DATE: October 30, 2006

In re:

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

Applicant for Security Clearance

ISCR Case No. 04-05490

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant deliberately falsified two security clearance applications, lied about his illicit substance abuse in a sworn statement, continued to use marijuana after he was granted a clearance, and was convicted of operating under the influence of alcohol (second offense). He now repudiates prior admissions of drug use and claims falsely that after high school he had merely been in the presence of others using marijuana. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on May 31, 2005, detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Applicant answered the SOR on June 24, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on February 2, 2006, with a motion pending from the government to amend the SOR to add under Guideline E and Guideline J allegations concerning deliberate falsification of a March 2000 security clearance application. Applicant filed a response to the new allegations on March 28, 2006.

With the consent of the parties, I convened a hearing on April 20, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Seven government exhibits and one Applicant exhibit were admitted, and testimony was taken from Applicant. DOHA received the hearing transcript (Tr.) on May 3, 2006.

At the hearing, the SOR was amended on motion of the government to add under Guideline E allegations that Applicant deliberately falsified his March 2000 SF 86 by omitting relevant and material drug and alcohol charges (¶ 1.g) and drug use (¶ 1.h), and failed to disclose to his employer or the Department of Defense as of April 19, 2006, that he had been convicted of an October 2004 operating under the influence of alcohol (OUI) offense (¶ 1.i). Also on the government's

motion, Guideline J was amended to allege as criminal conduct the March 2000 SF 86 omissions (¶ 2.a) and the October 2004 OUI (¶ 2.b).[(1)] The record was held open until May 22, 2006, for Applicant to respond to those allegations raised for the first time at the hearing (¶¶ 1.i and 2.b), and for the government to determine whether to further amend the SOR to allege Guideline G, alcohol consumption, following disclosure at the hearing of the October 2004 OUI. On May 16, 2006, Applicant answered SOR ¶¶ 1.i and 2.b, and submitted for inclusion nine additional exhibits. On May 22, 2006, Department Counsel indicated the government had no objection to their admission, and no further amendment to the SOR was necessary. Accordingly, the documents were marked and admitted as Applicant exhibits B-J.

PROCEDURAL ISSUES

On January 26, 2006, the government moved to amend the SOR to allege under Guideline E that Applicant falsified his March 29, 2000 security clearance application (SF 86) by failing to disclose that he had also been charged with illegal possession of marijuana in January 1992, and with transporting alcohol in January 1993 (¶ 1.g), and by failing to report that he had used marijuana on an approximately weekly basis from about June 1992 until 1998, and twice a month through March 2000, and that he had used psilocybin (mushrooms) at least two or three times in July 1994 (¶ 1.h). The government moved to also include proposed personal conduct allegations ¶¶ 1.g and 1.h under Guideline J in a paragraph designated as ¶ 2.b. On March 7, 2006, Applicant was given until April 7, 2006, to respond, or the SOR would be amended and the new allegations considered admitted.

On March 28, 2006, Applicant admitted that he had not disclosed the charges as alleged in ¶ 1.g, but denied it was deliberate. Applicant denied ¶¶ 1.h and 2.b.

At the hearing convened on April 20, 2006, I granted the motion to amend. Applicant clarified his answers of March 28, 2006, and denied any intent to falsify material facts on his March 29, 2000 SF 86. Before opening statement, the government moved to further amend the SOR (second amendment) to include under Guideline J ¶¶ 1.g and 1.h in ¶ 2.a by substituting the language of ¶ 2.b for the language of ¶ 2.a, and to delete ¶ 2.b, as the language of ¶¶ 2.a and 2.b would be identical if the motion was granted. Department Counsel explained he had intended to amend the language of ¶ 2.a rather than add a new ¶ 2.b when he moved to amend in January 2006. Applicant did not object and the motion was granted.

Before closing argument, the government moved to add two new allegations to the SOR pursuant to ¶E3.1.17 of the Directive, based on Applicant's testimony that he had been convicted of a previously undisclosed October 2004 operating under the influence of alcohol (OUI) offense.[(2)] Applicant had no objection. Accordingly, the SOR was amended to add ¶ 2.b under Guideline J, alleging Applicant had been arrested and convicted of an October 2004 OUI offense and to add ¶ 1.i under Guideline E, alleging Applicant had not disclosed the offense to the Department of Defense or his employer as of April 19, 2006. Department Counsel provided Applicant with written notice of the new allegations ¶¶ 1.i and 2.b on April 24, 2006. In a response dated May 16, 2006, Applicant described the OUI as an "isolated mistake on a very abnormal day" and attributed his failure to disclose the OUI to misinformation and lack of knowledge about Department of Defense policies and procedures.

FINDINGS OF FACT

In the SOR as amended, DOHA alleges under Guideline E that Applicant concealed material facts about his illegal drug involvement and a January 1993 arrest for minor transporting alcohol when he completed his August 1998 (¶¶ 1.a and 1.b) March 2000 (¶¶ 1.g and 1.h) security clearance applications; deliberately misrepresented his drug use in a November 1998 sworn statement (¶¶ 1.c and 1.d); failed to report an October 2004 arrest and conviction of OUI until his April 20, 2006, security clearance hearing (¶ 1.i); and continued to use marijuana to at least June 2000 after he had been granted a secret-level security clearance (¶ 1.f) and told a Department of Defense investigator that he did not intend to use any illegal drugs in the future (¶ 1.e). Under Guideline J, Applicant was alleged to have violated 18 U.S.C. § 1001 by deliberately misrepresenting material facts on his clearance applications and in his sworn statement (¶ 2.a), and to have committed criminal conduct by being convicted of the October 2004 OUI (¶ 2.b).

In his responses to the amended SOR, Applicant denied any intentional concealment. He averred he misread the alcohol and drug offense question on the security clearance applications as pertaining only to convictions, so he did not report

the marijuana possession charge or the January 1993 alcohol offense due to oversight. He maintained he had used marijuana only about seven times as a high school senior from December 1991 to April 1992, had not known mescaline was an illegal drug, and had not knowingly used psilocybin, so he had not lied about his drug use on his clearance applications or in his sworn statement. While he had continued to socialize with friends who used marijuana in his presence to June 2000, he claimed to have not used marijuana himself after being granted a clearance. Applicant admitted the October 2004 OUI, for which he was placed on one year probation. While he acknowledged he had not disclosed the offense before his hearing, he denied knowing he needed to inform the Department of Defense or his employer about the offense.

After a thorough review of the pleadings and the evidence of record, including the hearing transcript, I make the following findings of fact:

Applicant is a 32-year-old, single male who began working in July 1998 as a member of the service staff at a research and development laboratory engaged in defense work. He was granted a secret-level security clearance in February 2000. He seeks to retain that clearance for his duties as a senior technician.

A social drinker since the latter part of high school, Applicant began to use marijuana as well during his senior year. He tried marijuana initially out of curiosity in 1991, but enjoyed the effects so continued to use the drug on a weekly basis. He bought small quantities of marijuana, at $30 for a bag, for his personal consumption and to share with friends. Applicant also tried mescaline ("microdots") once in high school.

After drinking beer at a party with friends in January 1992, Applicant was observed by the police to be weaving. He was arrested for operating under the influence (OUI) after failing field sobriety tests. His passengers, who also appeared to be intoxicated, were taken into protective custody. A breathalyzer taken at the station confirmed Applicant was legally intoxicated (blood alcohol content .14%). A charge of possession of Class D substance (marijuana) was added after the police found a pipe with marijuana residue in his coat pocket. In February 1992, Applicant admitted to sufficient facts for a guilty finding to OUI and failure to stay in marked lanes. He was sentenced for the OUI to loss of license, fines and costs, placed on probation for one year, and ordered to complete an alcohol awareness course. He was adjudicated responsible for the marked lanes violation and the charge was continued to August 1992 when it was filed. In late May 1992, Applicant admitted to sufficient facts on the drug charge and it was continued without a finding for six months to November 1992 on payment of $50 costs.

Following his graduation from high school in June 1992, Applicant continued to smoke marijuana approximately weekly until 1998. He also used psilocybin on two or three occasions during a concert in July 1994.

In January 1993, Applicant was arrested for transporting alcoholic beverages as a minor after he and his two passengers were caught by the police with a 12-pack of beer they had obtained from an acquaintance. His two passengers were also arrested, one for minor in possession of alcohol and the other for minor in possession of alcohol as well as possession of a Class D substance (marijuana). Applicant pleaded not guilty, and in October 1993, the charge was dismissed at the request of the prosecution on Applicant's payment of $120 court costs.

In July 1998, Applicant went to work for his present employer. His usage of marijuana decreased from weekly to about two times monthly when visiting his friends. He continued to smoke marijuana socially to June 2000, after he was granted a secret-level clearance in February 2000 and knowing it was against Department of Defense policy.

On August 17, 1998, Applicant executed a Questionnaire for National Security Positions (QNSP), Standard Form 86, in application for a clearance. In response to whether he had ever been charged with or convicted of any offenses related to alcohol or drugs (question 23), Applicant listed his January 1992 OUI offense. He failed to indicate that he had also been charged on that occasion with illegal drug possession and that he had been charged in January 1993 with transporting alcohol because he understood the charges had been continued without a finding, and he misread the question as requiring the listing of convictions only. Applicant responded affirmatively to question 24 concerning use of any illegal drug in the last seven years, but deliberately under reported his involvement as limited to using marijuana an estimated seven times from December 1991 to April 1992.

On November 18, 1998, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his

adverse legal involvement, and his usage of illegal drugs and alcohol. As reflected in a statement he signed and attested to its accuracy, he detailed the January 1992 and January 1993 arrests, and attributed the omission of the January 1993 charge from his QNSP to "oversight." As for his illegal drug use, Applicant related that following his initial experimentation with marijuana in December 1991, he continued to smoke the drug on a weekly basis until a last use in approximately April 1992. He claimed he decided to refrain from future usage shortly after his OUI arrest:

I came to realize marijuana was illegal and ultimately bad for my health. Although some of my friends continued to smoke marijuana socially, I did not feel pressured to do so and refrained without difficulty . . . I have not used or experimented with any other illegal or controlled substance, and I do not intend to use illegal/controlled substances in the future. I understand that illegal drug use is inconsistent with holding a U.S. government security clearance, and I fully intend to comply with this policy.

(Ex. 2) Concerning his alcohol use, Applicant explained he had matured since his two arrests and was drinking on average four beers per week.

On or about February 15, 2000, Applicant was granted a secret-level clearance. On March 29, 2000, he executed another QNSP. Applicant updated his educational information and reported that in September 1999, he had commenced studies at a university nearby. He disclosed previously unreported foreign travel to Canada in 1993 and 1996. As he had on his August 1998 QNSP, he listed only the 1992 OUI arrest. Concerning his use of illegal drugs, he again indicated that he used marijuana an estimated seven times, but that it occurred over a longer period (from January 1991 to April 1992) than he had previously reported on his August 1998 QNSP.

Applicant was subsequently interviewed in 2000 by a government investigator in conjunction with a clearance upgrade. [(3)] Confronted with the discrepancies about his drug use, Applicant admitted he had been previously untruthful about his drug involvement. Following his discussion with the interviewer, Applicant realized that in order to keep his job, he had to stop using marijuana and other controlled substances. He denied any use of marijuana since June 2000 or any intent of future involvement with illegal drugs.

On February 13, 2003, Applicant was reinterviewed by the DSS agent who had conducted his subject interview in November 1998. Applicant signed and swore to the truth of a written statement in which he related three times weekly use of marijuana as a high school student beginning in December 1991, approximately weekly use after graduation until 1998, and twice monthly use thereafter until June 2000. He acknowledged he continued to smoke marijuana while he held a clearance and knowing it was against Department of Defense policy. He also related he had experimented with mescaline once in high school and "mushrooms" (psilocybin) at a concert in approximately July 1994. He admitted to the agent he had been untruthful during previous interviews, as he "just did not consider [his] drug use to be a 'big issue'," but that after being confronted by another investigator in an update of his clearance, he realized he had "to grow up and stop using illegal substances altogether." Applicant denied any marijuana use since June 2000 and any intent to use marijuana or other illegal drug in the future. He expressed a willingness to submit to a polygraph to attest to his abstinence from drugs since June 2000.

On October 31, 2004, Applicant was stopped by the police for having a headlight out on his vehicle. He and his passenger had been drinking earlier that day and the officer detected signs of intoxication about Applicant (bloodshot and glassy eyes, strong odor of alcohol in the vehicle and on his breath, slurred speech). Applicant failed field sobriety tests, and was arrested for OUI, second offense. He was also cited for defective equipment. He repeatedly told the police he had consumed only a couple of beers, but a breathalyzer test registered his blood alcohol content at .17%. On November 23, 2004, he pleaded guilty to OUI, second offense, and was sentenced to 45 days loss of license, one year probation, a 24-day driver alcohol education program, a one-day "brains-at-risk" seminar, and fines and costs totaling $1,380. He was adjudged responsible of the defective equipment violation. Applicant completed the terms of his sentence and was discharged from probation on November 22, 2005. Applicant has not operated a vehicle after drinking since his October 2004 arrest. Applicant did not inform his employer or the Department of Defense that he had been convicted of OUI until he disclosed the OUI at his security clearance hearing.

In the response to the government's allegations of May 31, 2005, that he had misrepresented his illegal drug use on his August 1998 QNSP and in his November 1998 signed, sworn statement, Applicant denied any use of marijuana beyond

the estimated seven times from December 1991 to April 1992, and claimed to have not knowingly engaged in abuse of other drugs ("In July 1994, a stranger approached me at a gathering and asked if I would like a sip of his drink. After I took a couple sips of his drink, he then mentioned it was "mushroom tea."; "I thought [mescaline] was an over-the-counter prescription of some sort."). He claimed not to have told the investigator in 2000 that he had used drugs after 1992, but that he had continued to socialize on a regular basis with friends who smoke marijuana in his presence.

At his April 20, 2006 hearing, Applicant revealed that he had been arrested and convicted of OUI since his last subject interview, but he continued to deny any use of marijuana after April 1992, or the knowing abuse of psilocybin or mescaline. Applicant testified he had admitted to the government investigator in 2000 that he had friends who smoke marijuana in his presence, and "the investigator thought that was close enough to be considered drug activity." (Tr. 55-56) Confronted on cross-examination with his February 2003 signed, sworn statement which indicates marijuana use by him to June 2000, Applicant responded:

I didn't write this one up. I barely even read it. I thought it was ridiculous, like I stated earlier, that--I didn't know that two other ones I stated were drugs, and if they were--. And as for the marijuana, I don't believe that being in the same room with somebody could be considered drug activity.

(Tr. 90) When asked specifically if the statements therein, such as "I continued smoking marijuana from July 1998 until my last usage of marijuana in June 2000," were untrue, Applicant responded, "I was told, or I was assuming that I was considered a user if I was visiting room [sic] and was in the same room as them, as they were smoking." (Tr. 91)

As of May 16, 2006, Applicant continued to maintain his denial of personal drug use after high school. Asked to respond to the concerns raised by his October 2004 OUI and failure to disclose the offense before his hearing, Applicant took the opportunity to "clarify" the record as to his understanding of prohibited drug activity. He indicated that he did not know until the interview in 2000 that the presence of marijuana was against DOD policy, and he did not knowingly attempt to conceal or fail to disclose this information.

Applicant has been an outstanding worker for his employer. Because of the high quality of his work, his ability to work with limited supervision, and his enthusiasm for learning new skills, Applicant has received several merit increases and promotions.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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 (App. Bd. Dec. 19, 2002).

The Adjudicative Guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline E--Personal Conduct

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.

When he initially applied for a security clearance in August 1998, Applicant disclosed his January 1992 OUI offense. While he did not report the January 1993 minor transporting alcohol offense or that he had also been charged with drug possession in January 1992, it was because he misread question 23.d on the QNSP as pertaining only to convictions. Having listed a more serious OUI, Applicant would have had little to gain by omitting the 1993 alcohol-related charge. Similarly, he reported drug use between December 1991 and April 1992 on his August 1998 QNSP, and the possession charge was within that time frame. I find for Applicant as to ¶ 1.a. of the amended SOR, as the omissions were due to an error in reading the question.

However, on that same QNSP Applicant knowingly and willfully concealed that he had used psilocybin in 1994, and that his marijuana use was ongoing. Disqualifying condition (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 eligibility or trustworthiness, or award fiduciary responsibilities*, is raised because of his misrepresentation of his drug use on his August 1998 QNSP.

When provided the opportunity to correct the record during a November 1998 DSS interview, Applicant detailed his arrests, admitting that he had possession of a pipe containing marijuana residue when he was arrested in January 1992. However, he falsely denied any use of marijuana after about April 1992 or any use or experimentation with any other illicit drug. DC ¶ E2.A5.1.2.3. *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*, must also be considered.

By the time Applicant completed his March 2000 QNSP in upgrade for his clearance, he had been asked by a DSS agent about the omission of his 1993 offense from his clearance application. Although he disclosed information of foreign travel that he should have reported earlier, he made no effort to list that alcohol offense or the 1992 drug charge in response to question 23.d ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"], and falsely reported that he had used marijuana only on seven occasions between January 1991 and April 1992. Even if the reference to January rather than December 1991 was due to typographical error, he did not disclose that he had continued using marijuana after high school twice per month. His intentional omissions not only fall under DC ¶ E2.A5.1.2.2., but are part of a pattern of dishonesty that surfaced initially with his QNSP falsification in August 1998 (*see* DC ¶ E2.A5.1.2.5. *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement between the individual and the agency*.)

Furthermore, Applicant exercised poor judgment within the overall security concerns underlying Guideline E when he used marijuana after he had sworn to the Department of Defense that he had no intent to use marijuana in the future (¶ 1.e) and after he had been granted his secret-level clearance in February 2000 (¶ 1.f). Applicant abused marijuana knowing it was against DoD policy. DC ¶ E2.A5.1.2.5 applies. ¶ E2.A5.1.2.6. *Association with persons involved in criminal activity* must also be considered since he used the marijuana with friends.

However, alleged government concerns because of his failure to fulfill his obligations as a cleared employee and report his October 2004 OUI conviction (¶ 1.i) are not sufficiently established where Applicant denied knowledge of his responsibility to report adverse information not related to security violations, and there is no evidence he was informed of his reporting obligations by his employer. When asked on cross-examination whether he reported his OUI to security officials at work, Applicant responded, "I heard that you were only, it would only be an issue if you went to trial and were convicted, that's what I heard at my class." (Tr. 97) He later clarified that he had been provided this information in his drunk driving class (Tr. 100). In response to the new SOR allegation ¶ 1.i, Applicant indicated on May 16, 2006, "I believed I only needed to contact the security office if there were a problem involving incidents concerning illegal or unauthorized access to classified or sensitive information, a question about controlling and safeguarding classified information or even incidents concerning possibly espionage or blackmail." The government did not prove that Applicant had been adequately apprized by his employer of his reporting requirements as a cleared employee.

Applicant's unprompted disclosure of the OUI at his April 2006 hearing weighed heavily in his favor in finding him credible on this issue despite the concerns about his repeated falsifications.

Of the Guideline E mitigating conditions (MC), only ¶ E2.A5.1.3.7. *Association with persons involved in criminal activities has ceased*, is potentially applicable. There is no evidence Applicant is continuing to socialize with the friends with whom he used the marijuana to June 2000. As for the falsifications, although Applicant eventually admitted to a government investigator in about June 2000 that he had continued to use marijuana until about one week before his interview, and had used psilocybin in July 1994 and mescaline in high school, the disclosures were in the context of a confrontational interview, and were certainly not prompt rectifications of his 1998 falsifications. Accordingly, he cannot avail himself of ¶ E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*. Furthermore, his recent repudiation of his February 2003 sworn statement undermines the limited evidence of reform seen in Exhibit 4.

Applicant has claimed since June 2005 when he first answered the SOR that his error was in failing to distance himself from friends who used marijuana in his presence, that any prior admissions of drug use by him after high school are due to equating this with use. Several factors undermine Applicant's credibility on this issue. First and foremost, it is patently incredible that Applicant would admit he used marijuana while he held a clearance and knowing it was against DoD policy if he did not smoke the drug himself. Given his expressed enjoyment of marijuana--which he has not repudiated--it is unlikely he would have completely refrained from using marijuana when others in his social circle were using it in his presence at least twice monthly. It is also noted that the sworn statement chronicling his abuse was taken during a subject interview in 2003, and not in 2000 when the admissions of drug use first surfaced. There is no evidence that Applicant raised in 2003 the issue of whether second-hand inhalation can properly be equated to use. Nor is there any evidence of any concern expressed by Applicant in 2003 that the statements he made in 2000 had been misconstrued. To the contrary, his February 2003 sworn statement refers specifically to drug use by him and not to friends smoking around him. Moreover, the statement also contains admissions by him that he had not been completely truthful about his drug use during his past interviews. Even if he didn't type the statement himself, he signed it. While he now claims he "read it real fast and signed it" (Tr. 94), he took the time to write in his own hand, "I have nothing further to add to this statement." (Ex. 4) In the face of this evidence, Applicant's uncorroborated claims that he did not use marijuana after April 1992 are not persuasive.

Similarly, his denials of any knowing use of psilocybin or mescaline are not credible. In his February 2003 statement, he indicated he tried "'microdots' (mescaline) on one occasion in high school, and 'mushrooms' on two or three occasions during a concert in approximately Jul 94." His apparent use of the slang terms for the drugs raises a reasonable inference that he knew they were illegal substances rather than over the counter drugs. It was not until after the SOR was issued that he claimed to have not known that the mescaline was illegal or to have not knowingly used the hallucinogenic mushrooms before he ingested them. The circumstances under which he now claims he used the psilocybin, in tea passed to him by a stranger, are not typical of a concert venue.

Guideline J-Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. His knowing, willful false statements about his illegal drug involvement to the Department of Defense on his August 1998 and March 2000 QNSP forms and in a November 1998 sworn statement violate 18 U.S.C. § 1001,[(4)] and thus constitute felonious conduct. Applicant's October 2004 OUI (¶ 2.b) was his second drunk driving offense. His criminal conduct raises security concerns under Guideline J, DC ¶E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*.

Applicant's October 2004 drunk driving is recent and not isolated.[(5)] While he exhibits good judgment in no longer driving after drinking, it cannot be viewed in isolation from the criminal false statements that continue to cast considerable doubt about his security worthiness. There is no clear evidence of successful rehabilitation (*see* ¶ E2.A10.1.3.6) where Applicant repudiates his prior admissions of drug use with explanations that belie common sense. As recently as May 16, 2006, Applicant persisted in the fallacy that he was guilty only of failing to distance himself from others that used marijuana:

I would also like to clarify that after the interview in November 1998 with an investigator, I only knew that personal illegal marijuana use, trafficking, and cultivating marijuana was considered drug activity and inconsistent with holding a U.S. government security clearance. I did not consider illegal marijuana use of others around me to be adversarial on my

ability to maintain a security clearance. After the interview with an investigator in 2000, did I only find out that the presence of marijuana around me was considered drug activity and inconsistent with holding a U.S. government security clearance.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. The security risks presented by Applicant's drunk driving, his marijuana involvement in knowing disregard of DoD policy against drug use, and his false statements on two security clearance applications, in a sworn statement, in his answers to the SOR and recent amendments, and at his hearing (*see* ¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*), must be evaluated in the context of the "whole person." Applicant's performance evaluations show he has exercised good judgment and reliability on the job. At the same time, the government must be assured that those persons who are granted access can be counted on to act solely in the national interest. Applicant has yet to show that he understands and appreciates the importance of his obligation to be fully candid at all times (*see* ¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Under the totality of the facts and circumstances presented, I am unable to conclude that it is clearly consistent with the national interest to grant or renew his access to classified information.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR, as amended:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all of the circumstances 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. *See* Procedural Issues, *supra*.

2. Applicant inadvertently erred as to the arresting agency when he first disclosed the offense. The government relied solely on Applicant's admission when it moved to amend to add ¶ 2.b. The correct jurisdiction is noted in Exhibit E.

3. The exact date of this interview is not of record. Given the facts of record, it was likely in June 2000, about a week after his last use of marijuana of record. (*See* Ex. 4; Tr. 101)

4. 18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

5. *See* ISCR Case No. 94-1159 (App. Bd. Dec. 4, 1995). While uncharged conduct cannot be the basis for an adverse decision, it is relevant to determining whether a particular policy factor applies.