

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant has a history of use of illegal substances (primarily marijuana) that he repeatedly omitted when executing security clearance applications in 1990 and 2003 and first talking with a DSS agent in July 2004. While Applicant's recurrent use of illegal substances is relatively small and mitigated by the passage of time, his repeated omissions of his illegal drug use were both knowing and intentional and material to his background investigations and are not mitigated under any of the pertinent mitigation conditions of Guideline E. By contrast, the criminal conduct implications of his omissions are mitigated under whole personal rehabilitation considerations. Clearance is denied.

CASENO: 04-11443.h1

DATE: 03/23/2006

DATE: March 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11443

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Kenneth M. Roberts, Esq.

SYNOPSIS

Applicant has a history of use of illegal substances (primarily marijuana) that he repeatedly omitted when executing security clearance applications in 1990 and 2003 and first talking with a DSS agent in July 2004. While Applicant's recurrent use of illegal substances is relatively small and mitigated by the passage of time, his repeated omissions of his illegal drug use were both knowing and intentional and material to his background investigations and are not mitigated under any of the pertinent mitigation conditions of Guideline E. By contrast, the criminal conduct implications of his omissions are mitigated under whole personal rehabilitation considerations. Clearance is denied.

STATEMENT OF THE CASE

On July 11, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 19, 2005, and requested a hearing. The case was assigned to me on October 31, 2005, and was scheduled for hearing on November 18, 2005. A hearing was convened on November 18, 2005, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits. Applicant relied on five witnesses (including himself) and 18 exhibits. The transcript (R.T.) was received on December 1, 2005.

PROCEDURAL ISSUES

Prior to the close of the hearing, the Government asked for leave to amend subparagraph 2.b of the SOR to substitute the phrase "electronically transmitted on July 3, 2003" for "executed by you on June 20, 2003." There being no objections from Applicant, and good cause being demonstrated, the amendment was granted.

SUMMARY OF PLEADINGS

Under Guideline H, Applicant is alleged to have (1) used marijuana, with varying frequency, from about 1975 to at least January 2003, (2) contributed money towards purchases of marijuana, (3) used mushrooms (psilocybin) with varying frequency, to at least January 2003, (4) been arrested in January 2003 for DuI after having consumed alcohol and used marijuana and mushrooms prior to his arrest, for which he pleaded guilty and was sentenced to 24 hours of community service, (5) used peyote at least once in 2001 and 2002, (6) used LSD at least once between 1975 and 1981, (7) used hashish, with varying frequency, to include weekly use, from 1971 to 1975, (8) used THC in 1975, and (9) committed to abstain conditionally if granted a security clearance.

Under Guideline E, Applicant is alleged to have (a) falsified his security clearance application (SF-86) of October 1990 by falsely denying using illegal substances (including marijuana, mushrooms, LSD, hashish, and THC) and (b) falsified his SF-86 of June 2003 (amended to July 2003) by falsely denying his use of illegal substances (including marijuana, mushrooms, and peyote). The allegations made under Guideline E are incorporated under Guideline J.

For his response to the SOR, Applicant admitted to using marijuana between 1975 and January 2003, but very infrequently and only on those unusual occasions when the drugs were offered to him. He denies contributing towards the purchase of marijuana, while acknowledging he later learned that money he pitched in for refreshments was actually spent on marijuana. Applicant admits to using mushrooms twice: once in 2001 and once in 2003, but assures he will not try them again. Applicant denies using mushrooms or smoking marijuana at the dinner party he attended with work colleagues and their spouses before his later DuI arrest in January 2003. He also denies intentionally using peyote at the Indian tribal ceremony he attended in 1999 (not 2001 or 2002 as alleged), using LSD between 1975 and 1981, using hashish weekly between 1971 and 1975 (admitting to only one-time use in 1976), and using THC in pill form in 1975 (claiming he tried it just once, but in 1973 at age 16). Applicant denies any intention (conditional or otherwise) of using any type of drugs, illegal, natural, unnatural or otherwise, at anytime in the future.

Addressing the falsification allegations, Applicant denies intentionally falsifying his illegal drug use when answering question 22 of his October 1990 SF-86. He claims he understood question 22 of the form to inquire about his serious abuse of illegal drugs and to experimental use only as to mind altering drugs, which he denied. Applicant also denies falsifying his illegal drug use when answering question 27 of his June 2003 SF-86, claiming he didn't believe at the time that he had illegally used any controlled substances within the previous seven years. He claims to have mistakenly construed the word "illegally" to mean something other than the insignificant use he had engaged in.

FINDINGS OF FACT

Applicant is a 50-year-old systems engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was born to middle class parents in State 1 and was one of ten siblings. His father was not only a successful manager of computer programmers with a major U.S. oil producer, but he was a volunteer fireman (promoted to chief in 1963) and much admired by Applicant and his siblings. Growing up in State 1, Applicant pursued his musical and mechanical interests and apprenticed for a small air-conditioner firm while in high school (becoming a journeyman technician).

While in high school, Applicant tried illegal substances. Based on the statements attributed to him in a certified results of interview conducted in July 2004, he and a female friend smoked hashish on a weekly basis in high school for an unspecified period (*i.e.*, between 1971 and 1975). Her boyfriend, reportedly, had access to the drug, and she and Applicant smoked it while viewing a specific television program (ex. 2). Applicant never purchased the drug and would not identify the friend. He could neither recall the time frame in high school nor the effect the drug had on him (*see* ex. 2). While Applicant denies the DSS account of his hashish use in his answer and hearing testimony (isolating his use to several times over a three-week period with a female acquaintance of his during his sophomore year in college), he provides no details of his revised account or what he actually told the agent in a July 2004 interview in which he declined to provide a written statement. Without more probative evidence to corroborate his disputed version of the agent's reported account of his hashish use, his DSS account that was rendered during his background investigation, and before issuance of an SOR, remains the most plausible version and entitled to acceptance.

Applicant matriculated to State 2 in 1981 to attend college. While in college, he tried a number of drugs: marijuana, THC, and LSD. In the same DSS certified results of interview, Applicant described a single use of THC in 1976 in the company of a female associate, who he was dating at the time. Applicant tried this drug in pill form on just this one occasion and noted that it had a more intense euphoric effect on him than marijuana (*see* ex. 2). Applicant disputes this account, too, in his answer and hearing testimony (claiming the event occurred much earlier, in 1973), but provides no details of the reasons for his revision or how he realistically could have compared the effects of THC with marijuana in

1973, when at that time he had still never tried marijuana (R.T., at 51-52). Applicant's account of his THC use in his certified results of interview remains the most persuasive one and is accepted for fact-finding purposes herein (*see ex. 2*).

Besides THC, Applicant tried both marijuana and LSD in college. He smoked marijuana throughout his college years, about 12 times altogether according to his best estimates (*compare ex. 2 with R.T., at 96*). While most of it was given to him by friends, occasionally he contributed to purchases of the substance for his and their personal use. The most he had in his possession at any one sitting was a quarter of an ounce. Applicant's revised assurances in his furnished statement that he used it "but a handful of times in his entire life" (*see ex. S*), and later in his testimony that he used it infrequently (about 15 times between 1975 and February 2003) are at odds with his less certain recollection reported in DSS' certified results of interview and inconsistent with his denials of any use in the two security clearance applications he completed. How much marijuana Applicant actually used between 1975 and 1981 remains uncertain, but inferentially more than the amounts he acknowledged in his written summary (*ex. S*) and closer to the dozen range he estimated in his testimony (R.T., at 95-96).

Applicant took a brief leave from college in 1978 following a serious motorcycle accident that left both himself and his girlfriend seriously injured. Following his return to school, he and his girlfriend married (in 1980). He graduated from college in 1981 with a bachelors degree in physics and relocated to another state to accept a position with a defense contractor (Company A). He worked for Company A for about five years (between 1982 and 1987), briefly left its employ for another company (Company B), and returned to Company A for an additional five years of employment (*i.e.*, between 1990 and 1995). For the duration of his employment by both companies A and B between 1982 and 1995, he held a security clearance (*see ex. S; R.T., at 61-64*).

In May 1985, a daughter was born to Applicant and his wife. Two years later, he and his wife separated, and divorced the following year. Applicant and his ex-spouse remain on good terms and share financial and personal responsibility for their daughter's development. His daughter currently attends a local university in State 4, aided by Applicant's financial support, and remains very close to him (*see ex. A; R.T., at 27-28*).

For over fifteen years after graduating from college, Applicant abstained from illegal drugs (R.T., at 96-97). Not until he moved to State 3 in 1998 to become a self-employed computer programmer for small companies did he resume his use of illegal substances. During his three-plus years in State 3, he attended numerous parties and on a few occasions accepted marijuana that was passed around (*see ex. A; R.T., at 58-59*). At one of these events, he pitched in money for refreshments and later learned that the money was spent on marijuana purchases. He tried mushrooms just once during his three-year stay in State 3.

Applicant moved to State 4 in late 2001 following the 9/11 tragedy and joined a commercial satellite venture where he specialized in orbit analysis. Finding the position less challenging than he anticipated, he rejoined company A in approximately July 2003 (*see exs. 3 and A*).

Since relocating to State 4 in 2001, Applicant occasionally used illegal substances. He reported trying peyote on one occasion with a girlfriend he visited in State 2. He and a group of her friends attended a gathering in which the couples sat in a teepee and shared peyote (ex. 2). He estimates he used marijuana at parties in January and February 2003, but no more than three to four times, albeit, probably more (R.T., at 92-94). Preceding his arrest for DuI in January 2003, he admits to using psilocybin mushrooms and marijuana at a party he attended. While he couldn't describe how much he used, he indicated in his DSS interview of July 2004 that he experienced a euphoric feeling for about an hour after using the marijuana (*see* ex. 2). However, he was never cited for use or possession of illegal substances in connection with his 2003 DuI arrest. Applicant subsequently pleaded guilty to the reduced charge of driving while impaired and was sentenced to 24 hours of community service and 12 hours of alcohol education, and, in addition, was ordered to pay \$470.00 in fines, costs, and fees.

Applicant insists he has not used illegal substances of any kind since February 2003, relies on a produced negative drug screen (albeit not randomized), and assures he will not return to illegal drugs of any kind in the future. To be sure, his assurances are inconsistent with the qualified assurances he is credited with in his July 2004 DSS interview. Asked by the interviewing DSS agent whether he had any intention of returning to illegal drugs in the future, Applicant hedged: He indicated he would abstain from illegal drug use if he was granted a clearance, but not necessarily otherwise (*see* ex. 2). With three years of abstinence to his credit when he testified at his hearing, he assured he would not return to illegal drugs in the foreseeable future. Given the considerable lapse of time since his last probative use (in February 2003), he is entitled to the benefit of his revised assurances.

Asked to complete an SF-86 in October 1990 as part of an upgrading clearance process, Applicant answered in the negative to question 22 (inquiring about whether he had ever tried or used illegal drugs, to include marijuana and hashish). In denying any prior drug use, Applicant failed to disclose his repeated use of marijuana and hashish and experimentation with other illegal substances. He attributes his omissions to his misunderstanding of the meaning of the term illegal use (*see* ex. 1). He assures he interpreted the term illegal use to connote someone who was a regular user or trafficker of illegal drugs, and not someone like himself who tried drugs infrequently (R.T., at 88-91, 97-98). Applicant, though, was and is a highly educated engineer who was inferentially quite aware of DoD policies banning illegal drug use. He makes no claim of misreading the plain wording of question 22 that inquired of whether he had ever tried or used illegal substances and listed examples (to include marijuana and hashish).

Whether Applicant was ever queried about his use of illegal drugs in a pre-1990 SF-86 and/or follow-up DSS interview is unclear. He was asked to acknowledge any prior use of illegal drugs within the previous seven years when he executed an SF-86 in July 2003 (*see* ex. 3), and again responded in the negative. As with his earlier SF-86 omissions, he attributed his omissions of his prior drug use to his misunderstanding of the term "used any illegal substance" (*see* ex. 3). Without misreading the plain wording of question 27 of the 2003 SF-86 (inquiring about his drug use within the previous seven years), he claimed to have interpreted the words illegal drugs in the question to imply much larger quantities of drugs than he had ever used in the previous seven years (R.T., at 88-91).

In a DSS interview in July 2004, Applicant initially stuck to his original story and denied any prior illegal substance abuse (*see* ex. 2). At the point of his denials, the DSS agent advised Applicant that someone had observed him smoking marijuana. Only at this point did Applicant relent and acknowledge his prior drug use. Nothing in Applicant's prior

answers on the issue of his use of illegal drugs suggest he would have disclosed his use of marijuana and other illegal substances if the DSS agent hadn't confronted him with it. Applicant's admissions prompted more questions about his drug use from the interviewing DSS agent and ultimately produced Applicant's disclosure of his complete drug history. Applicant declined to provide a written statement covering his drug use accounts to the agent (claiming the agent didn't appear to care whether he signed a written statement or not) and disputes some of the statements attributed to him about his drug use by the interviewing agent (*see ex. 2; R.T., at 91*). Because he was told he didn't have to sign a written statement doesn't diminish the agent's reasonable expectation of obtaining a written statement from Applicant covering his drug use disclosures. Given the circumstances of his being confronted by the interviewing agent about his drug use, Applicant's claimed impressions that the DSS agent didn't seem to care whether the former provided a written statement or not is too implausible to be accepted without corroboration.

Taking into account Applicant's history of illegal drug involvement, his intelligence, his persistent omissions of his involvement with illegal substances until he was confronted, his declination to provide a written statement covering his acknowledged drug use, and his assigned reasons for denying any use of illegal substances in each of the SF-86 forms he executed, too many doubts remain about his motives for omitting his illegal drug use to accept his misunderstanding claims. Applicant's claims of a good-faith misunderstanding over what kind of illegal drug use the Government was interested in and his characterized voluntary disclosures notwithstanding, the most reasonable inferences to draw from the circumstances surrounding his repeated SF-86 omissions and subsequent DSS exchange are that he knowingly and deliberately withheld his illegal drug use in each of his submitted SF-86s and disclosed the dates and frequencies of his drug use only after he was confronted by the agent.

Applicant is highly regarded by his supervisor and co-workers. As a senior project engineer, he is valued for his skills, dependability and trustworthiness. He is respected for not only his analytical and mathematical skills, but for his enthusiasm and energy that is a source of motivation for his peers as well as his leaders (*see exs. F through Q*). He is rated a successful contributor in his performance evaluations and has been recognized for his contributions in both individual and team awards (*see ex. R*). Colleagues who have worked with Applicant laud his engineering skills, ethics, and team contributions (*see exs. F through Q*).

Applicant's daughter, former spouse, and friend who testified in Applicant's behalf characterize him as reliable and trustworthy; albeit, none express familiarity with all of the allegations contained in the SOR. Applicant is credited, too, with maintaining excellent credit, while at the same time providing important financial support for his daughter's college education.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating

Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

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

Drug Involvement

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

Personal Conduct

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.

Criminal Conduct

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

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the

Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant brings a praiseworthy civilian work record to these proceedings, in addition to a history of recurrent marijuana use and isolated contributions to purchases. Applicant's recurrent involvement with illegal substances over a thirty-four period, coupled with his repeated drug use omissions in not just one, but two SF-86s he completed while in the employ of the same company, raise security significant issues about his judgment, reliability and trustworthiness required for eligibility to access classified information.

Drug issues

While most of Applicant's use of marijuana and other illegal substances occurred during his adolescent and college years, some of acknowledged use is more recent (*i.e.*, in the 1998 to February 2003 time frame). Introduced to hashish in high school, he experimented with other drugs in college before settling on marijuana as the drug he used most frequently. He enjoyed a considerable period of sustained abstinence from illegal substances (between 1981 and 1998) before returning to illegal substances (albeit, infrequently) for a five-year period spanning 1998 and February 2003.

Applicant's recurrent use of marijuana and experimentation with other drugs since 1975 are sufficient to invoke two of the disqualifying conditions of the Adjudicative Guidelines for drugs, *i.e.*, 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*). Because his 2003 DuI arrest and conviction did not involve any cognizable possession of illegal substances, no inferences of abusive use of illegal substances can be drawn from this arrest.

Misconduct predictions (to include return to illegal drug use), generally, may not be based on supposition or suspicion. *See* ISCR Case No. 01-26893 (October 2002); ISCR Case No. 97-0356 (April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used marijuana since his last recorded use, or based on his past use is likely to resume usage in the future. *See* ISCR Case No. 02-08032 (May 2004). Based on the relatively small amounts of proven Applicant involvement with illegal substances over the past ten years, the testimonials of his character references, and the negative drug screen he furnished (albeit, not randomized) over the past three years, Applicant may invoke two of the mitigating conditions of the Guidelines for drugs: 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*). While Applicant's recurrent marijuana use over 30 plus years raises some questions over the strength of his avoidance assurances, it is not enough to prevent Applicant's successful mitigation of the issue. Applicant's recurrent use of illegal substances marijuana between 1971 and 2003 has been interrupted by long periods of non use, and most importantly has never been documented to be significant (at least since college).

Applicant's assurances that his marijuana involvement is a thing of the past are entitled to acceptance based on the absence of any drug activity attributed to him over the past three years and his very strong character references from his former spouse, daughter, supervisors and colleagues who have worked closely with him. Considering the all of the developed evidence of record, Applicant mitigates security concerns associated with his recurrent use and possession of illegal substances. Favorable conclusions warrant with respect to sub-paragraphs 1.a through 1.I of Guideline H.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's drug use omissions in each of his SF-86s, as well as in his DSS interview that followed his electronically transmitted July 2003 SF-86. So much trust is imposed on persons cleared to see classified information that deviation tolerances for candor lapses are gauged very narrowly.

By omitting his past involvement with illegal substances in each of his clearance applications, and ensuing DSS interview following submission of his 2003 SF-86, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. His claims of misunderstanding the drug-related questions lack substantiation. Weighing all of the circumstances surrounding his SF-86 omissions and ensuing DSS interview, claims lack the necessary probative showing to avert drawn conclusions he knowingly and deliberately withheld material background information about his prior use of illegal substances.

Applicant makes clear that he approached questions 22 and 27 of his respective SF-86s with the intent to withhold as much information about his past use of illegal substances as he believed he could safely rationalize. His omissions were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of Disqualifying Condition (DC) for personal conduct of the Guidelines: E2.A5.1.2.2 (*The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of the first available opportunity afforded him to correct either of his SF-86 omissions in the July 2004 DSS interview following completion of his 2003 SF-86. Not only has the Appeal Board found the use of Mitigating Condition (MC) E2.A5.1.3.2 of the Adjudicative Guidelines for personal conduct (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of E2.M5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) as well in circumstances (as here) where the applicant has waited many months to timely correct known omissions. Compare ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995).

Applicant in the present case is on record with bypassing his first afforded opportunities (between the completion of his SF-86s and before his scheduled DSS interview in July 2004) to voluntarily correct his omissions. Instead, he waited until after he was confronted about his drug use in his July 2004 DSS interview (years after completing his 1990 SF-86 and many months after completing his 2003 SF-86) to come forward with the true facts about his drug history. The Appeal Board has been quite clear for a number of years now that an applicant cannot be credited with a prompt, good faith correction where he has tacitly repeated his omissions and waited to be interviewed in a DSS interview years or months later before electing to come forward with corrections, and then after being confronted. See DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either E2.A5.1.3.2 (isolated omissions) or E2.A5.1.3.3 (prompt, good faith correction of the falsification) of the Guidelines for personal conduct.

There can be no doubt but that Applicant has inspired confidence and trust among his superiors and colleagues who know him. But in the face of his SF-86 omissions, his favorable character evidence and positive professional contributions alone are not enough to mitigate security concerns over his failure to be truthful in his SF-86 submissions and ensuing DSS interview before being confronted. Mitigation is further weakened by Applicant's apparent lack of awareness of the material nature of his omissions and declination to sign a written statement attesting to the disclosures he made in the interview.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2.2 factors), unfavorable conclusions warrant with respect to sub-paras. 1.a and 1.b of Guideline E.

Criminal coverage of falsification issues

That none of Applicant's SF-86 omissions resulted in formal charges and adjudication against him does not mean that the falsification issues may not be raised and considered anew in a clearance proceeding such as the present. The Appeal Board has repeatedly stated that the government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Accordingly, two of the disqualifying conditions of the Adjudication Guidelines for criminal conduct may be invoked: 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*).

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

Applicant's belated coming forward with his full disclosure of his illegal drug history (which he had omitted in his completed SF-86 applications) in his DSS interview represented a positive shift in his attitude about withholding drug involvement information. That he disclosed his drug use only after being confronted on his observed illegal marijuana use detracts some from the voluntary nature of his disclosures, but does not dispel the importance of his acknowledgments when assessing his rehabilitation under the criminal parameters of Guideline J. The same materiality and prompt, good-faith mitigation requirements that govern trustworthiness assessments under Guideline E do not expressly control Guideline J assessments grounded in 18 U.S.C. Sec. 1001 violations.

Considering the omissions themselves, the relative small amounts of illegal drugs Applicant used over his 30-plus years of recurrent drug use, and Applicant's otherwise whole-person profile of personal reliability and trustworthiness, his disclosures are enough to meet the mitigation requirement of evidenced clear rehabilitation to entitle him to take advantage of E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*) of the Adjudication Guidelines at this time. Applicant's overall rehabilitation efforts are sufficient to mitigate the criminally-related features of his drug use omissions. Based on a full review of the evidence and drawn inferences from the developed record, favorable conclusions warrant with respect to subparagraph 3.a of Guideline J.

In reaching my decision, I have considered the evidence as a whole, including each of the E2 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE H (DRUGS): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR APPLICANT

DECISION

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

Roger C. Wesley

Administrative Judge