

Applicant answered the SOR in writing on December 17, 2007, and requested a hearing. On February 11, 2008, Department Counsel indicated the government was prepared to proceed, but also moved to amend the SOR to include new allegations under Guideline H and Guideline E, and to modify existing SOR ¶¶ 2.a and 2.d. The case was assigned to me on February 14, 2008.

On February 21, 2008, I scheduled a hearing for March 25, 2008. In a separate Order, I gave Applicant until March 17, 2008, to file any objections and to respond to the proposed allegations. Applicant filed no response by the due date.

I convened the hearing as scheduled. Before the introduction of any evidence, I granted the government's motion to amend the SOR. The government's case consisted of 13 exhibits (Ex. 1-13). Applicant testified on his behalf and submitted three exhibits (Ex. A-C) that were entered without objections. A transcript (Tr.) of the hearing was received on April 3, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

On February 11, 2008, Department Counsel moved to amend the SOR by adding ¶ 1.g under Guideline H, alleging that Applicant was arrested in August 1996 for driving under the influence (DUI). Under Guideline E, the government proposed clarifications to SOR ¶¶ 2.a and 2.d to allege that Applicant deliberately failed to disclose on his December 2003 and August 2004 security clearance applications that he had been charged with possession of marijuana and/or possession of drug paraphernalia in 1996 and 2001. The government also proposed new allegations under Guideline E: SOR ¶ 2.g concerning falsification of a September 1, 2004, written statement by not revealing that he had been arrested for possession of marijuana in 1996; SOR ¶ 2.h concerning false statements in a July 7, 2006, interview, by indicating that he used marijuana four to five times between 1995 and 2002 when he had used marijuana daily from 1996 to 2002; and SOR ¶ 2.i also alleging falsification of his July 7 interview by denying any marijuana use between 2002 and about July 2006.

On February 21, 2008, I gave Applicant until March 17, 2008, to file any objections and to respond to the proposed allegations. I informed the parties that in the absence of a response or of no objections, the SOR would be amended as requested. Applicant filed no response by the due date. After confirming with Applicant at the hearing that he had received the proposed SOR amendments and did not object, I amended the SOR as requested.

Findings of Fact

In the SOR as amended, DOHA alleged under Guideline H, drug involvement, that Applicant used marijuana on numerous occasions from about 1996 through at least March 2007 (SOR ¶ 1.a), including after he completed security applications in December 2003 and August 2004 (SOR ¶ 1.b); that he was arrested in August 1996 for possession of marijuana and possession of drug paraphernalia (SOR ¶ 1.c) and DUI (SOR ¶ 1.g) and found guilty of possession of drug paraphernalia and DUI; that he was arrested for DUI and possession of drug paraphernalia in February 2001 and convicted of DUI (SOR ¶ 1.d); that he pleaded nolo contendere to a November 2005 possession of marijuana charge (SOR ¶ 1.e); and that he was arrested while attempting to enter a U.S. military base in March 2007 for possession of marijuana (SOR ¶ 1.f). Applicant was alleged under Guideline E to have deliberately falsified a December 2003 SF 86 by not disclosing that he had been charged with marijuana offenses in 1996 and 2001 (SOR ¶ 2.a), he had used marijuana (SOR ¶ 2.b), or he had purchased marijuana in college and after 2002 (SOR ¶ 2.c). He was also alleged to have falsified an August 2004 SF 86 by not disclosing his marijuana charges (SOR ¶ 2.d), his marijuana use (SOR ¶ 2.e), and his marijuana purchases (SOR ¶ 2.f). Further, he was alleged to have falsified a September 2004 written statement by not disclosing that he had been charged with possession of marijuana in 1996 (SOR ¶ 2.g), and to have falsified material facts during a July 2006 interview by stating that he had used marijuana about four to five times between 1995 and 2002 when he had used marijuana daily (SOR ¶ 2.h), and by denying that he had used marijuana from 2002 through July 2006 (SOR ¶ 2.i).

In his Answer filed before the SOR was amended, Applicant admitted the Guideline H allegations and denied the Guideline E allegations. He attributed his omission of the illegal drug charges from his SF 86 to his failure to understand that expunged charges had to be listed. As for his failure to disclose his use and purchase of marijuana on both SF 86 forms, Applicant averred he was at the time “still very much in denial” about his issues with marijuana. Before the introduction of evidence at his hearing, Applicant admitted all the allegations in the SOR as amended. After considering the evidence of record, I make the following findings of fact.

Applicant is a 31-year-old systems engineer who has worked for his current employer, a defense contractor, since late September 2003 (Ex. 1). He has held a secret level security clearance since 2004, initially on an interim basis, for his duties involving software integration (Tr. 50-51).

Applicant first tried marijuana on December 31, 1993, while at a New Year's Eve party at his home. A friend brought the marijuana. During his last term in high school, Applicant continued to smoke marijuana once every couple of months (Tr. 52-53).

After graduating from high school, Applicant attended college for a year out of state. He did not use marijuana during that time (Tr. 56). He moved back home by September 1994, and began working as a cook/dishwasher at a local restaurant (Ex. 1, Ex. 2). In late August 1995, he matriculated to the state university (Ex. 1, Ex. 2). He

began smoking marijuana with new friends, and continued his marijuana use throughout college with varying frequency, up to on a daily basis.¹ Applicant abstained at times, after waking up coughing from smoking the night before and questioning why he was punishing his body and brain in that way. Applicant purchased marijuana from a friend every couple of weeks (Tr. 54-55). Applicant had his own marijuana pipe (Tr. 56).

Applicant was arrested twice while he was a college undergraduate. In August 1996, after drinking seven or eight beers with friends from college, he decided to drive home. At around 0100 hours, he was stopped by the police for speeding. The officer saw signs of alcohol use (bloodshot and watery eyes, an odor of alcohol on breath) and administered field sobriety tests. After failing the tests, Applicant was arrested for driving under the influence (DUI). During a search of Applicant's vehicle incident to his arrest, the police found a smoking pipe with suspected marijuana (Ex. 3, Ex. 8, Tr. 65-68). Applicant had smoked marijuana that night ("I shared a bowl with one of the guys that I was partying with during the day." Tr. 67). While at the station, Applicant gave the police a small marijuana pipe that he had in his pocket (Ex. 8). Applicant was charged with DUI, possession of less than four ounces of marijuana, possession of drug paraphernalia, and speeding (Ex. 7). In late September 1996, he pleaded guilty to possession of drug paraphernalia and was fined \$100 (Ex. 9, Ex. 10). The possession of marijuana charge was nolle prossed (Ex. 10, Tr. 69). He pleaded guilty to DUI and was sentenced to a \$500 fine and alcohol education classes (Ex. 3, Tr. 69, 86).

In early February 2001, Applicant smoked some marijuana and then consumed four mixed drinks at a bar. He was stopped at a traffic light and arrested for misdemeanor DUI (Ex. 3, Ex. 6). He had a pipe on him containing marijuana residue, and a charge of possession of drug paraphernalia was added (Ex. 3, Tr. 70-73). In late March 2001, he pleaded guilty and was sentenced on the DUI to six months in jail, two days to serve, one year probation, and fines and fees totaling \$563 (Ex. 10). The drug charge was dismissed (Ex. 3). Applicant claims he abstained from any marijuana use while on probation, as he was required to submit to court-mandated drug tests and attend an alcohol and drug program at a local treatment facility (Tr. 64, 74-75). Applicant resided at home with his mother while he was on probation.

In December 2002, he was awarded his bachelor's degree in computer science and engineering. Six months before, having finished his studies, he moved to the area where he had attended his first year of college and began working as a waiter (Ex. 1, Ex. 2). Applicant did not use any marijuana there but smoked the drug on trips back home (Tr. 57). In about August 2003, Applicant returned home to stay (Ex. 1, Ex. 2). Applicant resumed smoking marijuana on weekends with a friend from his first job as a cook/dishwasher (Tr. 56-58).

¹Applicant told a government investigator in March 2007 that he had used marijuana from 1996 to 2002 on a daily basis in college (Ex. 5). At his hearing, he testified that his use in college was at times daily, although it varied and he went months at time without marijuana (Tr. 54-55). It is reasonable to infer that he used marijuana with some regularity in college.

In late September 2003, Applicant began working for his present employer. He was informed of his employer's policy against the use of illegal drugs (Tr. 59). Within a couple of weeks, he was told that he would need a security clearance. He understood that "marijuana was not a proper thing to do" and that it would affect his chances of obtaining a clearance, but continued to use marijuana on a weekly basis on weekends (Tr. 60).

On about December 4, 2003, Applicant completed a security clearance application (SF 86) for a secret-level clearance. He responded "YES" to question 24, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?", and indicated that he had been fined for a May [sic] 1996 DWI. He also answered "YES" to question 26, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?", and reported a January [sic] 2001 DWI. Applicant responded "NO" to the illegal drug inquiries, including question 27 "Since the age of 16 or in the last 7 years, whichever 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 prescription drugs?", and question 29, "In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?" (Ex. 2). Applicant was granted his secret-level clearance (Tr. 51).

On August 2, 2004, Applicant submitted a SF 86, EPSQ version, for a top-secret clearance. He responded as he had on his December 2003 SF 86, listing the DWI offenses only in answer to questions 24 and 27, and denying any involvement with illegal drugs in answer to questions 27 and 29. He also denied in response to question 28 that he had used a controlled substance while possessing a security clearance, even though he had continued to smoke marijuana after being granted his secret clearance (Ex.1).

On September 1, 2004, Applicant was interviewed by a Defense Security Service (DSS) special agent. In a sworn statement, he discussed his listed DUI offenses in 1996 and 2001, and related that on both occasions, he had also been charged with possession of drug paraphernalia since he had on him a pipe containing marijuana residue. He indicated the 1996 charge had been nolle prossed and the 2001 charge had been dismissed. Applicant described his use of marijuana as "typically about once a week" in college. He indicated he had bought it "on maybe three occasions." He claimed a last use of marijuana in 2001, before his college graduation, and denied any intent to use marijuana or other illegal drug in the future. As for his failure to disclose his drug charges or drug use on his December 2003 SF 86, Applicant explained that he was embarrassed and thought that if he listed them, his clearance would be in jeopardy (Ex. 3).

Applicant was reinterviewed on September 20, 2004, about his failure to disclose his drug use on his August 2004 SF 86 application for a top secret clearance. Applicant stated:

I left out information relating to drug charges I was brought up on for my DWI arrests. I also left out that I had used drugs in the last seven years, specifically in concert with the DWI. I left this information out since I had done so on an earlier application for a secret clearance and as trying to stay consistent on all my applications (Ex. 4).

After his interviews, Applicant continued to use marijuana on the weekends (Tr. 61). In November 2005, Applicant smoked marijuana at his home with an old friend from college and an acquaintance of his friend's. Applicant "figured oh, what could it hurt" since he had not seen the friend in a long time (Tr. 47). The police, responding to a complaint of noise, smelled marijuana and observed a marijuana bowl (his friend's bowl, Tr. 78) in plain view in Applicant's apartment. Applicant was arrested for misdemeanor possession of marijuana, first offense. In January 2006, he pleaded nolo contendere, and was sentenced to a \$200 fee, court costs, and 25 hours of community service (Ex. 5, Ex. 11, Ex. 12, Tr. 76-79). Applicant told his employer about his arrest "the next day" (Tr. 79).

On July 7, 2006, Applicant was interviewed by a government investigator about his November 2005 arrest for marijuana possession. Applicant indicated he had paid the fine and planned to complete the community service by October. He related that the police could smell marijuana in his apartment and saw a pot pipe (bowl) in plain view. He admitted to past drug use, marijuana only, between 1995 and 2002 about four to five times on the weekend. He denied any current use of drugs or any future plans of drug use (Ex. 5).

Applicant continued to smoke marijuana weekly (Tr. 61). On March 14, 2007, Applicant was entering a local military base to test an integration system when his vehicle was selected for a random inspection. An authorized security contractor discovered a small clear plastic bag containing marijuana and a glass smoking pipe in the center console. Applicant was arrested and charged with possession of marijuana and possession of drug paraphernalia on a federal installation (Ex. 13, Tr. 80). He was planning to use marijuana after work (Tr. 80-81).

On March 21, 2007, Applicant was contacted by the investigator for further information. He indicated he had smoked marijuana in college from 1996 to 2002 on a daily basis and periodically thereafter to March 2007. He admitted he had marijuana in his apartment before his arrest in November 2005. He smoked it at that time because he enjoyed it and to fall asleep. Applicant maintained he had stopped using marijuana in March 2007, and had contacted the employee assistance program (EAP) at work to help him abstain (Ex. 5). There is no indication that Applicant told the investigator of his recent drug-related arrest on the military installation.

On March 29, 2007, Applicant began counseling with a licensed marital and family therapist (LMFT) to establish sustained recovery from marijuana abuse. He continued in his counseling through his employer's EAP initially once a week and then once every two weeks (Ex. 6, Ex. A, Tr. 65). In response to interrogatories from DOHA, Applicant affirmed in July 2007 that he had not used any marijuana since March 2007. He indicated he was still seeing his EAP-provided drug counselor to assist him in remaining free of illegal drugs. He expressed a willingness and plan to take drug tests to prove his abstinence (Ex. 5). In response to separate interrogatories, Applicant averred that he last used marijuana on March 14, 2007 when he smoked the drug in a bowl. Applicant disclosed his detention in March 2007 on drug charges, but indicated he was receiving counseling every two weeks. Asked again to explain why he had not listed his drug use on his December 2003 and August 2004 security clearance applications, Applicant chose instead to reiterate that he had ceased using marijuana:

My use of marijuana has been sporadic. At time in my past I had smoked it, and at some time I did not. I can obviously see now that I cannot use marijuana and live my life the way I should. I swear that I have grown up and I no longer have marijuana as any part of my life. I will have drug testing done to show that I have stopped (Ex. 6).

On August 13, 2007, Applicant was notified that he was prohibited for one year, retroactive from his detention date, from entering the military installation where he had been caught with marijuana (Ex. 13, Tr. 81). In September 2007, Applicant went to court for the March 2007 drug charges. He was informed that he was going to be put into a six month to year-long program and then the charges would be expunged on its completion (Tr. 82-84). As of March 2008, Applicant had heard nothing further (Tr. 83).

Applicant smoked marijuana at least once in December 2007. He was at a party with friends ("I really didn't see how I was going to keep my clearance, after all the stuff that I've been through, and I was weak for a night." Tr. 62). In March 2008, Applicant was told by his employer that if he managed to keep his clearance, steps would be taken to ensure his abstinence from illegal drugs, such as drug testing (Tr. 63).

Applicant remains friendly with those with whom he used marijuana since 2005, although he is willing to stop hanging out with these friends if necessary to keep his job (Tr. 84, 98). In about late January 2008, Applicant told a close friend with whom he used marijuana in December 2007 that he was having a hearing on his clearance and that he "should probably be smart and just not smoke anymore, smoke pot anymore." (Tr. 98). Applicant's counselor has told him that he could be addicted to marijuana (Tr. 85), and that he should abstain completely (Tr. 99). On a couple of occasions since December 2007, the last time in late February 2008, Applicant has been present when others brought out marijuana ("It was just like my [sic], like after a few drinks at the bar, we'll go back to my buddy's place and just hang out, just a little bit after, and then I usually walk home from there.") (Tr. 100). Knowing his self control is "very low," Applicant left almost immediately (Tr. 101).

In March 2008, Applicant moved in with his girlfriend to change his environment. They have been together for eight months (Tr. 46). In the past, Applicant did not feel that his marijuana use was causing enough of a problem for him to stop. He now understands that his marijuana use has repercussions for his job and future (Tr. 45-47). His therapist indicates he has been compliant with his treatment and he is acquiring the necessary skills to maintain long term abstinence (Ex. A).

Applicant has been eager to take on assignments at work and has responded to the challenge of increasing responsibilities. He is considered a key member of his software development team (Ex. C). The company's facility security officer has found him to be conscientious in handling classified information. She is aware Applicant has been attending counseling on a regular basis and believes he has learned a valuable lesson from his past actions (Ex. B).

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement

The security concern related to the guideline for drug involvement is set out in AG ¶ 24: “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” After trying marijuana at a New Year’s Eve party in 1993, Applicant smoked marijuana with friends every couple of months. He refrained from drug use during his freshman year of college out of state, but after transferring to his home state’s university, he abused marijuana with regularity, at times daily. He also purchased the drug for his own consumption every couple of weeks. Arrests on drug-related charges in August 1996 and February 2001 had little impact on changing his attitude toward illegal drugs. Except for occasional weekends spent back home, he abstained from marijuana use from June 2002 to August 2003 when living out of state. Once he returned in August 2003, he resumed his involvement with marijuana on the weekends. He continued this abuse while in his current job, knowing it was against his employer’s policy, and after he had obtained a secret clearance and applied for an upgrade to top secret. He was arrested in his apartment for marijuana possession in November 2005 and sentenced to a fine and community service. Yet, he continued to smoke the drug weekly until March 2007, when he was caught entering a military installation with marijuana and a small pipe in the console of his vehicle. Despite ongoing counseling since late March 2007, Applicant again smoked marijuana on at least one occasion in December 2007. AG ¶ 25(a) (“any drug abuse”), ¶ 25(c) (“illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”), and ¶ 25(g) (“any illegal drug use after being granted a security clearance”), are clearly applicable.

None of the mitigating conditions set forth in AG ¶ 26 apply. Marijuana played a large part in Applicant’s life until March 2007 when he was caught entering a federal installation with marijuana in his vehicle. AG ¶ 26(a) (“the behavior happened so long

ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment") clearly does not apply. Despite ongoing counseling with an LMFT since late March 2007 to assist him in achieving sustained abstinence, he continues to associate with those friends with whom he used marijuana in the past. Applicant waited until January 2008 to inform his close friend with whom he shared marijuana that he no longer intends to use marijuana. As recently as February 2008, others pulled out marijuana in his presence at this friend's house. While Applicant left on that occasion, he had smoked marijuana in a similar situation only a couple of months before. Applicant is now willing if required to dissociate himself from drug-using associates (see AG ¶ 26(b)(1)), but the fact that he has not yet done so raises considerable concerns about his commitment to reform. Under AG ¶ 26(b)(2), a demonstrated intent not to abuse drugs in the future can be shown by "changing or avoiding the environment where drugs were used." Within the past month, Applicant moved in with his girlfriend, but it is too soon to conclude that he will be able to avoid those friends and environments associated with marijuana use. It has been only three months since his last use of marijuana, which is far short of that appropriate to demonstrate intent not to abuse drugs in the future under AG ¶ 26(b)(3), given his years of frequent if not regular drug abuse.

Guideline E, Personal Conduct

The security concern related to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

When Applicant applied for a secret-level clearance in December 2003, he did not disclose in response to question 24 (any alcohol or drug charges or convictions) that he had been arrested for possession of marijuana and drug paraphernalia (convicted of the latter) in 1996, and that he had been arrested for possession of drug paraphernalia in February 2001. He did not disclose the 2001 drug paraphernalia charge in response to question 26 (any other arrests, charges, or convictions within the last seven years). Applicant also responded "NO" to question 27 concerning any illegal drug use in the last seven years, and to question 29 regarding any illegal drug purchases in the last seven years. In August 2004, Applicant filled out an application for a top secret clearance. He provided the same answers to questions 24, 26, 27, and 29. Accepting the Applicant did not use marijuana while he was on probation for the February 2001 DUI, he had used marijuana regularly in college from August 1995 to May 2001, sporadically from June 2002 to August 2003, and on weekends after starting his defense contractor employment. His drug-related arrests, abuse of marijuana, and purchases of marijuana

were required to be reported on the December 2003 and August 2004 security clearance applications.

While Applicant does not deny that he falsified his responses to question 27 concerning drug use, he explained that he thought he did not have to list the drug charges because he had been told they would be expunged (i.e., no record of them, Tr. 43-44, 91), and that he thought question 29 applied to drug traffickers and he failed to read it as closely as he should have (Tr. 89-90). He also attributed his inaccurate responses to denial over his marijuana problem (“I think as part of the denial that goes on in my head, I just wanted to get those questions over with as quickly as possible and may have skimmed over them and not looked at them as closely as I should have.” Tr. 90). There is no evidence any of the drug charges had been expunged. If Applicant in good faith had equated nolle prossed with expungement, he likely would have listed his conviction of a drug paraphernalia charge in 1996. His clearance applications fail to disclose any involvement with illegal drugs. It is telling that in a September 2004 written statement, Applicant stated, “My Security Clearance Application does not reflect the drug charges, nor does it reflect my marijuana use. I was embarrassed by these events and thought that if I listed them my security clearance would be in jeopardy.” (See Ex. 3). AG ¶ 16(a) (“deliberate omission, concealment, or falsification of relevant 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 because of the SF 86 falsifications alleged in SOR ¶¶ 2.a through 2.f.

Furthermore, the evidence shows that Applicant falsified a September 1, 2004 sworn statement, and material facts during a July 7, 2006 interview beyond that alleged in the recent amendments (SOR ¶¶ 2.g, 2.h, and 2.i). In his September 1, 2004-sworn statement, Applicant admitted he had been charged with possession of drug paraphernalia in addition to DUI in both 1996 and 2001, but he claimed the 1996 charge had been nolle prossed. He did not reveal that he had also been charged with illegal drug possession, which was the charge that had been nolle prossed, or that he had been convicted of the drug paraphernalia charge in 1996 (see SOR ¶ 2.g). Not alleged by the government but reluctantly acknowledged by Applicant at his hearing (Tr. 93-94), he also falsely asserted that his last use of marijuana was in 2001 before his college graduation. When reinterviewed on September 20, 2004 (Ex. 4), Applicant had an opportunity to correct the record and admit that his marijuana abuse was ongoing. Instead, he indicated, “I also left out that I had used drugs in the last seven years, specifically in concert with the DWI . . . since I had done so on an earlier application for a secret clearance, and was trying to stay consistent on all my applications. His comment is misleading in that a reader could infer that his abuse occurred only in concert with his drunk driving offenses. AG ¶ 16(b) (“deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative”) applies.

He was not completely candid with a government investigator on July 7, 2006, as well. When asked about his November 2005 arrest for possession of marijuana, Applicant claimed that his drug use consisted of marijuana between 1995 and 2002 four to five times on the weekends while a college student, and he falsely denied any current use. There is conflicting evidence as to whether Applicant used marijuana on a daily basis from 1996 to 2002 (see n.1), but he unquestionably minimized the extent of his marijuana involvement in college and, moreover, concealed his subsequent abuse, including on the occasion of his arrest in November 2005 (SOR ¶ 2.i). AG ¶ 16(b) also applies to his false statements in July 2006. Applicant's ongoing association with known illegal drug users implicates AG ¶ 16(g) ("association with persons involved in criminal activity"), although it was not alleged as a separate concern under Guideline E.

Applicant does not satisfy any of the relevant mitigating conditions under Guideline E. AG ¶ 17(a) ("the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts") is inapplicable to his record of piecemeal disclosure. There is no evidence that he relied on the advice of authorized personnel or legal counsel concerning the security clearance process required by AG ¶ 17(b). His record of multiple misrepresentation is not only serious, but also too recent to consider AG ¶ 17(c) ("the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"). As recently as March 21, 2007, Applicant discussed with a government investigator his marijuana use and his arrest in November 2005. Although he "volunteered" during that interview that he used a lot of marijuana in college and up to March 2007, the evidence does not show that he told the investigator of his arrest the previous week on the military installation. Applicant's acknowledgment of the falsity of some of his previous statements to the government² provides a limited degree of encouragement about his reformation.

²The following exchange concerning his September 1, 2004, misrepresentations is illustrative:

- Q But you, in that statement, you told him that your drug use had ceased when you left college in 2001, correct?
- A At that time, I had stopped, yes, and I started again later on. It's, I mean it all varies, I'm not, you know, at that time, when I had that interview with [the DSS Agent], I had stopped.
- Q Okay, but you had, you might not be, so let me clarify then. Your testimony is that you were not using in September of 2004 when you were interviewed by [the DSS Agent], correct?
- A When I talked to him at that point, yes.
- Q But you had used between 2001 and September of 2004, correct?
- A Yes, ma'am.
- Q So when you told him that you had stopped using in 2001, that was false, right?
- A Yes.

(Tr. 93-94).

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. Applicant has raised considerable doubts about his continued suitability for classified access, notwithstanding his record of properly handling classified information at work. He was granted his secret clearance when the government was unaware of the extent of his true drug involvement. He also continued to smoke marijuana while holding that clearance, to as recently as December 2007. Applicant also showed disregard for his fiduciary obligation of candor with the government. Under the totality of the facts and circumstances presented, I conclude it is not clearly consistent with the national interest to continue a security clearance for him.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant ³

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant

³In the SOR as amended, the government alleged that Applicant was arrested for DUI on August 5, 1996, in addition to the drug charges in SOR ¶ 1.c. The DUI is relevant under Guideline H to the extent it shows Applicant used marijuana at times in combination with alcohol. However, I find "For Applicant" because his drug conduct at issue is addressed in ¶ 1.c and as such ¶ 1.g is duplicative.

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge