

KEYWORD: Criminal Conduct; Drugs; Alcohol; Personal Conduct

DIGEST: Applicant has abused alcohol on and off since 1976 and was caught drunk driving three times. He smoked marijuana in Fall 1992 and again from August 2001 until January 2002, including after he was arrested for operating under the influence and possession of marijuana. Drug involvement and drug-related criminal conduct concerns are mitigated where he has not used any marijuana since early 2002 and intends no future involvement. Despite his abstinence from alcohol since April 2004, there remains an unacceptable risk of future alcohol abuse, given his relapse history and the absence of a viable support network. Personal conduct concerns persist where he minimized the extent of his marijuana involvement on his March 2003 security clearance application and in a April 2004 sworn statement. Clearance is denied.

CASENO: 04-07469.h1

DATE: 05/16/2006

DATE: May 16, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07469

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant has abused alcohol on and off since 1976 and was caught drunk driving three times. He smoked marijuana in Fall 1992 and again from August 2001 until January 2002, including after he was arrested for operating under the influence and possession of marijuana. Drug involvement and drug-related criminal conduct concerns are mitigated where he has not used any marijuana since early 2002 and intends no future involvement. Despite his abstinence from alcohol since April 2004, there remains an unacceptable risk of future alcohol abuse, given his relapse history and the absence of a viable support network. Personal conduct concerns persist where he minimized the extent of his marijuana involvement on his March 2003 security clearance application and in a April 2004 sworn statement. Clearance is denied.

STATEMENT OF THE CASE

On April 29, 2005, 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 determine whether his clearance should be granted, continued, denied, or revoked. The SOR was based on criminal conduct (Guideline J), drug involvement (Guideline H), alcohol consumption (Guideline G), and personal conduct (Guideline E).

On May 11, 2005, Applicant responded to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on September 6, 2005. On September 19, 2005, I scheduled a hearing for October 27, 2005. At the hearing, three government exhibits and two Applicant exhibits (Exhibit A over Department Counsel's objection) were admitted and testimony was taken from Applicant, as reflected in a transcript received on November 11, 2005. The

record was held open until November 10, 2005, for the government to submit the original of Applicant's security clearance application executed in or about arch 2003. No documentation was received by the due date.

FINDINGS OF FACT

In the SOR, the government alleged under Guidelines J and H that Applicant was convicted of misdemeanor possession of marijuana and operating under the influence (OUI) in October 2001, and he used marijuana from August/September 2001 to at least January 2002, purchasing it in August or September 2001. Under Guideline G, Applicant was alleged to have consumed alcohol at times to excess from about 1976 to at least October 2001; to have attended an alcohol education program after a 1988 DWI conviction; to have received inpatient treatment in November 1992 for excessive use of alcohol; to have been arrested in October 2001 for OUI; to have been evaluated in February 2002 with outpatient therapy recommended for "a progressive history of substance dependence;" to have received counseling with a licensed professional counselor in November 2002; to have consumed alcohol on a daily basis from at least April 2002 to at least April 2004 despite his prior counseling; and to have an admitted "weakness for drinking." Applicant was alleged under personal conduct to have deliberately falsified his March 2003 security clearance application for reporting that he used marijuana only a few times in October 2001 and denying any purchase of illegal drugs, and to have falsified material facts in an April 2004 sworn statement by denying any marijuana use since October 2001.

In his answer, Applicant admitted his arrest in October 2001, correcting the location. He also acknowledged he used marijuana between August or September 2001 and his arrest in October 2001, and that he purchased it in August or September 2001. Applicant denied any use of marijuana since his arrest. He admitted the Guideline G allegations, correcting the record as to the location of his alcohol education sessions in 1988. Applicant denied any intentional falsification of his SF 86 or his sworn statement. Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the evidence of record, I make the following additional findings:

Applicant, 52 years of age, has been employed by the same defense contractor since May 1973, except during strikes in 1975 and 1988. He held a secret security clearance from on or before May 1979 to February 1987 when it was administratively downgraded to the confidential level, but regained his secret clearance in about 2001. He requires a secret clearance for his duties as a first class service engineer (pipefitter).

Applicant tried marijuana a couple of times in 1972, but he liked alcohol better. One year out of high school, he started working for his present employer in ay 1973. That November, the same month he turned 20, he married his first wife. They had a son in October 1974, and then divorced in April 1976. Applicant and his son moved in with his parents, who took primary responsibility for caring for their grandson. Applicant began to socialize with his friends in bars and to play baseball "beer games." The losing team was required to pay for a keg, and Applicant drank beer with his teammates. He drank more frequently as the years went on with consequent legal difficulties.

Sometime in the early 1980s, his car slid off the road and hit a tree. He had been drinking before the accident, and the state police arrested him for drunk driving. Applicant was placed in a diversion program where he was required to attend an alcohol education program. He completed the sessions, and the charge was dismissed after one year.

Following his arrest, Applicant abstained from alcohol for 12 to 18 months before resuming drinking because he thought he could handle it. In November 1984, Applicant married his second wife, and they had two children, a son in May 1986 and a daughter in February 1989.

After drinking four or five beers and three shots of liquor at a bar one night in 1988, Applicant hit a pole en route home. Off duty ambulance workers stopped to help him and told him to remain there, but Applicant drove off. He was arrested at his home and charged with driving while intoxicated. He was sentenced to six months in jail, suspended after 48 hours served, fined \$750 plus court costs, one year suspension of his operator's license, one year probation, and ten sessions of group counseling. Applicant stopped drinking for about a year and a half after his arrest.

In about December 1990, Applicant and his second wife divorced. Applicant, who sued for custody of their two children, ended up calling in and not reporting in to work on several Mondays because his ex-wife was not at home when he brought back their children. He eventually coped with the stress by drinking. By late summer/early Fall 1992, Applicant was drinking "White Russians," a six-pack or more of beer, or a pint of brandy at home on a daily basis. He also smoked marijuana with his brother about a dozen times in October 1992. With his employer expressing concerns about his lost time, and facing potential disciplinary action, Applicant voluntarily admitted himself to a 28-day inpatient alcohol rehabilitation program in November 1992, where he was introduced to Alcoholics Anonymous (AA). After his discharge, he continued with AA for about two years, attending one meeting weekly, sometimes two. He did not obtain a sponsor in AA but maintained abstinence for about eight months.

In January 1993, Applicant met his current spouse, who has three children of her own. While on a date with her that summer, Applicant decided he could handle drinking "one or two" alcoholic beverages. Two to three times per month thereafter, Applicant consumed one or two drinks when out to dinner. They wed in May 1999.

In 2000, Applicant was out of work due to an injury. Over the next 18 months or so, he received workmen's compensation payments of \$1,282 biweekly. In August 2001, attempting to refinance the mortgage on his home, Applicant learned that his spouse owed several thousand dollars in delinquent credit card and income tax debt. Applicant paid off her debt, but he began to drink more often due to financial pressures. On occasion Applicant left work early to have a couple of alcohol drinks, and he often walked from his home to a nearby social club where he consumed alcohol. By October 2001, he was drinking almost every day. Applicant also smoked marijuana on about 10 or 12 occasions from late August 2001 to October 2001. On one occasion in August or September 2001, he gave his brother \$20 for marijuana his brother had provided him as he wanted to pay him back.

Scheduled to work second shift for his employer in mid-October 2001, Applicant stopped for a couple of drinks before his shift. After he consumed seven or eight "White Russians" in the bar, he decided not to go to work. An acquaintance with whom he had been drinking asked him if he had marijuana on him, and they went outside to smoke the drug. Applicant drove his truck to a private parking lot where local police on patrol approached and ordered him to remain. Applicant left the lot and was arrested for operating under the influence. Applicant had a small amount of marijuana and a small pipe used to smoke marijuana on his person, and charges of possession of marijuana and possession of drug paraphernalia were added. Applicant pleaded guilty to OUI and was sentenced to eight months in jail, all but 48 hours suspended, one year probation, fines and costs totaling about \$778, and loss of license for one year. He was also convicted of misdemeanor marijuana possession and fined \$85. The drug paraphernalia charge was nolle prosequi.

Applicant stopped drinking alcohol for only a couple of months after his arrest in October 2001. On February 6, 2002, Applicant was evaluated by a licensed alcohol and drug counselor at the referral of adult probation. Applicant reported a latest use of alcohol on February 3, 2002, and of marijuana in January 2002. He acknowledged employment, relationship, and financial problems due to alcohol, but in the opinion of the evaluating counselor, Applicant did not see himself as dependent on, or as an abuser of, alcohol. The counselor informed Applicant he was alcohol dependent, and recommended outpatient substance abuse therapy with a warning that any future alcohol use would require him to undergo residential treatment. Applicant did not pursue counseling at that time. He maintains he was unaware of the requirement to do so. In April 2002, Applicant's father committed suicide. Applicant resumed drinking alcohol, initially a couple a day or every other day, but eventually "pretty much every day."

Sometime before November 2002, Applicant was requested by his employer to complete a security clearance application (SF 86) in update of his clearance. Applicant took about a month to complete the form before he handed it in to his employer, who entered his responses onto an SF 86 to be submitted electronically to the government. In response to question 24 (any charges or convictions related to alcohol or drugs), Applicant disclosed his October 2001 OUI and possession of marijuana convictions. Applicant answered question 27 (any illegal drug use in the last 7 years) also affirmatively, but indicated marijuana use "ONCE" in October 2001. Applicant reported in response to question 28 that he had used marijuana eight times from October 1992 to November 1992 while in a sensitive position (*i.e.*, while possessing a security clearance). He answered "NO" to question 29 (any illegal drug activity, including purchase within the preceding seven years), as he did not consider giving his brother \$20 once for marijuana to be a purchase of the drug. Applicant also answered "NO" to his use of alcohol leading to any treatment or counseling in the last 7 years (question 30).

In about November 2002, Applicant was informed that a warrant was going to be issued for his arrest for failure to fulfill the counseling requirement of his probation. Applicant contacted adult probation, and was referred to a local therapist. He attended individual counseling once a week for eight weeks starting in late November 2002. Their sessions focused on the issues that led Applicant to drink. Applicant abstained from alcohol during this counseling but soon relapsed into drinking. He drank "off and on" for the next two years, primarily in his garage where he kept beer in a refrigerator during the summer months. He consumed brandy in the winter. On occasion, he also drank mixed drinks when out to dinner.

In March 2003, Applicant reviewed the SF 86 prepared for his signature from the information he had previously

provided. Before signing the form on March 31, 2003, Applicant corrected his SF 86 to indicate in response to question 30 that he had been in counseling for alcohol since late November 2002 with a licensed professional counselor. He also changed his response to question 27 to indicate that he had used marijuana a "few times" rather than once in October 2001. Applicant did not disclose that he used marijuana in the August/September 2001 time frame because he was worried about his job (*see* Tr. 114).

From about April 2003 to April 2004, Applicant consumed alcohol about 12 times per month. On April 2, 2004, he was interviewed by a Defense Security Service (DSS) special agent about his alcohol consumption, illegal drug involvement, arrests, and failure to list his first two drunk driving offenses on his SF 86. As reflected in a signed sworn statement prepared with the agent's assistance, Applicant discussed his abuse of alcohol since 1976, describing his current consumption as follows:

I have stopped hanging out in bars, but I still drink about a dozen times a month. I like to drink Polish Brandy in the winter and beer in the summer. I am an alcoholic. I do not believe I am a hard core alcoholic but I admit to having a weakness for drinking. I don't expect to drink any more than I do now. The last time I was intoxicated was when I was arrested in October 2001.

As for his use of marijuana, Applicant admitted that he tried it a couple of times when he was 19, smoked it "maybe a dozen times" with his brother in October 1992, and refrained from any further use until August or September 2001, when he discovered his spouse had outstanding debt. He indicated he smoked marijuana "maybe 10 to 12 times from then until [he] was arrested in October 2001," and had not used it since. Applicant denied any intent to use marijuana in the future. After being advised by the agent that the payment of money for marijuana constituted a purchase, Applicant admitted buying an eighth of an ounce from his brother in August or September 2001. As for his omission of the drunk driving offenses from his SF 86, Applicant maintained he was "sure" he had listed the 1988 offense, but that he had omitted the earlier charge because it had been erased from his record.

A few days after his DSS interview, Applicant checked himself into the alcohol rehabilitation facility where he had been treated in 1992. He was concerned he might lose his job and realized that he was drinking too much. Applicant underwent five days of detoxification before he was brought over to an affiliated group facility. Applicant did not think living in a group home for addicts was for him, and he had himself discharged to pursue counseling on his own. Applicant contacted his employer's EAP and had eight sessions of counseling over the next three months.

There is no evidence Applicant has consumed alcohol since the weekend before he checked into the rehabilitation facility in April 2004, but he had beer in a refrigerator in his house in October 2005 even as his spouse does not drink alcohol. He had purchased the beer in mid-August 2005 for a family gathering. He is not involved in AA as he does not think it necessary ("I know all about alcoholism. I've learned everything there is to know about it." Tr. 72). Applicant would consider resuming an AA affiliation in the future if he needs it.

Applicant denies any use of illegal drugs since his arrest in October 2001 and any intent to use marijuana in the future. The record evidence substantiates a last use of marijuana in January 2002. Applicant reported to the substance abuse counselor in February 2002 that he had used cannabis "this past January" (*see* Ex. 3).

Applicant's supervisor, who has known him since May 1973, considers Applicant a responsible and conscientious employee. Applicant is one of two employees in his department to have completed a state certification for backflow device testing, and he is regarded as an asset.

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 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 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.

After considering the evidence of record, the following adjudicative guidelines are pertinent to an evaluation of Applicant's security suitability:

Alcohol Consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. (¶ E2.A7.1.1)

Drug Involvement. 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.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1.)

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. (¶ E2.A5.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the government established its case with respect to Guideline G, alcohol consumption, Guideline H, drug involvement, Guideline J, criminal conduct, and Guideline E, personal conduct.

While his involvement with marijuana is not condoned, and falls within Guideline H disqualifying conditions (DC) ¶ E2.A8.1.2.1. *Any drug abuse*, and ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, and Guideline J DCs ¶ 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*, it does not now warrant revocation of his clearance. Alcohol has been his drug of choice. He experimented with marijuana in high school, and on limited occasions since, confined to October 1992 and the August 2001 to January 2002 time frames, when he was actively abusing alcohol. While the government raises legitimate concerns about Applicant using marijuana with his brother and while he held a clearance, there is no evidence Applicant has used any marijuana or other illegal drug since January 2002 and he intends no future involvement. Notwithstanding the negative inferences for Applicant's credibility because of his failure to be fully candid with the government about the extent of his marijuana use (*see* Personal Conduct, *infra*), there is no evidence of recent behavior on his part that would support an inference of ongoing drug use or that he continues to place himself in situations where he risks relapse. Acknowledging the nine-year-time span between his use of marijuana in 1992 and 2001, his present abstinence from illegal drugs of less than four years does not alone guarantee against recurrence. The possibility of him using marijuana should he again abuse alcohol must also be considered. However, Applicant did not smoke marijuana during his latest bout with excessive drinking from April 2002 to April 2004. Mitigating conditions (MC) ¶ E2.A8.1.3.1. *The drug involvement was not recent* and ¶ E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future*, under Guideline H, and under Guideline J, ¶ E2.A10.1.3.1. *The criminal behavior was not recent*, apply. SOR ¶¶ 1.b., 1.c., 2.a., 2.b., and 2.c., are resolved in his favor.

Applicant has a heavier burden of overcoming the security concerns caused by his on and off abuse of alcohol from about 1976 to April 2004. He began drinking with friends at bars and after baseball games following his first divorce and committed two drunk driving offenses in the 1980s. On the dissolution of his second marriage and ensuing custody battle in the 1991/92 time frame, his drinking escalated to daily. Facing potential disciplinary action at work for lost time, he completed a 28-day inpatient rehabilitation program. Yet, despite an affiliation with AA that lasted two years, he resumed drinking eight months after his discharge from the program. While he managed to control his drinking for several years, he drank heavily over the August 2001/October 2001 time frame, culminating in his third drunk driving offense that October. Under Guideline G, DCs ¶ E2.A7.1.2.1. *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*, and ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*, are pertinent to an evaluation of his security suitability.

Applicant does not dispute that alcohol affected his attendance at work on occasion, especially in 1992 when he faced potential disciplinary action for lost time, and in mid-October 2001, when he chose not to report for duty after drinking to intoxication at the bar. Furthermore, in February 2002 Applicant was assessed as having "a progressive history of substance dependence." The counselor, who rendered the evaluation at the request of adult probation, has a master's degree, is a licensed substance abuse counselor in the state, and is affiliated with a substance abuse program recognized by the state's adult probation department. While it is not clear that the counselor has a LCSW degree, she is sufficiently credentialed in the substance abuse field to apply ¶ E2.A7.1.2.4. *Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*. Although Applicant repeatedly relapsed into abusive drinking after successfully completing an inpatient alcohol treatment program in 1992, DC ¶ E2.A7.1.2.6. *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*, is not appropriately considered where there is no evidence of a qualifying diagnosis rendered or ratified by a credentialed medical professional, which is defined under the adjudicative guidelines as a physician, clinical psychologist, or psychiatrist.

Applicant has been abstinent from alcohol since April 2004, which is a demonstrated change in behavior supportive of sobriety (see ¶ E3.A7.1.3.3.). However, more is required to guarantee against future abuse given the severity of Applicant's drinking in 2001, culminating in an OUI in October 2001, his frequent consumption from April 2002 to April 2004, and his inability to sustain previous efforts at abstinence. He continued to drink after completing the counseling required by adult probation, and has an admitted "weakness for alcohol." Applicant's relapse history justifies requiring him to meet the conditions of ¶ E2.A7.1.3.4., which provides: *Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*. He has not been involved with AA since about 1994 and never obtained a sponsor. He went through five days of detoxification after his DSS interview in April 2004, but elected not to pursue the treatment plan envisioned for him in the group home. Applicant apparently attended outpatient counseling sessions instead, but neither the qualifications of the clinician nor his assessment of Applicant's progress are of record. Applicant clearly does not show the reform required under ¶ E2.A7.1.3.4.

Applicant submits that the stressors that led him to drink in the past no longer exist (his divorces, his parents' illnesses and his current spouse's debts). Applicant's present marriage remains stable and his parents are both deceased. With his past track record of abusive drinking in response to stress, it is especially vital that he have a strong support network, such as AA or other viable alternative, to assist him in coping with the next stressful situation. As of October 2005, he was not pursuing any counseling or affiliation with such a program, and showed little insight into his alcohol problem. He was keeping beer at his residence even though his spouse reportedly does not consume alcohol, while at the same time claiming that he knows all there is to know about alcoholism. SOR ¶¶ 1.a., ⁽²⁾ 3.a., 3.b., 3.c., 3.d., 3.e., 3.f., and 3.g. are resolved against him.

Nor has the Applicant successfully mitigated or rebutted the personal conduct concerns raised by his knowingly inaccurate misrepresentations on his SF 86 and in his April 2004 sworn statement. When Applicant initially handed in his SF 86 for typing to his employer, Applicant reported that he used marijuana only once within the seven years preceding his application. Before the document was submitted to the government, he changed his response to question 27 to indicate that he used marijuana a few times in October 2001. This response was knowingly inaccurate, in that he did not include his abuse of marijuana in August and September 2001 or his use of marijuana after October 2001. Guideline E DC ¶ E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material fact 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, applies.*

Provided the opportunity to correct the record when questioned by the DSS agent on April 2, 2004, Applicant admitted he smoked marijuana 10 to 12 times from about August or September 2001 until his arrest in mid-October 2001. However, as reflected in his sworn statement of that date, he falsely denied any use of marijuana thereafter. 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.*

To his credit, Applicant did not conceal his October 2001 marijuana possession and OUI convictions, but he failed to demonstrate that he understands, and can be counted on to abide by, his obligation of full candor. At his hearing, he claimed to recall no use of marijuana by him following his arrest in October 2001. In her admission summary evaluation notes, the counselor who evaluated Applicant on February 6, 2002, stated in part, "He claims he has used alcohol, last reported use was 2/3/02, and cannabis, last reported use was this past January." (Ex. 3) The counselor had no apparent motive to report other than what Applicant told her and his contemporaneous report of marijuana use is credible. Reform of deliberate false statement is not shown by his present adamant denials of any drug use after October 2001. MC ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts, is inapplicable.* SOR ¶¶ 4.a. and 4.b. are concluded against Applicant. However, SOR ¶ 4.c. is resolved in his favor as Applicant could reasonably read question 29 as not applying to his unsolicited one-time payment of \$20 for marijuana to his brother. There is no evidence Applicant gave his brother the \$20 up-front and asked him to purchase the drug for him, or that Applicant ever engaged in any transaction involving illegal drugs for his intended profit or that of another.

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 J: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Paragraph 2. Guideline H: FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Paragraph 3. Guideline G: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: Against the Applicant

Subparagraph 3.e: Against the Applicant

Subparagraph 3.f: Against the Applicant

Subparagraph 3.g: Against the Applicant

Paragraph 4. Guideline E: AGAINST THE APPLICANT

Subparagraph 4.a: Against the Applicant

Subparagraph 4.b: Against the Applicant

Subparagraph 4.c: For 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.

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. SOR ¶ 1.a. is resolved against Applicant as to the drunk driving only, as he has mitigated the illegal drug-related criminal conduct. Although there is no recent evidence of drunk driving (*see* E2.A10.1.3.1.), I am unable to conclude with a reasonable degree of certainty that his drunk driving is safely in the past given his latest OUI occurred 13 years after his second offense and there is an unacceptable risk of relapse into excessive alcohol consumption.