



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 07-09592
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel

For Applicant: Alan V. Edmunds, Esquire

August 29, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed Security Clearance Applications (SF-86) in 1999, 2000, and an SF-86 signed by Appellant on October 3, 2002, was affirmed on May 28, 2003. On January 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns regarding personal conduct and criminal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SOR issued after September 1, 2006.

Applicant answered the SOR allegations on January 28, 2008, by denying all allegations raised. The case was assigned to me on March 15, 2008. Department Counsel and Applicant agreed to an April 9, 2008, hearing date and a Notice of Hearing was issued on March 17, 2008, setting the hearing for that date.

The hearing took place as scheduled. Department Counsel submitted six exhibits (Ex.), accepted into the record as Exs. 1-6 without objection. Applicant testified and submitted 14 exhibits, which were accepted as Exs. A-N without objection. Two witnesses testified on behalf of Applicant. The transcript (Tr.) was received on April 18, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 50-year-old sub-contractor working for a Federal government entity. She has a bachelor of science (B.S.) degree and a master of science (M.S.) degree in management information systems. She is a successful professional who is lauded in her field.¹ Her personal attributes and community involvement are thoroughly praised by peers from her community.² She is divorced and has no children.

After graduating from high school in 1976, Applicant went to college. During that time, she may have experimented with drugs.³ In 1978, on the last day of summer school in her sophomore year, she was caught in a fire and severely burned. She was treated in a hospital for three or four months with second and third degree burns all over her body. Over the next 15 years, she would undergo seven or eight surgeries related to the injury.⁴ Prior to the end of her series of surgeries, she was married from September 1991 until her divorce in August 1992.⁵ During her divorce, Applicant used marijuana.

Applicant's references to her divorce time frame generally equate to the time frame of her marriage, 1991-1992. Without a copy of her divorce decree in front of her, or a document like the SF-86 which she may have filled out with the help of a copy of the decree, she cannot remember exactly when the divorce was.⁶ Nor is she capable of remembering when she returned to college in the 1990s without resort to documentation or reference to the divorce.⁷

Applicant is clear, however, she returned to college to finish her undergraduate degree after she was divorced. She then completed her undergraduate degree in

¹ Exs. A-B (Letters of Recommendation).

² Exs. C-K (Letters of Reference).

³ Tr. 41. "... but outside of that -- that's back in the '76 time frame. Outside of that, no. It's the only other time other than that I've used drugs is in 1991, during my divorce time frame."

⁴ Applicant was unable to recall the years or exact number of her surgeries. Tr. 35.

⁵ These dates come from Applicant's SF-86.

⁶ Tr. 72.

⁷ Tr. 72-74.

August 1996. It was in 1996 that she first began work as a federal contractor. After receiving her bachelor's degree, Applicant continued with school and worked on a master's degree. During that time she was engaged, but her fiancée died before she graduated.⁸ In distinguishing this academic period of her life from the time of her divorce, Applicant noted that "[i]t was schooling that helped me get through that whole scenario. Not drugs."⁹ She completed her graduate degree in 1999.¹⁰ She thinks she received her first security clearance in 2000.¹¹

Applicant completed an unsigned SF-86 form that was electronically submitted on July 1, 1999. In response to 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. . . ,"* Applicant answered "no." In response to question 28, *"Have you EVER illegally used a controlled substance while . . . possessing a security clearance. . . ,"* Applicant answered "no." An identical or virtually identical application was electronically submitted on January 13, 2000, with no discernable changes. The hard copies of those electronic transmissions are unsigned.

An SF-86 form signed by Applicant on October 3, 2002, and again signed on May 28, 2003, does have discernable updates. Her city, county, and state of birth are incorrectly identified. Applicant's employment and foreign travel destinations are updated. A top secret security clearance from one Government entity is specifically noted as received on October 5, 1999, and a confidential security clearance from another Government entity is documented as having been received on August 1, 2000, refuting her earlier belief she first received a security clearance in 2000. Appellant's negative answers regarding past drug use remained unchanged.

An investigator's statement summarized an interview of Applicant on May 28, 2003. The summary, which was not signed by Applicant, states that Applicant revealed she began using marijuana in late 1991 or early 1992, after her divorce; she used the drug once a month or every other month until 1999.¹² Her estimate of usage was stated as being approximately 200 times during that period. The interviewer stated Applicant did not use marijuana in the year 2000 through May 2002 for fear of being given a random drug test. It further states she recommenced using marijuana in May 2002.

⁸ Tr. 41.

⁹ *Id.*

¹⁰ With regard to her undergraduate degree, the date noted is from her SF-86. It clarifies her statement that "I think I got my B.S. degree in 1996. . . ." Tr. 34. Inasmuch as the SF-86 does not indicate a date for her graduate degree completion, reliance is on her statement: "I think that was '99." Tr. 34.

¹¹ "I think I've had a clearance since, maybe 2000, maybe before that. I – I've had a clearance a long time." Tr. 37.

¹² Monthly use from January 1992 through December 1998 would indicate 84 instances; every other month use would denote 42 instances of marijuana use.

After a July 9, 2003, interview, Applicant signed a statement prepared with the assistance of a special agent. In that statement, Applicant properly stated her year and city of birth, noting she must have mistakenly acknowledged the wrong city and year on her October 2002/May 2003 SF-86 form or some other unidentified form.¹³ On that same page, there is a typed comment regarding her place of residence and a tenant/cohabitant. It is situated between her written initials and the handwritten notation "Attachment 1 (2 pages)." No attachment, however, is appended to, or incorporated into, the submitted exhibit.¹⁴ In another section, Appellant noted that her academic career was nearly ended when she was once accused of plagiarism in graduate school. She did not, however, recall the name of the professor.¹⁵ On page three, she stated that she did not know the whereabouts of her father, her ex-husband, or two of her siblings.¹⁶

Regarding her past drug use, Applicant's July 9, 2003, statement reads: "I did not indicate any drug use on my security form because I believe my last use was prior to the last 7 years. From my best recollection, my last use was in late 96 or early 97."¹⁷ I am disclosing this information because I am not definitely sure about the year."¹⁸ No distinction is made as to whether Applicant meant the SF-86 security form transmitted in July 1999 or January 2000, nor is it clear she knew it was twice transmitted. She characterized her drug use as limited to marijuana at social gatherings, "and I would averaged to have been at least 10 but no more than 20 times. . . ."¹⁹

During the interview, Applicant felt pressed to provide precise dates and numerical ranges of instances of marijuana use based on the investigator's questioning.²⁰ When further pressed for an answer, she ultimately gave a number just to satisfy the inquiry. She thought to herself: "And then afterwards I said 'You know, this is going to come back to haunt me.'"²¹ In reviewing her statement during the hearing, Applicant acknowledged she gave those answers, but commented: "But I tell you the

¹³ Ex. 4 (Statement of July 9, 2003) at 1. The 2002/2003 SF-86 incorrectly identifies Appellant's city of birth, but reflects the proper year of birth. See Ex. 3 (NSA Denial, dated February 28, 2006).

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 3.

¹⁷ See also Tr. 51.

¹⁸ *Id.* at 4.

¹⁹ Ex. 4, *supra* note 8, at 4.

²⁰ Tr. 58-61. *E.g.*, "She said 'Well, you have to give us something. We can't sit here all day,' And I said 'Okay. Well, that's the case, then I'll go with this.'" Tr. 61.

²¹ Tr. 58.

dates is what I'm confused about . . . I'm not able to remember."²² "It states it here, but I don't recall that. . . . I don't recall saying that I did that."²³ In further questioning regarding dates, she became more confused: "Okay. Here I'm getting confused again."²⁴

On December 8, 2006, Applicant gave an unsworn declaration to an Office of Personnel Management representative. The Government introduced it as part of its Exhibit 5, which is described in the Index of Government Exhibits as "Applicant's Interrogatory Response, signed on December 13, 2007 (including summary of Applicant's interview from December 8, 2006)(12 pages)."²⁵ Its four sections of materials vary in format, but it is stapled as a whole document. The second section is the typed testimony from an "Interview Conducted Under Unsworn Declaration on 12/08/06," in which Applicant is repeatedly noted as being unable to recall specific names, dates, and facts from her past. She affirms she used marijuana during the 1991-1992 time frame, during her divorce. She denied drug use between 1992 and 1999, but concedes she may have smoked marijuana one or two times while attending college between 1996 to 1999. In what appears to be direct responses to specific questions, she stated she did not recall using drugs since 1999 or in May 2002. The testimony is followed by a section bearing no letterhead.²⁶ It seeks affirmation from Applicant that she reviewed the report and affirmed its content as accurate. Her signature and a notary seal indicate she was offered this review on December 13, 2007, over a year after the 2006 interview. No reason is indicated for this delay.

For many years now, Applicant has been far removed from the "party" scene.²⁷ She has "grown considerably" since her divorce and her use of marijuana. She now lives a "clean life."²⁸ That clean life is one with many adult responsibilities²⁹ and she no longer associates with her former marijuana indulgers or those who use drugs.³⁰ Since eschewing drugs and those who use them, Applicant has worked for and received both a B.S. and a M.S. degree. She is busy with work, but also takes time to volunteer within her community, helping the jobless and homeless in her community find work and self-

²² Tr. 53.

²³ Tr. 56.

²⁴ Tr. 54.

²⁵ Ex. 5 (Applicant's Interrogatory Response, 2007).

²⁶ Although the page lacks letterhead, it does contain a template for the "For Official Use Only" stamp on the bottom of the sheet indicating the document of some Government or Department origin.

²⁷ Tr. 46.

²⁸ Tr. 45, 48.

²⁹ Tr. 45.

³⁰ Tr. 46.

sufficiency.³¹ She owns her own home and, with regard to her family, provides primary support for her elderly mother.³² She helped her brother reverse a downward spiral toward suicide by helping him overcome drug and alcohol dependence, and she continues to provide him with support today.³³

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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³⁴ The burden of proof is something less than a preponderance of evidence.³⁵ The ultimate burden of persuasion is on the applicant.³⁶

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

³¹ Tr. 45-46.

³² Tr. 20, 45.

³³ Tr. 19, 47.

³⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁹ 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.

Analysis

Personal Conduct

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.

Applicant maintains she smoked marijuana around the time of her divorce, in 1991-1992, and used it about 10-20 times. That was her position when she completed her first SF-86s and it remained her position at the hearing. The Government presented evidence from intervening interviews, statements, and summaries bearing inconsistent answers to the same questions regarding frequency and time frame of drug use. It argues her successive inconsistent answers demonstrate she purposefully misled or deceived the Government. However, Applicant’s inconsistencies on matters both of relevance and on immaterial matters run throughout the documents discussed. She repeatedly couches her answers in tentative terms and acknowledges her poor recall. Lost on specific dates, she commonly has to make reference to her divorce (drug use) or to her return to college (no drug use) to establish a time frame. The overwhelming evidence demonstrates not that she lied or misled, but that she has poor recall with

³⁷ *Id.*

³⁸ *Id.*

³⁹ Executive Order 10865 § 7.

regard to personal matters. Moreover, some of the interview summaries upon which the Government depends contain wildly inconsistent statements. For example, the giant leap from her having used marijuana 10-20 times to having used it 200 times. Such discrepancies, especially in the case of an unsigned declaration or one signed over a year after the fact, makes one ponder whether there is a transcription mistake or interpretative misunderstanding at play. The one constant seems to be the Applicant's SF-86, which was apparently completed with the aid of documents, such as her divorce decree. Given these facts, I do not find any of the Personal Conduct Disqualifying Conditions applicable.

In the alternative, however, if falsity is found, Personal Conduct Disqualifying Condition (PC DC) 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*) and PC DC 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*) apply.

The evidence presented by the Government against Applicant comes directly from her own statements and submissions, as well as from purported representations of her statements. Applicant has overcome several obstacles to get where she is today, a lauded professional in her particular field. In maintenance of a security clearance, she has comported herself professionally, welcomed interviews, and conveyed appropriate equivocation when she was unsure of an answer. Based on the record and her highly credible appearance at the hearing, however, her recall with regard to her personal life is poor and unreliable. The more a question is rephrased, the more visibly frustrated she grows in not being able to be more precise. When persisted into giving a date range or a guess, she often gave the latter equivocally. While it may be argued that a selective memory is to her advantage with regard to the time frame of her marijuana usage and the number of instances she abused drugs, her lack of recall has been consistently shown to extend equally to minor and immaterial matters.⁴⁰ She misidentified her city, county, and state of birth on one SF-86 through simple negligence. She apparently misidentified her year of birth on a form. She cannot remember the number of surgeries her tragic accident required. She has varying recollections as to what year she received her first security clearance.⁴¹ She has lost contact information for siblings. She cannot remember the name of the professor who accused her of plagiarism, although the incident almost jeopardized her academic career. She is unable to recall the dates of her marriage or the date she was divorced. She cannot remember when she returned to college in the 1990s, except that it was after the time frame of her divorce. These latter two memory lapses are particularly

⁴⁰ If this is a ploy, it has been adroitly executed with uncanny consistency for nearly a decade.

⁴¹ Applicant has been at her most reliable, or at least most consistent, with regard to her SF-86s. Her allusion to possibly having had a copy of her divorce decree at hand when she completed her SF-86s may provide a clue that her answers on those forms were entered with documentary assistance to refresh her memory.

notable because they are repeatedly used to frame a reference for when she stopped using marijuana. While her professional credentials and success portray her as a gifted businesswoman, her statements and testimony consistently show that she can be absent minded with regard to her personal life. To her credit, however, she has consistently forewarned interviewers when she was unsure of dates, events, and identities, so it is hard to imagine her memory lapses now are a matter of convenience.

Despite sufficient evidence that Applicant's recall is imprecise, the Government relies heavily on her inconsistencies. In particular, it relies on two exhibits to demonstrate Applicant falsified or misled investigators. Those two exhibits, however, are not without flaws. The May 2003 interview concerned answers to questions entered on SF-86s dating back to 1999 and covering events occurring over a decade earlier. In that interview, her answers varied wildly. She indicated she used marijuana 200 times between late 1991 or early 1992 until 1999, using it once a month or every other month. Yet the interviewer never asked how or why her drug use continued after 1992, when it increased from 10-20 instances to 200 instances, or how such infrequent use could add up to 200 incidents. The jump from 10-20 incidents to 200, in particular, is so inconsistent it is striking. Applicant, however, never signed that statement and there is no indication she was ever afforded the opportunity to review it. Such striking inconsistency and the failure to offer Applicant an opportunity to review affect the weight the statement should be given. Similar questions arise regarding the reliability of the December 8, 2006, statement included in the oddly comprised Exhibit 5. It appears Applicant was afforded the opportunity to review the statement attributed to her and to note whether it accurately reflected her conversation. That opportunity, however, was curiously and inexplicably not extended until December 13, 2007, over a year after the interview. It would be difficult to expect anyone to reliably affirm or refute detailed notes from a meeting over a year in the past. Again, such facts must be considered in weighing the reliability of the document. Aside from issues regarding the weight of the evidence, Given the flaws and weaknesses of these documents in contrast to Applicant's admitted difficulties with recall, Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(f) (*the information was unsubstantiated or from a source of questionable reliability*) is applicable with regard to these statements.

The July 9, 2003, statement appears to be the most reliable evidence presented, although it also has a curious fault. The first page alludes to a two-page attachment that is not appended to the document. Regardless, the statement is signed and there is no indication Applicant objected to her statement with regard to drug use. That statement limits her drug use to 10-20 times, which is consistent with all other allusions except the wildly variant content in the unsigned statement from May 2003. Her date of last drug use is extended beyond her divorce time frame.

With regard to her last drug use, Applicant prefaces her comments by stating, "I did not indicate any drug use on my security form because I believe my last drug use was prior to the last 7 years." She then comes to her main point of departure concerning past drug use – as based "[f]rom [her] own recollection," she used marijuana from the late 1991 to early 1992 period into late 1996 or early 1997. She then notes that she was "disclosing this information because [she was] not definitely sure

about the year.” Aside from the repeatedly equivocal language and disclaimers, the time frame is implausible.

At the time, Applicant clearly meant to convey that her last drug use was *prior* to the last seven years. She makes it clear that her suggestion of 1996/1997 is something of a “guesstimate.” Whether indicating her 1999 SF-86 or the security form submitted in May 2003, neither could account for a seven year gap since drug use, and she clearly meant to assert that seven years had passed between drug use and security form. In failing to provide any follow up to these statements, the interviewer was left with an inconsistency.⁴² Such a result offers little to substantiate the Government’s allegations. Therefore, PC MC AG ¶ 17(f) again applies.

In the end, all the statements pertaining to Applicant’s drug use come from her or are attributed to her. Inconsistency may indicate a lack of credibility or a scheme to mislead, but it may also indicate a basic inability to recall accurately. Here, Applicant’s gift for recall was demonstrated at the hearing to be weak, although she was otherwise credible in testimony, demeanor, and delivery. Repeatedly, however, she has expressed her contrition and cited to her drug use as an evil she started and practiced during the time frame of her divorce.⁴³ Years have passed since Applicant’s divorce, she has not seen her ex-husband since that time, and she does not know his whereabouts. She has since completed undergraduate school and earned a master’s degree. She has thrown herself into her work and excelled in her chosen profession. She devotes significant time to her family and community. She has distanced herself from drug users. There is no indication she would use them again and no unrebutted evidence she has used them since her divorce. She has accumulated numerous personal and professional references as to her character today. She demonstrated her willingness to give true statements about her past drug use despite a recollection deficit for personal detail. PC MC AG ¶ 16(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*), PC MC AG ¶ 16(c) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*), and PC MC AG ¶ 16 (g) (*association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations*) apply.

⁴² Of even less significance to the issues is Applicant’s following sentence, where she states that despite being unsure, she is “certain that since 97 [she has] not been involved with any illegal drugs.” It simply affirms no drug use since 1997; it does not necessarily admit or imply drug use prior to that year.

⁴³ Even if Applicant’s drug use had continued until the end of her graduate program despite repeated testimony she did not do drugs while in school, most of the following factors would still apply.

Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and untrustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with rules, laws, and regulations.⁴⁴ Conditions that could raise a security concern and may be disqualifying include Criminal Conduct Disqualifying Conditions (CC DC) AG ¶ 31 (a) *a single serious crime or multiple lesser offenses*, (b) *discharge or dismissal from the Armed Forces under dishonorable conditions*, (c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*; (d) *individual is currently on parole or probation*, and (e) *violation of parole or probation, or failure to complete a court-mandated rehabilitation program*.

The criminal conduct here is the allegation that Applicant misled investigators, not her past drug use. Having previously determined Applicant did not intentionally mislead or defraud, no Criminal Conduct Disqualifying Condition (CC DC) applies.

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. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors noted above. Applicant is a mature, self-made woman who has overcome adversity to complete her education and become a successful professional. The period at issue concerns minimal to moderate marijuana in the 1990s, with no suggestion she has used the substance in the last five years. Her documentary statements on the matter come from 1999 to 2003. Consequently, both the personal and criminal conduct at issue are matters now squarely in the past.

⁴⁴ AG ¶ 30.

The Government culled from statements Applicant has made over the years to expand her use of drugs to beyond the 1991-1992/divorce time period she claims. In doing so, the Government contends Applicant falsified her SF-86 forms and mislead investigators. Those same statements, however, hold their own inconsistencies or flaws which bring their reliability into question. They also reflect the fact that Applicant's recollection with regard to personal matters – dates, people, and places – is poor. The entire period between her marriage and her returning to college seems to be a blur, including her drug use. In the end, it is a matter of “she said” versus what “she tentatively said or was interpreted to have said.” Giving the most weight to Applicant's live testimony and her July 2003 statement, despite its missing attachment(s), Applicant either ceased using marijuana around 1992 or the end of 1996, beginning of 1997. Considering Applicant's credible testimony and argument, and after rereading the July 2003 summation in context, it is clear that Applicant's intent was to convey not a specific year, but that she had not used marijuana for at least seven years prior to her SF-86. That would automatically strike the late 1996/early 1997 benchmark as another indication of faulty memory.

Regardless, Applicant has raised significant mitigating conditions with regard to both the personal and criminal conduct security concerns. An examination of the whole person shows a mature woman devoted to her career, her work, her community, and her family, with no other indications that raise issue with her veracity, trustworthiness, and honesty, or her intent to remain drug free. It is clearly consistent with the national security to continue Applicant's security clearance. Clearance is granted.

Formal Findings

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

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2a:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge