

DATE: May 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08260

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nygina T. Mills, Esq., Department Counsel

#### **FOR APPLICANT**

Russell W. Woodlief, Esq.

David P. Price, Esq.

### **SYNOPSIS**

Applicant used and purchased marijuana from 1992 to August 1999, including while he was in possession of a security clearance from 1992 to 1993. As of February 2000, he indicated he might use marijuana in the future on special occasions with a friend from graduate school. Applicant has since resolved to forego any future involvement with illegal drugs. Drug Involvement concerns are mitigated by his sustained commitment to a drug free lifestyle. Personal Conduct and Criminal Conduct concerns persist because of his misrepresentations of his marijuana involvement on an October 1999 security clearance application (SF 86) and his unwillingness to admit the knowing and willful concealment of his then recent drug involvement. Clearance is denied.

### **STATEMENT OF CASE**

On July 24, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Drug Involvement (Guideline H), Personal Conduct (Guideline E) and Criminal Conduct (Guideline J).

On August 22, 2003, Applicant, then *pro se*, filed his response to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 9, 2003, and pursuant to notice dated October 22, 2003, a hearing was scheduled for November 19, 2003. By letter dated October 31, 2003, legal counsel retained by Applicant requested a brief continuance due to the unavailability of the attorney assigned the case. By amended notice dated November 14, 2003, the parties were advised the hearing would be held on December 11, 2003. A change in the scheduled time for the hearing necessitated the issuance of a second amended notice on December 9, 2003.

At the hearing held as rescheduled on December 11, 2003, the Government's case consisted of five exhibits, Exhibit 5 admitted over Applicant's objection, and the testimony of a Defense Security Service (DSS) agent who interviewed Applicant in February 2000. Applicant's case consisted of 26 exhibits (exhibit C entered over objection) and testimony from Applicant, a coworker, and a friend. A transcript of the hearing was received December 19, 2003.

## FINDINGS OF FACT

Drug Involvement (Guideline H) is alleged based on marijuana use and purchase from approximately 1992 to August 1999, the purchase for resale of one ounce of marijuana in 1992/93, use of marijuana when he had a security clearance from 1992 to 1993, and his expressed belief he could possibly use marijuana in the future. Personal Conduct (Guideline E) and Criminal Conduct (Guideline J) concerns relate to alleged falsification of a March 1999 security clearance application (SF 86) in disclosing only that marijuana use from October 1992 to December 1996, and denying that he had used marijuana while possessing a security clearance. In his response to the SOR, Applicant admitted using and purchasing marijuana as alleged with the exception of purchase for resale, but he denied any intent to use marijuana in the future. He admitted he had reported only that marijuana involvement that had been regular on his SF 86, which was dated October 1999, but cited in mitigation his candor on subsequent occasions. He denied any intent to falsify his SF 86 when he responded negatively to whether he had ever used any illegal drug while in possession of a security clearance. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 33-year-old senior electrical engineer who has worked for his current employer, a defense contractor, since mid-October 1999. He seeks a secret security clearance for his present duties.

As a youth, Applicant was active in Boy Scouts, earning Eagle Scout rank in October 1987 and even a Founder's Award in 1991, a distinguished honor within scouting's Order of the Arrow organization. As a college undergraduate, he was instrumental in starting a campus chapter of a coed national service fraternity based on the Oath and Law of the Boy Scouts of America.

Circa 1989, Applicant began his undergraduate studies in electrical engineering. Enrolled in a five-year co-op program on a trimester schedule, Applicant alternated working full-time for a semester with studying on campus the next. He started his co-op working for a utility company, but switched after one semester to a co-op position with a locally situated defense contractor. He was granted a secret clearance for his duties in September 1991.

While spending the Fall semester 1992 on campus, Applicant began using marijuana because it was prevalent in his social circle. He enjoyed the drug's euphoric effects, and continued to smoke it two to four times per month at social gatherings during academic semesters throughout the remainder of his undergraduate career. Applicant refrained from using marijuana during the semesters when he worked for the defense contractor. Applicant spent from \$100 to \$150 per year on marijuana as an undergraduate, buying it from others on campus. On one occasion in 1992/93, Applicant purchased an ounce of marijuana for a friend who wanted it for someone else undergoing chemotherapy. Applicant did not purchase the drug for profit and received no financial gain from the transaction. Applicant's academic studies did not suffer because of his weekend marijuana use. In 1993, Applicant was elected to membership in a national honor society and placed on the school of engineering dean's honor list one semester. His received excellent ratings for his co-op work with the defense contractor with the exception of the spring 1993 semester when he was given a satisfactory plus rating. In May 1994, he earned his B.S.E.E. degree.

In September 1994, Applicant began graduate studies in electrical engineering at a state university some 500 miles away from his undergraduate campus. He found friends there who used marijuana and continued his involvement in social settings with the frequency declining as he began to spend more time in the laboratory. He purchased marijuana in graduate school spending roughly about the same amount per year as he had before.

After he earned his M.S.E.E. degree in December 1996, Applicant moved to his present state of residence where he went to work as an electrical engineer for a federal contractor in February 1997. His use of marijuana decreased to once a month on average with some months of no usage (four or five times in 1999). Applicant spent between \$50 and \$100 per year on marijuana from January 1997 to August 1999, buying it from friends. After attending an employment fair

offered by his present employer in about August 1999, Applicant stopped all use of marijuana as he was interested in the opportunity and knew he would be subjected to random drug testing by the defense contractor and because he felt it inhibited his training/performance in martial arts (kung fu).

Shortly after he was hired by his present employer, Applicant executed a security clearance application (SF 86) on October 22, 1999. In response to inquiry into any illegal drug involvement in the last seven years, Applicant listed marijuana use 50 times from October 13, 1992 to December 25, 1996, electing not to disclose his recent use from January 1997 to August 1999 as it was not regular. He responded "No" to inquiry into whether he had ever illegally used a controlled substance while possessing a security clearance, but reported he had a secret clearance granted to him in September 1991.

On February 22, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his drug use. Applicant detailed his use and purchase of marijuana from 1992 to August 1999. With respect to his failure to report his use of marijuana after December 25, 1996, on his SF 86, Applicant told the agent he had interpreted the question as usage on a consistent and frequent basis. Confronted with the specific language on the SF 86, Applicant indicated he must not have fully read the question. When asked about his future intentions, Applicant denied any intent to use marijuana while employed by his defense contractor employer or while possessing a security clearance. Applicant was unable to state his long term intentions. When advised adjudicating officials ask for such information, Applicant expressed his belief it was possible he would smoke marijuana when visited by a friend from graduate school or on special occasions. Applicant acknowledged he had made a poor decision to use marijuana when he held a clearance as a college student in 1992/93, but he asserted he had learned from that mistake and did not want to risk a positive drug test.

After the interview, the DSS agent prepared a certified results of interview incorporating Applicant's admissions to marijuana use, his reasons for ceasing his involvement in August 1999, his purchases, including the one ounce in 1992/93. While the agent reported that purchase had been for the purpose of resale, he noted Applicant had not sold it for profit, but had "functioned as a conduit for a friend who requested he provide marijuana to her to help relieve her discomfort from cancer treatment." In reporting Applicant's future intentions, the agent indicated Applicant maintained he had no intent to use marijuana while working for his present employer or while he had a security clearance, but Applicant was unable to state specifically his long term intentions. The agent indicated that after he advised Applicant adjudicating officials requested specific information in that regard, Applicant expressed his belief it was possible he would use marijuana in the future with a friend from college or on special occasions.

On August 10, 2001, DOHA issued a SOR to Applicant alleging: 1) Drug Involvement because of his marijuana use and purchase from approximately 1992 to August 1999, purchase of one ounce of marijuana in 1992 or 1993 "for the purpose of reselling it to another person," use of marijuana while he possessed a security clearance from 1992 to 1993, and Applicant's stated belief it was possible he would smoke marijuana in the future when visited by a friend from graduate school and on special occasions (bachelor parties, reunions, weddings); 2) Personal Conduct for deliberately falsifying a March 8, 1999 Questionnaire for National Security Positions (sic) <sup>(2)</sup>

by disclosing only that marijuana use from October 13, 1992 to December 25, 1996, and by responding negatively to whether he had ever illegally used a controlled substance while possessing a security clearance; and 3) Criminal Conduct as the falsification of a security clearance application is a felony violation of federal law.

On September 19, 2001, Applicant responded to the SOR, admitting the allegations of marijuana use and purchase, including when he possessed a security clearance although he denied using marijuana when he was working through the coop program when he had access to classified material. Applicant admitted he had acted as a middleman in purchasing an ounce for a friend who wanted marijuana for someone undergoing chemotherapy, but he did not use his own money and did not resell the drug. He denied any intent to use marijuana in the future, contending his expression of possible use with a friend and on special occasions was in response to the agent asking him what his future intentions would be if marijuana was legalized [*"During the interview, the Special Agent presented me with a hypothetical scenario and I was specifically asked by the Special Agent about what my future intentions would be with regard to marijuana use if marijuana was legalized. IF it were legalized, marijuana use no longer fits the definition of drug abuse as set forth in Guideline H."*]. Applicant reiterated his intent was, and continued to be, he would not use marijuana while working for his present employer or while possessing a security clearance. Applicant also denied any deliberate falsification of his

security clearance application, as he had been focused on his use between October 1992 and December 1996 rather than on his minimal involvement thereafter, and he had failed to read thoroughly enough the question regarding use of drugs in sensitive positions when he completed his application. Citing his disclosures of drug use from 1992 to 1996 and of a clearance having been granted to him in September 1991, Applicant contended it was obvious that he used marijuana during the time he possessed a security clearance.

Fearful he could lose his job and damage his career should he not be granted the security clearance, Applicant requested his employer withdraw his application for a security clearance. His employer agreed, and in November 1999, his employer filed a DISCO Form 562 requesting termination of the investigation on the basis Applicant would not need a clearance.

Applicant continued to work for his present employer without a clearance, with his job performance far exceeding requirements. In December 2002, the defense contractor resubmitted Applicant for a secret security clearance. In conjunction with this recent reapplication, Applicant executed an SF 86 on December 18, 2002, candidly reporting his marijuana use from October 13, 1992 to August 15, 1999. He responded affirmatively to having used illegal drugs from October 1992 to March 1994 during school semesters (not co-op working semesters). He denied an intent to use any illegal drug in the future as "*[his] career and future are too valuable to waste over the use of a drug.*" Applicant added his vow never to use marijuana again regardless of the circumstances would be easy to keep as he no longer associates with people who use or have access to marijuana. Applicant expressed regret for his bad decisions of the past.

On July 24, 2003, DOHA issued a SOR to Applicant bearing a new date and case number but alleging in substance the same security concerns as in August 2001. Applicant reiterated that his admission to possible future use of marijuana was in response to a hypothetical inquiry from the agent as to what his future intentions would be if marijuana were legalized:

*During the interview, the Special Agent presented me with a hypothetical scenario and I was specifically asked by the Special Agent about what my future intentions would be with regards to marijuana use if it were legalized. If it was legalized, marijuana use no longer fits the definition of drug abuse as set forth in Guideline H, subparagraph E2.A8.1.1.3. My response to the Special Agent with regard to this subparagraph was based solely on the fictional scenario that was presented to me during the interview.*

*In any event, I specifically stated that I would not use marijuana while working for [the defense contractor] or while possessing a security clearance . . . This was my position at the time of the interview, but today, my position has extended this ethic. The events surrounding the previous clearance application significantly strengthened my conviction to never use marijuana again regardless of the circumstances. My previous usage has already caused me a significant amount of stress and lost career opportunities and I cannot afford to use the substance in the future. I am now engaged to be married and I will absolutely put my future family, my health, and my career over activities that may adversely affect any one, such as marijuana usage.*

Applicant expressed his deep regret at not fully disclosing his drug use on his October 1999 SF 86, while reiterating that he omitted his more recent marijuana use on that SF 86 because "*[his] use of marijuana had ceased to be regular and it became significantly less frequent.*" Applicant denied he had falsified his October 1999 SF 86 when he responded negatively to whether he had ever used any illegal drug while possessing a security clearance, and attributed his negative response to oversight (failure to read the question thoroughly).

Applicant does not intend to use any marijuana in the future. He does not knowingly associate with individuals who use marijuana and is engaged to a woman who does not use illegal drugs. Highly regarded for his engineering competency, commitment to mentoring younger engineers, diligence and teamwork, Applicant has earned the respect and confidence of his superiors and coworkers, several of whom have come forward supporting a favorable grant of clearance to him.

## 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. Or. 12968, *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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

### **Drug Involvement**

E2.A8.1.1. The Concern:

E2.A8.1.1.1. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

E2.A8.1.1.2.2. Inhalants and other similar substances.

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition); [\(3\)](#)

E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

E2.A8.1.3. Conditions that could mitigate a security concern include:

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

E2.A8.1.3.2. A demonstrated intent not to abuse any drugs in the future.

### **Personal Conduct**

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.3. 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;

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **Criminal Conduct**

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

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

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

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

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

E2.A10.1.3.2. The crime was an isolated incident.

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the Government established its case with respect to Guideline H, Drug Involvement, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct. While Applicant has successfully mitigated the Drug Involvement concerns by maintaining abstinence from illegal drugs since August 1999 and committing himself to a drug free lifestyle, Personal Conduct and Criminal Conduct concerns persist, as follows:

Applicant smoked marijuana on a weekly basis at social gatherings during academic semesters between mid-October 1992 and May 1994. In addition to purchasing the drug for his personal consumption from others on his college campus, he acted as a conduit or middleman on one occasion, buying an ounce for a friend to give to someone suffering from cancer in 1992 or 1993. Although there is no evidence Applicant smoked marijuana other than when socializing with others, he clearly enjoyed the drug's effects. While he stayed abstinent from illegal drugs during the semesters where he was working full-time as a co-op student, he always returned to smoking once back on campus. Subsequently as a graduate student and then as a young engineer in his first career job, he found associates who shared his recreational enjoyment of marijuana and his use of marijuana continued in these diverse environments until August 1999. Disqualifying conditions E2.A8.1.2.1. *Any drug abuse*, and E2.A8.1.2.2. *Illegal drug possession, including . . . purchase*,



are pertinent to an evaluation of Applicant's current security suitability.

There is no evidence Applicant has used any marijuana since August 1999 when he stopped because he was interested in a position with his current defense contractor employer. While the Directive provides for mitigation when drug use is not recent (*see* mitigating condition E2.A8.1.3.1.), the presence or absence of a certain adjudicative condition is not outcome determinative. Factors such as the circumstances of drug use, its frequency and duration, and the likelihood of recurrence, must be taken into account in assessing whether there is a risk of future illegal drug use. Aggravating the concerns in this case are Applicant's known disregard of the laws against drug use for several years, his use of marijuana while he held a security clearance in 1992/93, and the fact that he managed to find friends who used marijuana and facilitated his continued involvement after each of his personal life/career changes.

As of February 2000, he had no intent to use marijuana while working for his defense contractor employer or while possessing a security clearance. Yet he was still maintaining a friendship with at least one individual known to him to be a frequent user of marijuana. When pressed by the DSS agent during his interview about his long term intent, <sup>(4)</sup> Applicant could not rule out future use on special occasions or when visited by this friend from graduate school (with whom he used marijuana in the past) should he no longer be employed by the defense contractor or have a clearance. That Applicant could conceive of possible circumstances under which he would use marijuana reflects little change in his personal attitude toward the drug. However, three and a half years have passed since his February 2000 interview with no evidence of any illicit substance use. Now more aware of the risks posed to his career by any future marijuana involvement, Applicant is committed to maintaining a drug-free lifestyle whether or not his employer requires it. Neither his fiancé nor the friends with whom he presently socializes use marijuana. He has not seen his friend from graduate school with whom he used marijuana and has lost contact with him. While Applicant purchased marijuana for personal consumption in the past and on one occasion in 1992/93 to assist a friend, he was not engaged in the resale or distribution of marijuana for profit. Mitigating condition E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future* applies in his favor. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. are found for Applicant.

Security significant Personal Conduct, Guideline E concerns are raised when an applicant has not been completely candid with the Government about matters relevant and material to his or her personnel security application and investigation. (*See* DC E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). On his SF 86 signed on October 22, 1999, shortly after he began working for his current employer, Applicant disclosed only his marijuana use from October 13, 1992 to December 31, 1996, when he had continued to smoke marijuana to August 1999. When asked by the DSS agent in February 2000 about his failure to fully disclose his marijuana use on his SF 86, Applicant indicated he had not listed his recent drug involvement because he interpreted the question as requiring only the usage on a consistent and frequent basis. Then confronted by the agent with the specific language of the SF 86 inquiry ["Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance . . ."], Applicant responded he must not have read the question fully, and he denied any intentional falsification of his SF 86. In September 2001, Applicant answered the Government's allegation of deliberate omission of the recent drug use similarly ["*Again, I viewed my use of marijuana at this time as minimal and my focus with regard to this question was on my use between October 13, 1992 and December 1996.*"]. While he acknowledged the incompleteness of his response, he denied deliberate omission ["*I now realize that my response was inadequate and, inadvertently, not a full disclosure.*"].

A good faith mistake or misunderstanding as to what was required in response to the drug inquiry on the SF 86 would not qualify as a deliberate falsification under E2.A5.1.2.2. Applicant is credited with disclosing his use of marijuana during his student days, but his level of education and the fact that he had held a clearance as a co-op student (where he would have been required to file an application for clearance) make it difficult to believe his omission of his then very recent marijuana involvement was inadvertent. The likely scenario is that Applicant deliberately omitted the information from his October 1999 SF 86 because he feared it would negatively impact his employment and/or clearance. The Government cannot allow individuals to choose for themselves the timing and extent of disclosure, and the knowing omission of material information such as illegal substance use raises significant Personal Conduct and Criminal Conduct concerns. The knowing and willful omission of relevant and material information from the Government is a felony offense under Title 18, Section 1001 of the United States Code, so DC E2.A10.1.2.1. *Allegations or admission of*

*criminal conduct, regardless of whether the person was formally charged*, of Guideline J must be considered as well. While Applicant responded negatively to question 28 (use in sensitive positions) on that same SF 86, I am persuaded he did not intentionally falsify his response to that question as he disclosed elsewhere on the application that he had a secret clearance issued to him in September 1991 and had used marijuana 50 times from October 1992 to December 1996.

It is noted Applicant detailed the extent of his marijuana use and purchase when he was interviewed by the DSS agent in February 2000. Applicant argues for the favorable application of MC E2.A5.1.3.3. *The individual made prompt good-faith efforts to correct the falsification before being confronted with the facts*, claiming he volunteered the information up-front without being confronted as he realized it was in his best interest to do so ("*I thought it was in my best interest to let it all out and tell them I had used it after the date that I'd indicated.*" Tr. 102). Tantamount to an admission that he had been less than fully frank about his drug use on his SF 86, Applicant remains unwilling to admit the deliberate falsification when confronted directly. Asked by the agent in February 2000 about the omission of the recent drug use from his October 1999 SF 86, Applicant explained he had interpreted the question as usage on a consistent and frequent basis. After being confronted with the specific language on the SF 86, Applicant indicated he must not have fully read the question. When Applicant responded to the August 2001 SOR, he was willing to admit only to recognizing in hindsight his disclosure was inadequate.

Applicant did not hide any of his past drug use when he completed his December 2002 SF 86, (5) but his rehabilitation is incomplete. Despite his admission to subparagraph 2.a. of the July 2003 SOR alleging he deliberately falsified his 1999 SF 86 by failing to list his post-1996 drug use, he is standing by his explanation that he had focused on his heaviest drug involvement [*"As I informed the Special Agent who interviewed me, I answered question 27 that way (on the October 22, 1999 application) because my use of marijuana ceased to be regular and it became significantly less frequent.*"]. At his hearing, he attempted yet again to discredit his February 2000 admission of possible future marijuana involvement by contending it had been in response to a hypothetical inquiry where he was to assume the legalization of marijuana use. (6) The agent's contemporaneous certified results of interview does not mention the legalization of marijuana, even as an assumption made on Applicant's part in his response to the agent's inquiry as to his future intentions. Given the DoD policy against drug use and its illegality, it is not reasonable that the agent would have asked Applicant to assume marijuana was legal.

While the falsification of one security clearance application more than four years ago could fall within MC E2.A5.1.3.2. *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*, of the Personal Conduct guideline, and MC E2.A10.1.3.1. *The criminal behavior was not recent*, and E2.A10.1.3.2. *The crime was an isolated incident*, of the Criminal Conduct guideline, Applicant continues to exhibit an unacceptable tendency to act in his self-interest. While Applicant has the support of his coworkers, who have found him to be trustworthy and reliable, evidence of excellent work performance is not sufficient to overcome the concerns caused by his failure to be completely frank with the Government. Adverse findings are returned as to subparagraphs 2.a. and 3.a. Subparagraph 2.b. is resolved in his favor for the reasons stated above.

### FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline H: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant



Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: For the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

## **DECISION**

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

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. The Government alleged deliberate falsification of a March 8, 1999, Questionnaire for National Security Positions (QNSP). The security clearance applications submitted in evidence by the Government at the hearing are dated October 1999 and December 2002, and are more recent versions of the application than the older QNSP. Despite this evidence and the dates of Applicant's employment with the defense contractor corroborating an October 1999 (vice March 1999) execution, the Government again alleged falsification of a March 1999 QNSP in its recent July 24, 2003 SOR. Department Counsel did not move to amend the SOR at the hearing, but there is no question Applicant was placed on notice of, and in fact understood, the Government was concerned about some of his responses on his security clearance application completed shortly after his hire by the defense contractor.
3. Under the provisions of 10 U.S.C. 986, any person who is an unlawful user of, or is addicted to, a controlled substances as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.
4. Applicant has consistently maintained that his statements of possible future use of marijuana were in response to inquiry from the agent as to his long term intent if marijuana is legalized. The DSS agent testified he lacked specific recall as to how the conversation evolved with Applicant, but under standard questioning techniques, he would not have asked Applicant his intentions under some hypothetical circumstance such as marijuana use becoming legal. The agent's certified results of interview and his testimony do not mention the legality of drug use as a factor in Applicant's stated intent. What is clear and corroborated by the agent is that Applicant denied any intent to use any illegal drug while possessing a security clearance or while working for his current employer. Even after Applicant was pressed on his future intent, Applicant responded there may be circumstances under which he might use marijuana (with his friend visiting, on special occasions), "if he didn't have that [defense contractor] affiliation or the security clearance." (Tr. 39).
5. Applicant's disclosures must be considered in light of the fact that he had little to lose by revealing his drug use at that point since it was already on record.
6. Applicant first raised the issue of the alleged hypothetical inquiry in response to the August 2001 SOR.