

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-03367

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant is a 27-year-old engineer working for a defense contractor. When he was 20 years old, he smoked marijuana about five times and took Ecstasy on three or four occasions. He denied having used drugs on his October 2003 security clearance application and on an up-dated application in July 2004, however, because he interpreted the question to exclude past experimentation with drugs. Although he was forthcoming about his drug use during his subject interview and has raised some mitigating conditions regarding his personal and criminal conduct, a "whole person" analysis of the Applicant best mitigates the personal conduct security concerns raised. Clearance is granted.

STATEMENT OF THE CASE

On March 24, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed reasons why, pursuant to Guideline E (Personal Conduct) and Guideline J (Criminal Conduct), it could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant. In an undated response, Applicant admitted to both allegations raised under Guideline E and denied the sole allegation raised under Guideline J with explanations. In his response, he also requested a hearing.

On September 29, 2006, I was assigned the case. A Notice of Hearing was issued on October 3, 2006, setting the hearing for October 20, 2006. The hearing was held as scheduled. At the hearing, the Government submitted two exhibits, marked and accepted into evidence as Exhibits (Ex.) 1-2, and presented one witness. Applicant, represented by counsel, offered seven documents, marked and accepted into the record as Exs. A-G. He also appeared as a witness,

along with three other individuals, on his behalf. The record was held open to provide the Government an opportunity to submit case law regarding a mitigating condition under Guideline E, and to afford Applicant an opportunity to respond. The Government and Applicant filed their submissions on October 26, 2006, and October 30, 2006, respectively. The transcript (Tr.) of the proceeding was received on October 31, 2006. The Government submitted a response to Applicant's submission on November 8, 2006, and the record was closed that day.

FINDINGS OF FACT

Applicant's admissions to the allegations set forth in the SOR are incorporated herein. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 27 years old and has worked for a federal defense contractor as an engineer since January 24, 2003. He has both a Bachelor of Science degree in computer engineering and a Master of Science degree in computer sciences. He is currently single and has no children.

In high school, Applicant developed a keen interest in science and math. Those subjects became his passion, and he became a high-ranking competitor in state-level science fairs. He was eventually awarded scholarships to attend his state's premier public university and pursue a five-year, dual engineering degree. By the time he started his collegiate career in August 1997, he already had accrued a number of credits. As a result, however, he was immediately immersed in advanced course work before he had an opportunity to acclimate to the academic and social requirements essential to collegiate life. Consequently, his grades began to suffer in his first year.

In his second year of college, Applicant took a job so that he could save money to sponsor his education in the event he was put on academic probation or lost his scholarships. Instead of a regular work-study job which would permit him to study during his shift, he took a more demanding position. As a result, his grades suffered; he lost his scholarships and was placed on academic probation. (1) By late 1999, Applicant was frustrated and distraught over his dwindling academic career, and he began to socialize with his mostly freshmen dormitory neighbors.

Over a period of a couple of months in the autumn of 1999, when Applicant was 20 years old, he experimented with marijuana on approximately five occasions and with Ecstasy (2) on three or four occasions. (3) His experimentation was the result of wanting to fit in and of his academic worries. With the beginning of 2000, however, he lost interest in drugs when the new semester presented him with courses that captured his attention, and he quit using them by January 2000. From that point until he graduated with his Bachelor of Science degree in May 2002, his grades markedly improved, culminating in a 3.8 grade point average during his last year.

After graduation, Applicant returned home to look for work. While he pursued job contacts, he volunteered time to mentoring 35 to 40 middle school students working on science fair projects while he pursued job contacts. He was interviewed by his present employer in the autumn of 2002, then hired in January 2003. A few months later, he bought a three bedroom house, which his father initially feared was too expensive, but which he has maintained and managed to pay for on his own. (4)

On October 23, 2003, he completed an electronic security clearance application, Standard Form 86 (SF-86). In response to "**Question 27 Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs** *Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescriptions drugs?*," Applicant answered "no," then e-mailed it to his work. It was subsequently signed. When Applicant answered the question in the negative, he first thought long and hard on the question. (5) He ultimately focused on the word "Use," which he defined as a regularly occurring practice continued over an extended period of time. Using this definition, he did not believe he had "used" or was a "user" of drugs, *per se*, (6) but one who had experimented on a limited basis. He did, however, harbor some concern that disclosure of his experimentation might impede the security clearance process. (7)

In January 2004, Applicant started graduate school. On July 20, 2004, his employer asked him to up-date his SF-86

regarding personal contacts. ⁽⁸⁾ He did so, and then re-signed the SF-86.

In April 2005, Applicant was contacted for a customary subject interview with an Office of Personnel Management (OPM) agent as part of his security clearance application and background check. On April 30, 2005, he met with an investigator from OPM's Federal Investigative Service Division. He was put under oath and the background investigation process that would be conducted was described by the investigator. ⁽⁹⁾ He was informed that after various interviews and checks were made, the investigator might have to speak to him a second time. ⁽¹⁰⁾ He was then told that if he gave false or misleading information at any time during "any part of this investigation, and it's found through other sources that he did provide such information that is erroneous or he withheld pertinent information, that [it] would be a direct negative upon his trustworthiness and truthfulness." ⁽¹¹⁾ The interview then commenced and the two went through each question on the SF-86 *seriatim*.

When they got to discussing Question 27, discussion ensued and the question arose as to the definition of the word "use." Applicant told the investigator that he had experimented with drugs. ⁽¹²⁾ The investigator stated that "'use' means taking a marijuana cigarette and bringing it to your lips, whether its experimentation, or not, this is use." ⁽¹³⁾ Once clarified, Applicant admitted to the use of marijuana and Ecstasy. He stated that he had not previously indicated his having tried drugs because he did not consider himself to be a drug user, but one who has experimented with drugs. The investigator asked Applicant whether he failed to list it before because he was concerned it would affect his security clearance application. ⁽¹⁴⁾ Applicant "considered it slightly," ⁽¹⁵⁾ but it was his interpretation of the word "use," not concern that his past drug use might affect his security clearance, that motivated him to answer the question "no."

Depicting Applicant from a parental perspective at the hearing, Applicant's father described his son's struggle to exceed in math and science as a youth, and to turn both his grades and attitude around in undergraduate school. He also commented as to how his son has matured over the years since college. ⁽¹⁶⁾ From the perspective of the work place, Applicant's supervisor noted his praiseworthy work effort and ethics. ⁽¹⁷⁾ Noting that maturation is an on-going process, his supervisor also commented that he had witnessed "considerable maturity and growth in [Applicant] over the years," ⁽¹⁸⁾ and that Applicant "has well exceeded the other people within his age bracket" in terms of his work performance. ⁽¹⁹⁾ Balancing these perspectives is a colleague who first met Applicant in a social setting and often socializes with him. He stated that Applicant's integrity is "top notch" both at work and outside the office. ⁽²⁰⁾ The colleague, Applicant's senior by 19 years, also characterized Applicant as "mature." ⁽²¹⁾

Both in and out of the office, Applicant socializes with an older circle of friends and associates, and his remaining college friends are from his final year or two of college; he is no longer in contact with the college peers with whom he once used drugs. He has not used drugs since about January 2000. His current life and his testimony at the hearing reflect maturity. His house has proved to be a solid investment and he socializes with his neighbors; he keeps current on his house payments. He drives a 1989 Ford Mustang and does not live extravagantly. He is paying off his college loans while also saving money.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²²⁾ The government has the burden of proving controverted facts.⁽²³⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽²⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁶⁾

No one has a right to a security clearance⁽²⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁰⁾ 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.

Based upon consideration of the evidence, I find the following two adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline E - 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.*⁽³¹⁾

Guideline J - Criminal Conduct. *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.*⁽³²⁾

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts regarding his drug use on his SF-86. Applicant admits this fact,⁽³³⁾ but also provides an explanation as to how he misinterpreted the question. Because an admission with explanation can be construed to be a denial, examination of Applicant's explanation is warranted. Here, his novel interpretation of the word "use" could, if genuine, undermine whether he had the requisite intent to falsify when he completed his SF-86. Judicial notice can be exercised to recognize that the word "use" is, indeed, sometimes employed to denote habitual or customary use.⁽³⁴⁾ Therefore, Applicant's semantic distinction between "use" and "experimentation" is not incredible.

It is, however, a stretch to think Question 27 ["**Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs . . . have you illegally used any controlled substance, for example, marijuana . . . ?**"] is designed to distinguish between "users" and "experimenters." Using Applicant's terminology, only those with a drug habit would answer the question in the affirmative. Moreover, the question clearly asks about *illegal* use. To follow his definition of "use," the question must be begging for further distinction between those with a legal drug habit and those with a illegal drug habit. His semantic argument simply skates around what, in context, is a relatively direct question, and his haste to seek clarification in his meeting with the investigator tends to indicate he had at least some reservations about his interpretation in the first place.

Here, Applicant chose to interpret the question to his advantage, in a way that concealed his past acquaintance with

illegal drugs, and he chose to do so without seeking clarification from family or colleagues; moreover, he did so while harboring at least some degree of fear that his disclosure might impede his security clearance.⁽³⁵⁾ Such manipulation of the Queen's English to serve one's purposes constitutes passive concealment and raises valid questions regarding his judgment, reliability, and willingness to comply with rules and regulations. Consequently, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

Neither remote drug use, nor youthful drug experimentation, necessarily provides a bar to gaining access to sensitive information. The failure to recognize the importance of full disclosure and an attempt to withhold, however, raises security concerns. Here, the information withheld was important for determining the suitability of his personal conduct. Therefore, Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.1 (*The information was unsubstantiated or not pertinent to a determination of judgement, trustworthiness, or reliability*) does not apply.

PC MC E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) almost applies inasmuch as the falsification was not recent, as discussed *infra*, and, by all accounts, he was more than happy to voluntarily provide correct information once the definition of use was firmly established. The falsification, however, was not isolated to one instance. His October 2003 application was forwarded for processing, then he amended, resigned, and embraced the altered application in June 2004. Therefore, Applicant has not presented facts that would raise this mitigating condition.

When Applicant chose not to ask for help as to the meaning of Question 27, he decided to base his answer on something other than a plain reading of the question, unaided. Consequently, neither PC MC E2.A5.1.3.4 (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*), nor PC MC E2.A5.1.3.6 (*A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information*), nor PC MC E2.A5.1.3.7 (*Association with persons involved in criminal activities has ceased*) applies.

Applicant urges, however, application of the facts to a plain reading of PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). When he met with the investigator and they got to Question 27, he instigated inquiry as to the meaning of "use." He explained that he did not equate experimentation with use. The investigator clarified the meaning of the term and the question, and Applicant promptly conceded his past drug use. The Government, however, argues that confrontation "occurred when the investigating agent asks an Applicant a question as it is listed on the SF-86,"⁽³⁶⁾ and notes that the Appeal Board "has very clearly stated that an applicant cannot get the benefit of MC 3 when he or she waits until the investigating agent schedules and then commences the subject interview before correcting a falsification."⁽³⁷⁾ It stated this conclusion after pointing to three cases to support its position: ISCR Case Number 01-03695 (App. Bd. Dec. Oct. 16, 2002); ISCR Case Number 98-0809 (App. Bd. Dec. Aug. 19, 1999), and ISCR Case No. 01-14701 (App. Bd. Dec. Jan. 22, 2003).

Applicant argues that those three cases are distinguishable on the facts and offers three decisions by Administrative Judges that note when the Guideline E mitigating conditions are found to be inapplicable or insufficiently applicable to mitigate personal conduct concerns, that a favorable "whole person" analysis can still lead to a finding for Applicant. As for his first argument, I agree that the first two Appeal Board decisions cited are distinguishable on the facts. I am persuaded, however, that the latter case is analogous. In ISCR Case No. 01-14701, the Applicant had failed to include certain details about his past arrests on a security clearance questionnaire, but volunteered the missing information during his interview with the investigative agent.⁽³⁸⁾ Despite that Applicant's disclosure, the Appeal Board noted that:

"the record evidence does not provide a basis for application of the mitigating condition as Applicant has not demonstrated that his voluntary cooperation was prompt or was made prior to being confronted with the facts. To the extent that Applicant's disclosures at the time of the DSS interview and his subsequent cooperation were mitigating in a general sense, such mitigation was not dispositive of the case, and the

⁽³⁹⁾

Judge was not required to conclude that such mitigation overcame the government's falsification case.

Here, Applicant clearly demonstrated that he clarified matters concerning Question 27 *prior to being confronted with the facts* related to his past drug use; he did not, however, show that his cooperation was *prompt*. The issue of promptness must be decided based on the particular facts and circumstances presented.⁽⁴⁰⁾ In this case, Applicant signed his SF-86 in October 2003, re-signed the application in July 2004, and made an appointment in early-to-mid April 2005 for his subject interview. He failed to make any inquiries or otherwise test his interpretation until April 30, 2005, when he met with the investigator face-to-face. Given the multiple opportunities and the passage of time, his corrected answer was not prompt. Therefore, PC MC E2.A5.1.3.3 is inapplicable.

While Applicant's interview explanation and *mea culpa* after having the question at issue clarified for him may not raise PC MC E2.A5.1.3.3, it does help, along with his subsequent forthrightness and openness, diffuse his brief period of collegiate drug use as something that might be used against him. Indeed, his witnesses testified that the facts are known and that they are not kept a secret.⁽⁴¹⁾ Consequently, although it does not wholly excuse his judgment in withholding the information, PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies to the extent that he attempted to rectify the situation and that the concealed facts are no longer an issue.

Criminal Conduct

Criminal conduct poses a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. In the SOR, DOHA cites to "the information set forth under paragraph 1, above [concerning Applicant's having answered Question 27 of the SF-86 in the negative], which constitutes a violation of Federal law, Title 18, United States Code 1001, a felony," as the basis for security concerns. In this case, Applicant admits that he answered "no" to the question, despite the fact he had tried drugs early in his college career. Consequently, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

As discussed, *supra*, Applicant failed to mention that he had used drugs in college when he submitted his SF-86 in October 2003. By not taking advantage of his opportunity to amend his answer when asked to furnish additional references in June 2004, however, his one act became two inasmuch as he once more represented himself as someone who had never consumed drugs. Therefore, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.2 (*The crime was an isolated incident*) does not apply.⁽⁴²⁾ That second submission also proved to up-date the recency of the conduct from over three years ago, a period which could comfortably be termed "not recent," to a period just shy of a two and a half years ago. In light of his youthful age, however, such a time period is significant, especially when that time has been spent contemplating how his misjudgment brought his trustworthiness and reliability into question; in those terms, I find that sufficient time has elapsed to deem the most recent event as not recent. Therefore, CC MC E2.A10.1.3.1 (*The criminal behavior was not recent*) applies.

There is no evidence that a third party influenced Applicant to answer Question 27 in the negative. Therefore, neither CC MC E2.A10.1.3.3 (*The person was pressured or coerced into committing the act and those pressures are no longer present in that persons life*) nor E2.A10.1.3.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) applies. CC MC E2.A10.1.3.5 (*Acquittal*) is simply inapplicable.

When Applicant was first interviewed by the OPM investigator, there was no suspicion that he had ever used drugs. He could easily have sat passively while the investigator noted Applicant's denial to the question regarding past drug use. Instead, Applicant took the initiative to ask for clarification on how the question was meant to be interpreted. When the investigator gave him an answer and an example clarifying the question, Applicant was forthcoming. Whether this exchange represents a semantic epiphany, an opportunity for Applicant to unburden a bothered conscience, or simply gave him an opportunity to rethink the question, it represents his coming forward before it was otherwise discovered by the investigator. Since that time, he has been open and honest in all respects. He has demonstrated genuine remorse and contrition for not having sought out clarification earlier, for not having asked for help with the question at the time he completed the application, and for not interpreting the question in its broadest sense. Additionally, his supervisor, in

noting that maturation is an on-going process, specifically commented on Applicant's growing maturity. Further, in describing the Applicant as the man he is today, his colleague has described Applicant's integrity as "top notch." Taken together, these facts raise CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). In light of the passage of sufficient enough time to contemplate his actions and its effects, as well as his subsequent actions and the assessment of Applicant's qualities today, Applicant has mitigated security concerns arising from his past criminal conduct.

"Whole Person" Analysis

As noted by Applicant, *supra*, even if the mitigating criteria under Guideline E is determined either to be not applicable, or applicable, but not sufficient to mitigate that particular Guideline, application of the "whole person concept" could still be sufficient to reach a finding for him. At age 20 in college, Applicant spent approximately a semester experimenting with drugs. He soon discovered that they were incompatible with his studies and his lifestyle, and he gave them up. In his early 20s, he completed an SF-86 and actively entered a negative answer to a question regarding past drug use, embracing an interpretation of the question that would conceal his past drug "experimentation." He was correct in his assessment that this interpretation had some basis in English vocabulary, and he understood he was playing with semantics. His fear of jeopardizing the security clearance process with what he hoped might be deemed too much information was secondary to his belief his interpretation was not unreasonable; thusly, he proceeded in full knowledge of the consequences of a purposefully inaccurate answer. He then passively reaffirmed the application when he re-signed it about two and a half years ago. The facts show that he was immediately forthcoming once his interpretation was dispelled as incorrect. [\(43\)](#)

Indeed, the facts indicate little doubt that his concession on this point was inevitable once the question left the printed page and was articulated face-to-face.

During the time between Applicant's original act and today, he has matured from a young man relatively fresh from undergraduate school to a man of 27 years of age. He has been employed now for nearly four years, and both his supervisor and his colleague have commented on how he has matured during that time; his father corroborated this fact. For half of that time, he balanced graduate school with his professional duties in an adult and responsible manner. He is no longer a college kid subject to peer pressure to try drugs; nor is he an early 20-something trying hard to find his way into a profession without seeking collegial help or soliciting parental advice, or splitting hairs to his advantage. Indeed, now that he has established his professional and character reputation for excellence in the workplace, excelled beyond his peers of similar age, and demonstrated a notable degree of integrity in the process, he now interacts with a mature crowd as a mature peer.

In his personal life, Applicant has taken on the responsibility of a home mortgage, lives simply and within budget, is repaying his student loans, and has volunteered with school children. With the exception of his past drug use, an issue now relegated to his past, and the incidents regarding Question 27, there is nothing in his history to indicate that he has ever before exhibited behavior that brought into question his trustworthiness, honesty, or reliability; nor is there anything in his present life that serves as a harbinger that such security concerns will ever again arise.

Finally, Applicant has learned that the security clearance process is on-going, and that it is a serious process that demands one's fullest attention and honesty. He has also learned that it is best to ask first before acting, in the interests of both national security and the expedition of investigative matters. This process has been a humbling period for him, as well as a time for learning and for reflecting on what he did. The passage of yet another year and reapplication would serve no further purpose than has already been served.

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a young, highly educated and talented man whose maturation has progressed from the time when he was in college and when he withheld information regarding his past drug use, and continues to progress. He has successfully shown that some mitigating conditions regarding his personal and criminal conduct apply. Analysis of Applicant, as a "whole person," however, best dispels the security concerns raised. He is contrite over his attempts to skirt important issues. He has learned that the security clearance application process demands a higher degree of bluntness than may be found in academe, where mental gymnastics are often encouraged. He has shown that his reputation for integrity and honesty is

otherwise unsullied. In short, the man of today is not the young man he was in 2003 or even 2004. Applicant has mitigated personal and criminal conduct concerns. Clearance is granted.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J (Criminal Conduct) FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. Tr. 81.
2. Methylenedioxymethamphetimine, a drug stimulating large amounts of serotonin, dopamine, and noradrenaline.
3. Ex. 2 (Personal Subject Interview), dated April 30, 2005; Tr. 70.
4. Tr. 55.
5. Tr. 78.
6. Applicant's Answer to the SOR, undated.
7. Tr. 73, 79.
8. Tr. 71.
9. Tr. 16-17. ("Basically, I say we're conducting your background investigation for a position of trust That will include that we'll be talking with your past and present neighbors, past and present employers. We'll be doing an educational background check. We'll also be doing an NCIC check We'll be doing a financial check Depending on the outcome of those inquiries, I may have to speak to you a second time.")
10. *Id.*
11. Tr. 17.
12. Tr. 21.
13. *Id.*
14. Tr. 22.

15. Tr. 79.
16. Tr. 52.
17. Tr. 37-38.
18. Tr. 40.
19. Tr. 41.
20. Tr. 29.
21. Tr. 32.
22. ISCR Case No. 96-0277 at 2 (App Bd Jul 11, 1997).
23. ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
25. ISCR Case No. 94-1075 at 3-4 (App Bd Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
26. ISCR Case No. 93-1390 at 7-8 (App Bd Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
27. *Egan*, 484 U.S. at 531.
28. *Id.*
29. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
30. Executive Order 10865 § 7.
31. Directive, Enclosure 2, ¶ E2.A5.1.1.
32. Directive, Enclosure 2, ¶ A10.1.1.
33. Applicant's Answer to the SOR, *supra*, note 5.
34. *Merriam-Webster's Collegiate Dictionary* (11th ed, 2003) notes six definitions under the term. The first entry is "1a: the act or practice of employing something . . . ; the second entry is ""2a(1) habitual or customary usage (2) an individual habit or group custom," while the remaining entries offer less generic, more technical meanings for the word.
35. Tr. 73, 79.
36. Government's Rebuttal to Applicant's Reply to the Government's Post Hearing Submission, dated November 8, 2006.
37. *Id.*
38. *See also* ISCR Case No. 01-14701(Adm. Judge Dec. Aug. 30, 2002)("He states that he honestly thought that he had resolved the matter when he was able to clarify these details during his interview with the Defense Security Service (DSS)."
39. ISCR Case No. 01-14701 (App. Bd. Dec. Jan. 22, 2003), at 3.
40. ADP Case No. 30-1130 (App. Bd. Dec Jan. 6, 2001), at 4-5. (Noting that promptness indicates a reasonable time,

and finding that what constitutes a reasonable time depends on the particular facts and circumstances in each case.)

41. *See also* Tr. 89-90.

42. In so finding, I note that the June 2004 amendment gave Applicant a second chance to seek clarification regarding that question.

43. As noted by the Appeal Board, disclosure at the time of one's subject interview may help mitigate security concerns in a general sense. *See* ISCR Case No. 01-14701 (App. Bd. Dec. Jan. 22, 2003), at 3, *supra*, note 39.