

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant with long history of drug abuse (mostly marijuana), much of it while holding a security clearance, and who currently uses marijuana, is barred by both the Smith Amendment (10 U.S.C. Sec. 986) and the absence of any mitigation under the Adjudicative Guidelines from holding a clearance. Applicant's drug abuse is further compounded by repeated omissions and understatement of his drug activity in his SF-86 forms and DSS interviews. Clearance is denied.

CASE NO: 02-24342.h1

DATE: 05/11/2004

DATE: May 11, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24342

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Rita O'Brien, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of recurrent use and purchases of illegal substances (primarily marijuana), much of which occurred while he held a security clearance. Because he continues to use marijuana, the Smith Amendment's (10 U.S.C. Sec. 986) mandatory preclusion from holding a security clearance is applicable. Applicant's drug activities are compounded by his repeated omissions and understatements of his drug involvement in security clearance applications (SF-86s) in 1985, 1989 and 2000, and DSS interviews, which are not mitigated. Only his child cruelty and battery arrests are considered extenuated and mitigated by evidence of successful rehabilitation. Clearance is denied.

### **STATEMENT OF CASE**

On November 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on December 15, 2003, and requested a hearing. The case was assigned to me on February 5, 2004, and was scheduled for hearing on March 5, 2004. A hearing was convened as scheduled for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of 12 exhibits; Applicant relied on one witness (himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on March 17, 2004.

## PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel moved to amend the SOR to add a new allegation to conform with Applicant's hearing testimony that he has continued using marijuana up to the day preceding the hearing (R.T., at 74-84). Department Counsel's proposed amendment added two subparagraphs: 1.g to allege that Applicant continues to use marijuana in 2003 and 2004, and as recently as March 4, 2004, and 1.h to allege that as a result of Applicant's current drug use, he is barred from holding a security clearance by virtue of 10 U.S.C. Sec. 986 (sometimes referred to as the Smith Amendment). There being no objection from Applicant, and good cause being shown, the Government's proposed amendment to the SOR was granted. Permitted to respond to the amendment, Applicant admitted the allegations covered by newly added subparagraphs 1.g and 1.h.

Prior to the close of the hearing, Applicant requested leave to keep the record open to permit him the opportunity to supplement the record with reports concerning his daughter's ungovernability charges. There being no objection from the Government, and good cause being demonstrated, Applicant was granted nine days to supplement the record. Department Counsel was afforded ten days to respond. Applicant failed to supplement the record within the time permitted.

## SUMMARY OF PLEADINGS

Under Guideline H, Applicant is alleged to have abused illegal drugs. Specifically, he is alleged to have (a) used and purchased marijuana, with varying frequency, from about 1970 to at least November 2002, (b) failed a random drug screening test in July 1998 (testing positive for marijuana), while passing five additional re-tests between July 1998 and September 1998 (testing negative on each occasion), (c) received counseling from his employee's assistance program for substance abuse from August 1998 to September 1998, and again from February 2002 to at least April 2002, and (d) was randomly selected for company drug tests in September 2002, and again in November 2002, wherein he produced positive test results on each testing occasion.

Under Guideline E, Applicant is alleged to have (a) used marijuana while holding a security clearance in the Navy (from 1975 to 1979), and after receiving a security clearance from his current employer in 1986 (using it to at least November 2002), (b) omitted his use and purchase of drugs other than marijuana (which he understated) when completing a signed, sworn statement in October 1985, (c) falsified his SF-86 of August 1989 by omitting his use and purchases of other drugs besides marijuana (which he understated), (d) falsified his SF-86 of August 2000 by omitting his 1998 substance abuse counseling, (e) falsified his SF-86 of July 2000 by omitting his 1995 child abuse charges, (f) omitted his continued marijuana use after December 1999 after stating in a signed, sworn statement of January 2002 that he had not, (g) continued to use marijuana despite promises made in his January 2002 signed, sworn statement that he would not use any illegal drugs in the future, and (h) continued to use marijuana to at least November 2002 after assuring otherwise in a signed, sworn statement of April 2002.

Under Guideline J, Applicant is alleged to have (a) been arrested in September 1995 and charged with cruelty towards child abuse (felony), after which he was released on his own cognizance and the charges were dropped, (b) been arrested in March 2001 and charged with battery (misdemeanor 1<sup>st</sup> degree) for which he was ordered to attend parenting, anger management, and counseling classes.

For his response to the SOR, Applicant admitted most of the allegations: He denied falsifying his August 2000 and July 2000 SF-86 forms and his 1995 and 2001 arrests. In explanation of his SF-86 omissions, Applicant claimed confusion over the questions dealing with counseling and arrests (claiming to understand the questions, respectively, sought information pertaining to voluntary counseling (his was directed by his employer and arrests leading to convictions (his charges were either dropped or subjected to deferred adjudication). Applicant claimed remorse for his action and a request to continue with his clearance subject to continued drug counseling, company random drug testing and cooperation in any other ways deemed necessary to keep his security clearance.

### **FINDINGS OF FACT**

Applicant is a 48-year-old launch service mechanic for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to marijuana in high school around 1970. He was about 15 or 16 at the time and smoked it almost daily: sometimes alone, and on other occasions with friends. He continued using marijuana during his Navy enlistment (between 1975 and 1979). As a navy enlistee he earned the rank of petty officer third class and held a security clearance. He continued using marijuana with friends after his discharge from the Navy and enrollment in college, usually weekly.

Applicant married W in 1984, who bore him two children (A, his eldest daughter and B, his youngest daughter). Applicant also gained a stepson (C) from W's first marriage. For the first five years of his marriage he quit using illegal drugs altogether. However, he resumed his use of marijuana in 1989 and has continued using it on a regular basis ever since.

With his current employer, he was asked to submit to random drug screens. In a random drug screen conducted in July 1998 he failed the test, testing positive for marijuana. As the result of his negative drug test, he sought substance counseling assistance from his employees assistance program. The program referred him for substance abuse counseling, which he received from August 1998 through September 1998. During his two months of counseling he

submitted to bi-weekly drug testing (five altogether). His program counselors credited him with negative tests in each of the five tests he submitted to during his period of treatment. Urged by his counselors to enroll in either Narcotics Anonymous (NA) or Alcoholics Anonymous (AA), Applicant declined.

Applicant returned to substance abuse counseling in February 2002 for relapse prevention (ex. 6) following his return to marijuana smoking. He attended weekly drug counseling sessions as required by the program's two-month course and received a favorable prognosis at discharge. His cessation from marijuana use that followed his completion of this program was brief: He soon returned to marijuana use, notwithstanding his possession of a security clearance. He returned to substance abuse counseling for a third session, however, after testing positive for marijuana in a company-administered random drug test in September 2002. Again, he received a positive prognosis from his counselors (*see ex. 7*). And as before, he returned to periodic marijuana use.

Applicant tested negative for marijuana several years later in a conducted random drug screen by his employer. At this time, he continued to hold a security clearance. Despite holding a clearance, he has been unable to cease using marijuana and tested positive for marijuana in a randomly administered drug test in November 2002. Since testing positive for marijuana in 2002, Applicant has used marijuana off and on three to four times a week. He did test negative for marijuana in a randomly conducted drug test in April 2003 (*see ex. B*), but he has continued his on-again, off-again use of the substance since this negative test. His acknowledged last use of marijuana was the day before the hearing (*i.e.*, on March 4, 2004).

Besides marijuana, Applicant experimented with other illegal drugs in high school: hash (1971 to 1974), speed (PCP) from 1971 to 1974, and LSD from 1971 to 1974. He tried cocaine as well following his discharge from the Navy in 1979: every two to three weeks between 1979 and 1984 (purchasing small quantities for his own use). He assures he has not used any of these other drugs after 1984; his assurances are accepted.

Following Applicant's divorce from W in 1994, W's stepson (C) continued living with him for awhile (*see ex. 3*; R.T., at 35-36). On one occasion in September 1995, C (aged 16 at the time) used foul language around Applicant and behaved badly. After admonishing C that he could either live by Applicant's rules or cease living in Applicant's home, Applicant directed C to leave his home. C then called the police who informed Applicant that he either must accept parental responsibility for C or face arrest. Applicant, in turn, was arrested. When the police heard Applicant's story, though, they promptly released him from custody on his own recognizance. The charges were then dropped.

Applicant was arrested a second time in March 2001: this time for battery-touch or strike domestic violence (a misdemeanor 1<sup>st</sup> degree). Applicant's daughter (A) had been arguing with Applicant, and when the argument became increasingly intense, Applicant slapped her face with an open hand. At Applicant's urging, A reported the incident to her school authorities the following day. Applicant, in turn, was arrested the next day on child abuse charges and released on his own recognizance. Upon being court-ordered to attend parenting and anger management classes, these charges, too, were dropped. Applicant is credited with completing his court-ordered parenting and anger management classes, along with his eldest daughter (A), who also received therapy (*see ex. A*). Applicant's treatment counselor described him as a very diligent and motivated participant in the therapy sessions he attended between May and September 2001. She

assigned an initial diagnosis of Adjustment Disorder, with Anxiety and credited him with excellent progress in a short time frame in the working goal of reuniting him with his eldest daughter (A). By September Applicant and his family were reunited and no longer required therapy.

Asked to complete a Personnel Security Questionnaire (SF-86) in July 1985, Applicant acknowledged prior marijuana use, but only on an occasional basis: maybe a total of 20 to 25 times in his life, with a last use in May 1984 (*see ex. 15*). He assured he had no intention of smoking marijuana in the future, given his Christian beliefs. In limiting his drug use history, he omitted his experimentation with other illegal substances. Inferences of knowing and wilful falsification are drawn against Applicant.

Applicant was interviewed several months later (in October 1985) by a DSS agent (Agent A). In the signed, sworn statement he gave Agent A he admitted to experimenting with other drugs between 1971 and 1984, including cocaine, which he used every two to three weeks between 1979 and 1984 and purchased enough to meet his personal needs. In this statement he reaffirmed his intention to abstain from any future drug use (*see ex. 14*).

As a part of his clearance update in 1989, Applicant was required to complete another SF-86. In the SF-86 he executed in August 1989, he acknowledged his marijuana use and small quantity purchases in high school, but omitted any mention of his marijuana use between 1975 and 1984, or his experimentation with other illegal substances between 1971 and 1984 (*see ex. 13*). Inferences of knowing and wilful falsification are drawn against Applicant.

As a part of another clearance update, Applicant completed an SF-86 in July 2000. In this SF-86, he omitted the substance abuse counseling he received in 1998. He attributed the omission to an erroneous assumption in the question: Question 19 referred to company-mandated counseling for policy requirements and not the kind of voluntary counseling he received in 1998. Question 19, however, does not distinguish between voluntary and involuntary counseling and calls for information about his drug abuse counseling that could be reasonably expected to expose his drug-related omissions. Considering all of the circumstances, including his very favorable character references on issues of overall honesty, Applicant's claims simply lack the plausibility necessary to enable him to avert inferences of knowing and wilful concealment.

In the same July 2000 SF-86, Applicant omitted his 1995 arrest. He attributes his omission to his misunderstanding of question 26 of the July 2000 SF-86 (*viz.*, he believed the question called for arrests leading to convictions, which he did not). His claims are complicated somewhat by his drug and counseling omissions. Were these his only omissions, his claims of misunderstanding might find acceptance in light of the favorable impressions he has fostered with his coworkers concerning his overall honesty. With his credibility in doubt from his other omissions and his job and security clearance inferentially affected by compounding positive disclosures of his 1995 arrest, he cannot avert inferences his omission of his 1995 arrest was made knowingly and wilfully out of concern for his job and clearance in considering all of the surrounding circumstances.

In a follow-up interview with DSS Agent B in January 2002, Applicant confirmed his 1998 counseling, as well as his 1995 and 2001 arrests. It is not clear whether or not he was confronted with information pertaining to his counseling

and arrests. At the same time, he claimed to have avoided any drug use (marijuana included) after December 1999 (*see ex. 3*). In so stating, he concealed his continuing use of marijuana after December 1999. His omissions were made knowingly and wilfully to maintain consistency with his prior omissions and minimize any risks to his job or security clearance. Several months later (in April 2002), Applicant called Agent B back and arranged for another interview to correct his drug-related omissions (R.T., at 71-73). In his arranged April 2002 DSS interview, Applicant voluntarily supplied the correct details of his marijuana history without any prompting from the interviewing agent (*see ex. 2*): He admitted to using marijuana on several occasions since December 1999.

Applicant is highly regarded by his work colleagues who characterize him as honest and trustworthy. He is described by colleagues as being very focused and dedicated and is credited with playing a vital role in his company's successful defense projects (*see exs. C and D*). He has received numerous commendations and certificates of appreciation in recognition of his good work for his employer (*compare exs. E and F*).

## POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must 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 Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Under the Smith Amendment (10 U.S.C. Sec. 986), the Department of Defense may not grant or renew a security clearance for a defense contractor official or employee that falls under any of four statutory categories [10 U.S.C. Sec. 986(c)(1) through (c)(4)]. Cases determined to fall under the following provisions of the Smith Amendment (10 U.S.C. Sec. 986) are subject to the statute's mandatory bar of security clearance eligibility without regard to any extenuating or mitigating circumstances: Persons found to be (2) an unlawful user of, or is addicted to, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. Sec. 802)) and (3) mentally incompetent, as determined by a mental health professional approved by the Department of Defense.

Viewing the issues raised and evidence as a whole, the following adjudication policy guidelines are pertinent herein:

### **Drug Involvement**

*The Concern:* 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.

**Disqualifying Conditions:**

DC 1: Any drug use.

DC 2: Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

DC 5: Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will invariably result in an unfavorable determination.

**Mitigating Conditions:** None.

**Personal Conduct**

*The Concern:* conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

**Disqualifying Conditions:**

DC 2: The deliberate omission, concealment, falsification or misrepresentation 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.

DC 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.

DC 5: A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

**Mitigating Conditions:** none

## **Criminal Conduct**

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

### **Disqualifying Conditions:**

DC 1: Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

DC 2: A single serious crime or multiple lesser offenses.

### **Mitigating Conditions:**

MC 6: There is clear evidence of successful rehabilitation.

## **Burden of Proof**

Under the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so 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.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR 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 materiality, however, does not require the Government to affirmatively demonstrate 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 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.

## CONCLUSION

Applicant comes to these proceedings with a history of illegal drug abuse (mostly marijuana), to include both current use and use while holding a security clearance. Actions raising security concerns also include falsification of security clearance applications and information furnished DSS agents in arranged interviews and arrests on allegations of child cruelty on his daughter and step son. These actions raise security concerns over his judgment, reliability, and trustworthiness required to access him to classified information.

### **Applicant's drug abuse history and Smith Amendment application**

Over a 34-year period, Applicant has experimented with various kinds of illegal drugs but has concentrated his use and purchases of illegal substances on marijuana. Despite positive random drug screens, ensuing counseling, varying periods of short-term abstinence and expressed intentions not to use illicit drugs in the future, he has consistently returned to recurrent marijuana abuse. He currently uses marijuana and reports a last use of the day before the hearing. With so many returns to drug use after commitments to abstain, and lacking in any reliable track history of illicit drug activity (considering the misleading and contradictory accounts he has provided DSS over a series of investigations), too much doubt and uncertainty exist to make safe predictable judgments about his ability to avoid recurrent drug involvement.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC 1 (any drug abuse), DC 2 (illegal drug possession, including purchases) and DC 5 (failure to successfully complete a drug treatment Program). While Applicant appeared to make some initial progress with his drug counseling, his returns to drug use preclude him from characterizing his counseling as successful.

Because of the Smith Amendment's mandatory preclusion of clearance eligibility for anyone determined to be an illegal drug user (*see* 10 U.S.C. Sec. 986(c)(2)), Applicant, by virtue of his current illegal use of marijuana, is barred from continued access to classified information without regard to any extenuating or mitigating circumstances that might be found in his behalf. Further, considering his long history of substance abuse, and recurrent use of marijuana while holding a security clearance and even despite past promises to abstain, considerable time in demonstrated abstinence would be required without the mandatory preclusive effects of 10 U.S.C. Sec. 986 (c)(2). Unfavorable conclusions warrant with respect to the allegations covered by Guideline H.

### **Falsification and rules violation 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 drug use omissions in each of his SF-86s, as well as in his DSS interviews that followed each of his clearance application submissions. So much trust is imposed on persons cleared to see classified information that tolerances for incidents of trust betrayal are necessarily small.

By omitting his earlier experimentation with other drugs and understating his past marijuana use in each of his clearance applications, and ensuing DSS interviews, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. He makes no claim of misunderstanding the questions, which were posed in a straightforward way in the questionnaire. Applicant's omissions reflect concerns about how disclosure of the adverse information would impact on his employment and clearance: understandable certainly, but historically considered by our Appeal Board to be insufficient to avert drawn conclusions of knowing and wilful concealment. In the same vein, his failure to disclose his receipt of substance abuse counseling and his 1995 arrest until after he was confronted with the same in ensuing DSS interviews reflect concerted desire to avert unfavorable information about himself that might conceivably impact adversely on his job and security clearance, which he valued a great deal.

Applicant's omissions were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire) and DC 3 (providing false information to an investigator).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of repeated opportunities in DSS interviews (dating to 1985) to disclose the extent of his historical involvement in illegal drugs. Not until he voluntarily disclosed his drug use history in belated DSS interview in November 2002 (over two years following his submission of a falsified SF-86) did he correct his prior omissions. Over the years, the Appeal Board has been very consistent in its finding 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. Similarly, the Appeal Board has denied applicants availability of MC 3 (prompt, good faith disclosure) in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

There can be no doubt but that Applicant has inspired confidence and trust among his defense contractor supervisor and co-workers. But in the face of his repeated acts of omission, his favorable character evidence alone is not enough to absorb security concerns extant with the Government over his failure to be truthful through both his SF-86 submissions and initial DSS interviews in 1985 and January 2002. Mitigation is further weakened by the qualifications expressed by most of his character witnesses: lack of awareness of the extent of Applicant's drug use and his record of omissions of material information about his drug involvement.

Applicant's continued use of marijuana while holding a security clearance also raises personal conduct concerns. His knowing use of drugs while holding a clearance was undertaken knowingly and wilfully and reflects persistent rules violations. The government may invoke DC

5 (pattern of rules violations) in connection with his continued use of marijuana long after he had been granted a security clearance. With his use of marijuana not yet abated, he may not take advantage of any of the mitigating conditions covered by 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-paras. 2.a through 2.i of Guideline E.

### **Criminal coverage of falsification issues**

That none of Applicant's SF-86 and DSS interview omissions resulted in formal charges and adjudication against Applicant does not mean that the falsification issues may not be raised and considered anew in a clearance proceeding such as the present. Our Appeal Board has repeatedly stated that the government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Accordingly, two of the disqualifying conditions of the Adjudication Guidelines for criminal conduct may be invoked: DC 1 (criminal conduct regardless of whether the person was formally charged) and DC 2 (a single serious crime or multiple lesser offenses).

Unlike Guideline E-covered omissions, Guideline J is designed to afford more recognition to an applicant's overall judgment and reliability history. Still, an applicant must meet the requirements of at least some of the mitigation conditions if he is to successfully mitigate its related falsification parameters under 18 U.S.C. Section 1001.

Applicant's belated coming forward with his full disclosure of his illegal drug history until his last DSS interview represented a positive shift in his attitude about withholding drug involvement information that are inferentially attributed to concerns over placing his job and clearance at risk by disclosing his full drug use record. His meritorious work record merits consideration, too, in weighing the extent of his exhibited rehabilitation. Given his considerable history of withholding his drug activity in clearance applications and a prior DSS interview, however, his disclosure, while commendable, is not enough to meet the mitigation requirement of evidenced clear rehabilitation to entitle him to take advantage of MC 6 (clear evidence of successful rehabilitation) of the Adjudication Guidelines at this time. More time is needed before Applicant is in a position to make the case his rehabilitation efforts are sufficient to mitigate the criminally-related features of his drug use omissions. Based on a full review of the evidence and drawn inferences from the developed record, unfavorable conclusions warrant with respect to subparagraph 2.c. of Guideline J as well.

While the cruelty allegations associated with his 1995 and 2001 arrests raise some security concerns they are adequately extenuated by Applicant's explanations, and mitigated by the counseling he underwent in 2001 at the court's direction, and the rehabilitation he has since demonstrated (to include the reunification of his family). Applicant is entitled to the mitigation benefits of MC 6 (clear evidence of rehabilitation) as to the allegations concerning his respective arrests in 1995 and 2001. Favorable conclusions warrant with respect to subparagraphs 2.a and 2.b of Guideline J.

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**

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 H (DRUG ABUSE): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2a: AGAINST APPLICANT

Sub-para. 2b: AGAINST APPLICANT

Sub-para. 2c: AGAINST APPLICANT

Sub-para. 2d: AGAINST APPLICANT

Sub-para. 2.e AGAINST APPLICANT

Sub-para. 2.f: AGAINST APPLICANT

Sub-para. 2.g: AGAINST APPLICANT

Sub-para. 2.h: AGAINST APPLICANT

Sub-para. 2.i: AGAINST APPLICANT

Sub-para. 2.j: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 3.a: FOR APPLICANT

Sub-para. 3.b FOR APPLICANT

Sub-para. 3.c: AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge