KEYWORD: Drugs; Personal Conduct

DIGEST: Applicant was granted Secret-level security clearances in 1979 and in 1988. He admitted using marijuana while holding those security clearances, but did not reveal his use of marijuana on a security clearance application he filed in 1998. In 1998, in an attempt to elicit the full history of Applicant's use of marijuana, an agent of the Defense Security Service questioned him several times. As a result of that investigation, Applicant's security clearance was revoked in 1999. In 2001, Applicant filed a security clearance application in which he denied ever using a controlled substance while holding a security clearance. While Applicant submits evidence of competence and hard work in his employment, these submissions do not mitigate the breach of trust implicit in his use of drugs while he held two security clearances. Clearance is denied.

CASE NO: 02-24965.h2

DATE: 05/07/2004

DATE: May 6, 2004

In Re:

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

Applicant for Security Clearance

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ISCR Case No. 02-24965

REMAND DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was granted Secret-level security clearances in 1979 and in 1988. He admitted using marijuana while holding those security clearances, but did not reveal his use of marijuana on a security clearance application he filed in 1998. In 1998, in an attempt to elicit the full history of Applicant's use of marijuana, an agent of the Defense Security Service questioned him several times. As a result of that investigation, Applicant's security clearance was revoked in 1999. In 2001, Applicant filed a security clearance application in which he denied ever using a controlled substance while holding a security clearance. While Applicant submits evidence of competence and hard work in his employment, these submissions do not mitigate the breach of trust implicit in his use of drugs while he held two security clearances. Clearance is denied.

STATEMENT OF THE CASE

On September 3, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR the Government alleged that Applicant was disqualified from obtaining a security clearance because of his illegal drug involvement (Guideline H) demonstrating a history of marijuana use while he held security clearances in 1979 and 1988, and personal conduct (Guideline E) demonstrating questionable judgment, based upon his continued use of marijuana and his failure to reveal his drug use on security clearance applications and in interviews with Defense Security Service agents.

By Memorandum dated November 15, 2002, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material (FORM) on December 3, 2002. By letter dated December 3, 2002, a copy of the FORM was forwarded to the Applicant, with instructions to submit additional information and/or any objections within 30 days of receipt. Applicant received the FORM on December 16, 2002, and on December 31, 2002, he requested extra time to file his response to the FORM. Department Counsel granted Applicant an extension of time until January 21, 2003 to file his response to the FORM. On February 3, 2003, the case was assigned to me for a decision. The memorandum of assignment made no mention of the extension of time granted to Applicant by Department Counsel and indicated that Applicant's response to the FORM was due on January 15, 2003. The record I received on February 3, 2003, did not contain a response from Applicant to the FORM.

On April 22, 2003, I issued a decision denying a security clearance to Applicant. The record provided to me on remand shows that Applicant appealed my decision and, on June 25, 2003, filed an appeal brief with DOHA's Appeal Board. With his appeal brief he filed a copy of his response to the FORM, dated January 16, 2003. The record further shows that by Memorandum dated June 25, 2003, the Appeal Board Chairman served Chief Department Counsel with a copy of Applicant's appeal brief and notified him that the deadline for filing a reply brief was July 15, 2003. By Memorandum to the Chief Department Counsel, dated July 21, 2003, the Chairman of the Appeal Board stated that no reply brief had been received and, accordingly, Applicant's case on appeal was deemed ready for consideration by the Appeal Board.

By decision dated August 19, 2003, the Appeal Board remanded my decision, with instructions to me to determine whether Applicant did or did not submit a timely response to the FORM. The Appeal Board further directed that if I found Applicant's response to the FORM to have been received timely, or good cause was found for receiving it late, I should consider his response to the FORM as part of the record for purposes of making findings and reaching conclusions about the SOR allegations. I was further instructed that if I found Applicant's response was untimely and there was not good cause to accept it late, then I should issue a new decision that included a specific discussion and explanation for that ruling.

On March 8, 2004, I issued an order directing the parties to provide me with the following information no later than close of business, March 23, 2004:

Applicant . . . [shall] . . .submit to me, by registered mail . . . a narrative, under oath or affirmation, discussing the circumstances under which he submitted his response to the FORM to DOHA. Applicant should tell with whom he communicated, and when. Applicant should also specify how he transmitted his response and whether it was sent by e-mail, e-mail attachment, through the U.S. Postal Service, by private postal carrier . . . or by any other means. If Applicant used the U.S. Postal Service to send his response, he should indicate whether he used registered or certified mail, express or priority mail and whether a tracking or return receipt was requested and received. Applicant should include with his narrative true copies of all postal, e-mail, or private carrier tracking records pertaining to his transmission of his response to the FORM and any tracking records indicating DOHA's receipt of his response to the form.

Department Counsel . . . [shall] . . .submit to me, by registered mail a statement, under oath or affirmation, as to whether Applicant's response to the FORM was received by DOHA. If DOHA received Applicant's response to the FORM, Department Counsel should state when the response was received and how it was docketed--electronically, by annotation on a paper docket card, . . . or by electronic or hand date stamp. Department Counsel is further directed to explain DOHA's procedures for receiving and logging in Applicant's response to the FORM and its review processes for ensuring that when it was submitted to an administrative judge for a clearance decision based on the written record, pursuant to Directive E3.1.7., it was deemed complete and ready for adjudication. Department Counsel is also directed to submit all records relating to oral and written correspondence by DOHA personnel with Applicant relating to the submission of his response to the FORM and true copies of all date stamps affixed to documents received from Applicant.

On Saturday, March 20, 2004, Applicant filed a request, by facsimile, for an extension of time to comply with my order. I received a copy of his request on Monday, March 22, 2004, and served a copy of his request on Department Counsel, who indicated no objection so long as the extension of time applied equally to both parties. Accordingly, I granted Applicant's request and granted both parties an extension of time until close of business March 31, 2004 to respond to my order of March 8, 2004. Both parties filed their responses within the prescribed time.

Applicant stated in his narrative statement[(1)] that he did not recall when his response to the FORM was due. He said he called the Department Counsel assigned to his case before Christmas 2002 and explained that his superiors would be unable to review his response to the FORM during the "holiday stand down." He requested an extension of time to file his response later in January 2003. He stated that the Department Counsel responded by telling him she had spoken to the judge and a date in early January was set for the reply.[(2)] Applicant stated he provided his written response to the FORM on January 16, 2003, after review by his superiors, who mailed it to DOHA. He said he has no tracking records for delivery of his response to DOHA, but he stated that his security officer has informed him that a tracking record is on file in his employer's security office. He said he addressed his response to the FORM to a security specialist in DOHA.

The Chief Department Counsel filed a statement about whether his office had received Applicant's response to the FORM, and he provided documentation in support of his conclusions. Chief Department Counsel reported that there was nothing in the database of his office or that of the Special Action, Policy, and Review Division (SAPRD) that would indicate that Applicant's response to the FORM had been received by either office. He reported that Applicant had called the lead Department Counsel in the matter on December 31, 2002, and had requested an extension of time for filing his response to the FORM. Department Counsel stated she had no objection to an extension and granted Applicant a new deadline of January 21, 2003, for submitting his response to the FORM. She communicated this information to staff at SAPRD. On February 3, 2003, SAPRD staff asked the lead Department Counsel if she had received Applicant's response. Lead Department Counsel reported she had received nothing from Applicant, and, accordingly, SAPRD transmitted the case to DOHA's Washington Hearing Office, where it was then assigned to me.

The Chief Department Counsel also stated: "Although there is no indication that the exhibit offered with the Applicant's appeal was ever received by either SAPRD or Department Counsel, we nonetheless do not object to the Administrative

Judge considering on remand the materials submitted by the Applicant along with his appeal brief." (Department Counsel Response, dated March 31, 2004, at 1.)

As the parties' submissions show, there is disagreement as to whether Applicant's response to the FORM was timely filed. Applicant claims he gave his response to the FORM to his security officer, but, contrary to my order, he has provided no evidence to support his assertion. He apparently relied on his security officer to transmit his response to the FORM to DOHA. It is not clear from Applicant's submissions whether it was company policy that all submissions related to security clearance matters be reviewed and submitted to DOHA by the security officer. It is also not clear whether Applicant informed his security officer of the new deadline he had received from Department Counsel. These ambiguities in the record, along with Department's Counsel's lack of objection, lead me to find good cause to consider Applicant's response to the FORM as part of the record for purposes of making findings and reaching conclusions about the SOR allegations. Accordingly, Applicant's response to the FORM is admitted into in the record of this case, and my findings include a careful review of that document, dated January 16, 2003.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR as set forth in paragraphs 1.a and 1.b, involving Criterion H (Drug Involvement), and paragraphs 2.a, 2.b, 2.c, 2.e, and 2.f, involving Criterion E (Personal Conduct). He denied allegation 2.d. of the SOR. Applicant's admissions are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 55-year-old senior analyst employed by a Government contractor. On March 20, 2001, Applicant signed a completed Security Clearance Application, Standard Form 86 (SF 86) that he had prepared.

Question 31 on the SF 86 completed by Applicant reads: "Your Investigation Record-Investigations/Clearance. Has the United States Government ever investigated your background and/or granted you a security clearance?" In response to Question 31, Applicant replied in the affirmative and stated that his background had been investigated and, as a result, he had been granted Secret clearances in 1979 and 1988. Question 20 on the SF 86 completed by the Applicant asks if during the last 10 years Applicant has left a job under unfavorable conditions. In response to Question 20, Applicant stated that, as a Federal employee, he had left a job under unfavorable conditions when his security clearance was revoked in July 1999, pursuant to a finding that he had used illegal drugs and had omitted or concealed or falsified that illegal use on a security clearance application

Question 32 on the SF 86 completed by the Applicant reads: "Your Investigation Record - Clearance Actions: To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?" In response to Question 32, Applicant replied in the affirmative that he had lost his security clearance in July 1999. Question 27 on the SF 86 completed by the Applicant reads: "Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs: Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana. . . ?" In response to Question 27 Applicant admitted to illegal use of the drug marijuana "occasionally" from January 1, 1976 to July 4, 1998.

Question 28 on the SF 86 completed by the Applicant reads: "Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions: Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" In response to Question 28 Applicant denied using illegal drugs or controlled substances while possessing a security clearance, even though his drug use as described in his response to Question 27 encompassed the period of time that he said he held security clearances in his response to Question 31 and his response to Question 20 indicated that he had left a job under unfavorable conditions when his security clearance was revoked pursuant to a finding that he had used illegal drugs and had omitted or concealed or falsified that illegal use on a security clearance application.

Question 29 on the SF 86 completed by the Applicant reads: "Your Use of Illegal Drugs and Drug Activity - Drug Activity: In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?"In his response to Question 29, Applicant denied purchasing or trafficking in illegal drugs. In his response to the SOR, Applicant admitted to contributing money on occasion to purchase marijuana for his use and the use of others. (Applicant's response to the SOR, dated 15 November 2002, at 1-2.) He stated that his use of marijuana occurred occasionally at social events and never affected his ability to carry out his official duties.

Applicant denied the Government's allegation 2.d in the SOR, that he failed to reveal the full extent of his marijuana use in a June 1998 interview with a Defense Security Service agent and that, because he was not forthcoming about his drug use, a second interview with a Defense Security Service agent was required in September 1998. Applicant states that he provided all the information asked of him but does not deny that the agent visited him several times in order to question him and obtain the information. (Applicant's response to SOR, dated 15 November, 2002, at 4.) Applicant attached to his memorandum an Enclosure, which he identified as "Enclosure (1): Personnel History of: [Applicant], Letters of Achievement, Commendations, Awards and Letters of Reference" The Enclosure comprised 41 pages and was characterized by Applicant as "documentation of my character, both personal and professional, my dedication to country, Navy and family." (Applicant's response to SOR, dated 15 November 2002, at 6.)

Applicant attached a copy of his response to the FORM, dated January 16, 2003, to the narrative statement he filed on March 31 in response to my Order of March 8, 2004. Applicant's response to the FORM was identified as "ENCLO #2." The seven-page document contained 13 discussion points, identified as **a** through **m**. In his discussion points, Applicant/Appellant took issue with Department Counsel's arguments in the FORM. He asserted he is a responsible

citizen and has an honorable work record. He averred he has changed his behavior and mitigated the Guideline H and E disqualifying conduct alleged in the SOR.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to. . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . .that will give that person access to such information." *Id*. at 527. The President has restricted eligibility for access to classified information to "United States citizens

. . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information*, §3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability on the part of an applicant. These concerns include consideration of the potential as well ans the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Adjudicative Guidelines H, Drug Involvement (Attachment 8 to Enclosure 2) and E, Personal Conduct (Attachment 5 to Enclosure 2) are most pertinent to this case. The relevant provisions of Guideline H which apply to the facts of this case are:

E2.A8.1.1. 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.

E2.A8.1.1.3 and E2.A8.1.2.1: Any drug abuse, defined as any illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2.2: Illegal drug possession, including ... purchase.

E2.A8.1.2.5: Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

Conditions that could mitigate security concerns regarding drug involvement include:

E2.A8.1.3.1: The drug involvement was not recent;

E2.A8.1.3.2: The drug involvement was an isolated or aberrational event;

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

The relevant provisions of Guideline E which apply to the facts of this case are:

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 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 [or] determine security clearance eligibility or trustworthiness.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official . . . or other official representative in connection with a personnel security or trustworthiness determination.

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

Under the provisions of the Directive, a decision to grant or to 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. *See* Directive, 5. and 6.

It is worth noting that Applicant's allegiance, loyalty, and patriotism are not at issue in this proceeding. Section 7 of Executive Order 10,865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, or any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

Burden of Proof

An Applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Department of the Navy v. Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, I interpret the Court's guidance to mean that doubts against an applicant's security worthiness are to be resolved against the Applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, including Applicant's response to the FORM, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline H, the Government has established its case. Applicant has admitted the Guideline H drug involvement specified in the SOR and identified as disqualifying conditions under paragraphs E2.A8.1.1, E2.A8.1.1.3, and E2.A8.1.2.1 of Guideline H. He used drugs from approximately 1976 through at least 1998 and contributed money on occasion to purchase marijuana for his own use and that of his companions. He used marijuana while he held secret clearances in 1979 and 1988. Applicant offers in mitigation his assertions that his drug use ended in 1998 and therefore is not recent (E2.A8.1.3.1). He states that his drug use, when it occurred, was episodic and not regular, that he used marijuana in social settings and never before or while at work, and that his judgment was not impaired as a result of his drug use. He directs our attention to his enclosed Personnel History containing evidence of numerous awards, letters of commendation, and promotions received while in Government employment as evidence that his work was not impaired by his drug use. In his response to the FORM, Applicant faults the Government for not requiring him to take a drug test when he filled out his SF-86 in March 2001 and for not recognizing that his employment at that time required tests for substance abuse. (Response to FORM, Discussion Point l, at unnumbered page 6.)

Applicant states that he last used drugs five years ago, in 1998. In 1982 Applicant stated to a Defense Department

investigator that he was giving up the use of drugs at that time. Had this occurred, Applicant would have demonstrated his intent not to abuse drugs in the future, mitigating factor E2.A8.1.3.3 under Guideline H. However, Applicant admits to using marijuana for the next 16 years, until at least July of 1998. Thus, Applicant's drug involvement spanned a period of many years and was not isolated or aberrational, but appears to be a part of his on-going social life. Mitigating condition E2.A8.1.3.2 thus does not apply. Absent Applicant's ability to demonstrate that he was able to stop using drugs, his assertion that his last drug abuse occurred in 1998 and thus is not recent lacks credibility and cannot mitigate, pursuant to E2.A8.1.3.1, Applicant's long-standing pattern of drug abuse.

Applicant's enclosed Personnel History contains many references to his hard work and effective occupational functioning during the time he has admitted using drugs. However, these positive references do not speak to the basic security concern expressed in paragraph E2.A8.1.1.1. of Guideline H, which is that illegal drug involvement, which alters mood and judgment, raises questions about an individual's willingness or ability to protect classified information and may increase the risk of unauthorized disclosure of classified material.

With respect to Guideline E, the Government has also established its case. Applicant admits personal conduct under paragraph E2.A5.1.1 of Guideline E that puts in question his judgment, trustworthiness, reliability, honesty and willingness to properly safeguard classified information. His continuing drug abuse while holding two security clearances and his attempts to conceal that information raises serious questions under paragraphs E2.A5.1.2.2 and E2.A5.1.2.3 about his security clearance eligibility and trustworthiness. Applicant used marijuana in the years 1976 until at least July 1998, and this drug use occurred even though he held a secret clearance granted in 1979 and a secret clearance granted in 1988. Applicant also used marijuana for 7 years (1982 to at least 1989) despite his assertions in 1982 to a Defense Security Service agent that, because of his family responsibilities, he had no intention of using marijuana in the future.

Applicant failed to reveal his marijuana use when he completed his SF 86 in April 1998 and did not discuss the matter until an interview with a security investigator in June 1998. Applicant lost his security clearance in 1999 because of his marijuana use and his failure to reveal it on his SF 86. Additionally, he failed to reveal his use of marijuana when he completed another SF 86 in March 2001 and denied ever using a controlled substance while holding a security clearance even though, in response to another question on the SF 86, he admitted to occasional drug use during periods when he had held security clearances.

Applicant denies that he failed to reveal the full extent of his marijuana use in his June 1998 interview with a Defense Security Service agent, an omission that required an additional interview to elicit the full and accurate history of his marijuana use. Applicant states that he gave all the information asked of him during two "official" interviews and in several more informal interviews which occurred when the Defense Security Service agent visited him, often unannounced. Applicant states that he failed to treat the agent with sufficient respect at the time of the interviews and further asserts that he was under considerable stress from his work responsibilities at the time of the encounters with the Defense Security Service agent. Applicant's amplifying statements do not demonstrate that he was initially forthcoming or fully cooperative when interviewed about his use of marijuana by the Defense Security Service agent. Applicant has failed to mitigate, under paragraph E2.A5.1.3.2, the disqualifying conditions described in paragraphs E2.A5.1.2.2 and E2.A5.1.2.3 of Guideline E. The falsifications on the Forms SF 86 he filed in 1998 and 2001 were not isolated incidents. While the falsifications filed in 1998 are not recent, those filed in 2001, in connection with the security clearance application herein under review, are recent. While Applicant eventually provided correct information, he did so only

after repeated inquiries by an agent of the Defense Security Service, leading to a conclusion that Applicant lacked candor and was unwilling to comply with rules and regulations, thus raising concerns about his willingness or ability to safeguard classified information.

It is the combination of drug use and drug-related falsifications that establish Applicant's current ineligibility for access to the nation's secrets. However sincere Applicant may now be in his intentions, he has not established his ability to conform and sustain his conduct to the standards of good judgment, reliability, and trustworthiness required of anyone seeking a security clearance.

In my evaluation of the record, I have carefully considered each piece of evidence, including Applicant's response to the FORM, in the context of the totality of the evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of this case. Under the whole person concept, I conclude that Applicant has a serious problem relating to his drug use and his continuing lack of candor about the drug use, leading to a series of falsifications about his conduct while he held security clearances. I have carefully considered all evidence presented by Applicant as mitigating or extenuating, including the evidence provided in his response to the FORM, dated January 16, 2003, and I find that Applicant's evidence falls far short of being convincing. Under the totality of the facts and circumstances of this case, I conclude that Applicant has not mitigated any of the SOR allegations.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Drug Involvement (Guideline H): AGAINST THE APPLICANT.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: 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 the Applicant. Clearance is denied.

_____

Joan Caton Anthony

Administrative Judge

1. Applicant provided a narrative statement that was not under oath or affirmation.

2. I was not the judge who reportedly was consulted for an extension of time. In December 2002, I was not employed by the Department of Defense. I assumed my duties as an administrative judge at DOHA on January 13, 2003. However, on the date Applicant claims he spoke with Department Counsel, there would not have been a judge assigned to his case because, pursuant to DOHA's procedures, the case was not yet ready for adjudication.