerable use of marijuana between 1997 and 2000 are sufficient to invoke two of the disqualifying conditions of the Adjudicative Guidelines (any drug abuse) and DC 2E (illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution). But misconduct predictions, generally, may not be based on supposition or suspicion. See ISCR Case No. 01-26893 (October 2002); ISCR Case No. 97-0356 (April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used marijuana since his last recorded use, or based on his past use is likely to resume usage in the future. See ISCR Case No. 02-08032 (May 2004). Based on his own testimony and the absence of any probative evidence of recurrent drug use since May 2000, Applicant may invoke MCD (non-recency of the drug involvement) and MCE (demonstrated intent not to abuse any drugs in the future). While Applicant's considerable marijuana use over a four-year span raises some questions over the strength of his avoidance assurances, it is not enough to prevent Applicant's successful mitigation of the issue. Applicant's assurances that his marijuana involvement is a thing of the past are entitled to acceptance based on the limited concentration of his marijuana use in the past (spread over a four-year period) and the absence of any drug activity attributed to him over the past four years. Considering the call of the developed evidence of record, Applicant mitigates security concerns associated with his recurrent use and possession of marijuana. Favorable conclusions warrant with respect to sub-paragraph 1.a of Guideline H. Personal conduct issues: Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's repeated drug use omissions in each of his SF-86s, as well as in his DSS interviews that followed his 2000 denial of a security clearance. So much to trust is imposed on persons cleared to see classified information that lapses in candor or become difficult to excuse or mitigate. By deliberately understating his past marijuana use in each of his clearance applications and ensuing DSS interviews before he was confronted following a polygraph test,

Applicant concealed materially important background information needed for the government to properly process and evaluate his security clearance. He compounds his drug use understatements with misstatements about the circumstances of his job separations. His collective omissions are attributable to concerns about how disclosure of the adverse information would impact on his employment and clearance, reasons that the Appeal Board has consistently held to be insufficient to avert drawn conclusions of knowing and wilful concealment.

Applicant's omissions invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC2 (falsification of a security questionnaire) and DC3 (providing false information to an investigator).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of the first obvious opportunities to correct his earlier SF-86 omissions before being confronted and continued to understate his marijuana use, as well as conceal his involuntary employment terminations, in his most recent clearance applications without making the necessary prompt, good faith corrections.

Not only has the Appeal Board found the use of Mitigating Condition (MC)2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity, or has compounded previously corrected omissions with new omissions. Compare ISCR Case No. D97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either MC2 (isolated omissions) or DC3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

Applicant's involuntary job terminations do indicate some judgment lapse and unreliability about exercising responsibility and accountability in a job setting. DC1 (reliable, unfavorable information) of the Guidelines for personal conduct have some application to the facts of this case. Considered alone, they might be mitigated by the strong work reference he received from his current supervisor. When appraised together with his past SF-86 and interview misstatements, though, they cannot mitigate the numerous judgment lapses reflected in the circumstances of his terminations and misstatements about his drug use and terminations for cause.

Unfavorable conclusions warrant with respect to subparagraphs 2.a through 2.f of Guideline E. Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to sub-para. 1.a through 1.d of Guideline E. In reaching my decision, I have considered the evidence as a whole, including each of the E.2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS: @, @, 0

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE (DRUGS): FOR APPLICANT

GUIDELINE (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

Sub-para. 2.e: AGAINST APPLICANT

Sub-para. 2.f: AGAINST APPLICANT

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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge