



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



In the matter of: )  
)  
) ISCR Case No. 07-13066  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: Greg D. McCormack, Esquire

September 30, 2008

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant owed the IRS \$183,000. The tax lien has been released. No taxes are owed the IRS or state tax commission. In 2001, Applicant started using marijuana as an attempt to address depression he experienced resulting from participation in a medical clinical study. He used marijuana daily from 2001 to 2004. He has since sought treatment and no additional treatment is warranted. Applicant has successfully mitigated financial considerations, drug involvement, and personal conduct security concerns. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Applicant a Statement of Reasons (SOR) on May 9, 2008, detailing security concerns under Guideline F, financial considerations, for delinquent taxes, Guideline H, drug involvement based on his daily use of marijuana from 2001 to 2004, and Guideline E, personal conduct, for using marijuana after having been issued a clearance.

On May 22, 2008, Applicant answered the SOR, and requested a hearing. On July 24, 2008, I was assigned the case. On July 24, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 12, 2008. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through F, which were admitted into evidence. On August 19, 2008, the transcript (Tr.) was received.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the allegations in the SOR. Applicant is a 54-year-old teacher and part-time copier who has been self employed since 1998, and is seeking to maintain a security clearance he has held since 1991. (Tr. 41) An individual who works for Applicant states Applicant is a wonderful person who treats everyone with respect and is a devoted husband and father. (Ex. E) A friend and acquaintance states Applicant is a man of strong faith who recognizes and has dealt with his past mistakes, is sorry for them, and works diligently to lead a good life. A co-worker states Applicant is a responsible person who arrives early and leaves late to insure all requirements are completed. He is a wonderful and patient teacher. Another co-worker states Applicant is a terrific co-worker, considerate friend, an ideal confidante, diligent worker, and very good at his job. He is also a dedicated and loving husband and father. (Ex. E)

Applicant has been married for 32 years. (Tr. 32) He has four children: a daughter 30, and three sons ages 29, 27, and 20. (Tr. 33) Applicant grew up in the printing business. His father was a newspaper foreman and in high school, Applicant started working in printing. (Tr. 35) In 1980, Applicant and his wife started a printing business in their home. In 1985, Applicant took a full-time job at a publishing company. (Tr. 38) In 1986, Applicant's brother asked him to join him in a blueprinting business. They stayed in business for 12 years. (Tr. 38) It grew to encompass three locations and 50 employees. (Tr. 39) That business had no tax problems. (Tr. 82)

In 1982 two years after opening the business, Applicant first took his business records to an accountant. (Tr. 58) In June 1981, he was the driver when his car hit a telephone pole killing a high school friend who was a passenger in the car. Applicant and his friend had been drinking and after leaving the bar Applicant fell asleep driving home. Applicant was criminally charged with driving while intoxicated. (Gov Ex. 2) Applicant's father died and Applicant and his wife moved 200 miles to a new location. (Tr. 59) He did not return to an account until 1986. At that time, the accountant told him

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*Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

he owed \$100,000 in back taxes and penalties for failing to file his taxes for several years. (Tr. 59) In 1989, Applicant asserts he filed tax returns for tax years 1980 through 1989.<sup>2</sup> (Tr. 60)

In 1985, Applicant turned down a printing job for a member of the former Soviet Union. The Soviet Union wanted a book published by an American printer and was willing to pay a large amount of money. (Tr. 56) Applicant declined the job and called the State Department and the FBI and informed them of the offer.

In 1998, Applicant sold the business and went back to school to obtain his teaching degree. (Tr. 39, 93) He was in school for two years and was sick and could not work for one year. (Tr. 66) In March 2001, Applicant was diagnosed with Hepatitis C, he lost 40 pounds in a month and a half, and on some days the most he could accomplish during the day was to walk the dog. (Tr. 90)

The 1998-sale was motivated in part to repay an IRS debt. In 1998, Applicant started a small printing business using another company's equipment at night to do his printing. (Tr. 41, 66) He is the only shareholder of a printing corporation. He now works part-time copying large documents. (Tr. 40) The corporation is a small business Sub S corporation by which all losses and profits flow through to the individual, who in this case is the Applicant. (Tr. 85)

In 1992, Applicant hired an attorney to help him address his tax problems. (Tr. 43) Applicant's problems with the IRS were compounded by tax agents transferring or for other reasons new agents taking over the case. Applicant asserts when the new tax agent took over, the process would start from the beginning again. (Tr. 45) In 1992, Applicant made an Offer in Compromise (Offer) to the IRS, which was rejected by the IRS. In March 1993, a second offer was made. In October 1994, another offer was made.

In 1995, the matter was reassigned to another revenue officer. In April 1996, it was assigned to a different revenue examiner. In June 1996, the examiner recommended acceptance of the offer and submitted the offer through channels. In January 1997 the offer was rejected. In 1999, the rejection was sustained. (Tr. 65) Until the final rejection, the statute of limitations on collection of Applicant's taxes was suspended.

In 1993, for approximately one year Applicant made \$167 monthly payments to the IRS. (Tr. 46, 61, Ex. A) Additionally, the IRS has intercepted Applicant's tax refunds and applied the overpayment to taxes owed. Applicant had overpaid his taxes in tax years 2002, 2003, and 2004. (Ex. A) In 2003 and 2004, Applicant's remaining tax liability was barred by the statute of limitations. In 2006, the IRS declared his tax obligation uncollectible. (Tr. 67, Ex. A)

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<sup>2</sup> Applicant did not explain how he filed his 1989 taxes in 1989 since the normal filing deadline for 1989 taxes would have been April 1990.

Applicant was indebted to the Internal Revenue Service (IRS) for delinquent taxes and penalties. Applicant provided three certificates of Release of Federal Tax Lien (Tax Lien Release). On October 12, 1993, a Tax Lien Release was filed releasing \$97,000 in IRS assessments for tax years 1982 through 1988 and 1999. (Ex A) On March 12, 2001, a Tax Lien Release was filed releasing \$185,000 in assessment for tax years 1985 through and including 1988. (Ex. A) A September 2005, IRS letter stated Applicant's 2004 overpayment of tax refund was applied to taxes owed by Applicant for 1989 and 1993 On August 16, 2004, a Tax Lien Release was filed releasing \$6,600 in assessment for tax years 1989 and 1993. (Ex. A)

Applicant provided a letter from the state comptroller reported he owes no taxes for tax year 1988, 1990 through 1993, and 1996. (Ex. A)

Applicant had used marijuana off-and-on from high school until 1987 when he was 33 years old. (Tr. 68) He would use it in his home. During this period, there were times when he did not use it for months or years. (Tr. 68) He thought marijuana and primarily alcohol were making his life unmanageable. After work he would sometimes go out for a beer, and then his use gradually increased to the point where it was all the time. In July 1987, he said no more and quit drinking and smoking marijuana. (Tr. 69, 88) In 1987, he checked him into a 30-day in-patient substance abuse treatment program. (Tr. 80)

In March 2001, following a Hepatitis C diagnoses, Applicant became part of a one year medical clinical study/trial for the drug interferon. Depression was a side affect of the drug. When he became depressed, a nurse at the trial told him marijuana helped some people deal with the depression. (Tr. 70, Ex. 2) When he was sick he lost 40 pounds in a month and a half. The most he could accomplish during the day was to walk the dog. (Tr. 90)

From June 2001 until February 2004, Applicant – then age 47 to 50 – smoked marijuana daily until arrested in February 2004. At the hearing, Applicant characterized his decision to start using marijuana again as “one of the dumbest decision I ever made.” (Tr. 70) His marijuana use occurred while hold a security clearance, which he had held since 1991. (Tr. 72)

In September 2001, he was told he could no longer participate in the study due to his depression. Applicant never saw a health professional concerning his depression, but stated his depression stopped when he stopped using interferon. (Tr. 72) After leaving the study, Applicant continued using marijuana which he characterized as a “bad decision.” He would usually buy \$50 of marijuana at a time, which was a quarter ounce of marijuana. In February 2004, shortly after purchasing marijuana he was arrested. Applicant's case was placed on the Stet docket and then *nolle prossed* in June 2005.

Applicant's last marijuana use was the day he was arrested. (Tr. 53) He is very vigilant to make sure he never uses marijuana again. On August 6, 2008, he signed an

affidavit acknowledging he last used illegal drugs in February 2004 and would not use illegal drugs in the future. (Tr. 54) He stated he was willing to submit to drug testing and any drug use would result in the loss of any clearance he held. (Ex. D) Applicant submitted a certificate of completion of a county department of correction and rehabilitation intervention program for substance abusers (IPSA), having completed six weeks of education in IPSA. (Ex. D)

Police records pertaining to Applicant's arrest, detention, or confinement on February 23, 2004, and the court records of this action by the district court on October 18, 2005, were ordered expunged. Following his February 2004 arrest, Applicant entered an intervention program for substance abusers for six weeks. (Ex. D) In 2004, he also completed 20 weeks of treatment. (Tr. 52, Ex. D) He learned how to handle stress and learned life-skills. (Tr. 53) In August 2008, Applicant was in an outpatient program. He was assessed as a level two problem/user. (Ex. D) No further treatment was deemed necessary at that time. A drug screen reported August 2008, was positive for opiates for which he had a prescription and negative for PCP, methamphetamine, THC, and cocaine. The prescription was for his arthritis in his hips. (Tr. 55)

Applicant frequently attends Saturday morning Alcoholic's Anonymous (AA) meetings. (Tr. 74) His most recent AA token was a ten-year token. (Tr. 81) The token that matters most to him is the one day at a time coin. (Tr. 81)

As a fourth grade teacher, Applicant makes \$50,000 a year. (Tr. 49) He has been teaching seven years at a Title 1 school.<sup>3</sup> (Tr. 34, 94) His wife makes \$35,000 per year as a receptionist. His part-time work as a copier makes \$2,000 to \$10,000 a year. (Tr. 85). Applicant is current on his rent, utilities, and other debts. He is not being contacted by creditors concerning past due obligations. His car is almost paid for and he is current on his student loans on which he pays \$200 per month. (Tr. 92)

### **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,

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<sup>3</sup> Title 1 is a federal entitlement program to help students who are behind academically or at risk of falling behind. Applicant states Title 1 schools means schools for the very poor. (Tr. 94)

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**

### **Financial Considerations**

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant had a history of financial problems. Applicant failed to file his 1980 through 1989 income taxes until 1989. At one time he owed the IRS \$185,000 in back taxes. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶19(c), "a history of not meeting financial obligations," and AG ¶19(g), "failure to file annual Federal, state, or local income tax returns as required," apply.

In 1980, Applicant opened a small business. Two years later he went to an accountant. He did not return to the accountant until 1986. He had been involved in an auto accident and resulting court action, his father had died, and he had made a 200 mile move. Taxes were filed in 1989, resulting in \$100,000 owed to the IRS. Starting in 1992, numerous offers in compromise were made, rejected, and resubmitted. Applicant made sporadic payments and any tax refund he was due was intercepted to pay his past due tax obligation. In 2006, the IRS declared his tax obligation uncollectible.

Applicant provided three certificates of Release of Federal Tax. In October 1993, \$97,000 was released for tax years 1982 through 1988 and 1999. In March 2001, \$185,000 in assessment was released for tax years 1985 through and including 1988. In September 2005, a Tax Lien Release was filed releasing \$6,600 in assessment for tax years 1989 and 1993, which had been filed in August 2004. Applicant provided a letter from the state comptroller stating he owed no taxes for tax year 1988, 1990 through 1993, and 1996.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; [and]

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Under AG ¶ 20(a), Applicant's financial problems with the IRS started with his failure to file his 1980 income tax return. Applicant first attempted to correct the problem by seeking legal help in 1992 – 16 years ago. Between October 1993 and August 2004, the tax liens were released and in 2006 his tax obligations were declared uncollectible. From 1992 through 2006, he was actively pursuing the correction of his tax problems. After 14 years of involvement with the IRS it is unlikely he will again incur tax delinquencies. AG ¶ 20(a) applies.

AG ¶ 20(b) does apply. AG ¶ 20(c) applies when a “person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” Applicant owes no money to the IRS or the state tax commission. Applicant is current on his rent, utilities, and other debts. He is not being contacted by creditors concerning past due obligations. His car is almost paid for and he is current on his student loans. There are clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) requires a good-faith effort to repay the creditors and AG ¶ 20(e) applies when the legitimacy of the debt is disputed. Applicant made numerous offers in compromise over the years. There is no evidence as to the details of the offers. However, IRS found the offers insufficient to justify acceptance, except for his assertion that one examiner forward an offer recommending approval. Without the details of the offer it is impossible to say they constituted a “good-faith” effort to repay the debt.

Additionally, the record is insufficient to establish Applicant had a reasonable basis to dispute the “legitimacy” of his delinquent taxes. Nothing in the record indicates he was challenging the validity of his tax debts or took the matter to tax court. It appears he was simply arguing over the amount of taxes owed and not the legitimacy of the taxes. AG ¶ 20(d) and AG ¶ 20(e) do not apply.



## Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement: 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant had used marijuana off-and-on from high school until 1987 when he was 33 years old. During this period, there were times when he did not use it for months or years. He quit because he thought marijuana and alcohol were making his life unmanageable. In June 2001, he resumed using marijuana daily and continued until his arrest in February 2004. His most recent use occurred when he held a security clearance.

AG ¶ 25(a) drug use, AG ¶ 25(c) purchase, and AG ¶ 25(g) illegal drug use after have being granted a security clearance apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant last used marijuana in February 2004, approximately four and a half years ago. Applicant characterized his decision to start using marijuana again in 2004 as "one of the dumbest decision I ever made." Applicant stated he would not use illegal drugs in the future. In August 2008, he signed an affidavit stating he would submit to drug testing and any drug use would result in the loss of his clearance. He is very vigilant to make sure he never uses again.

Following his arrest, he entered an intervention program for substance abusers. He learned how to handle stress and learned life-skills. As of August 2008, Applicant went to an outpatient program where additional treatment was not recommended. Applicant frequently attends Saturday morning AA meetings and has been involved with AA for ten years. However, the token that matters most to him is the one day at a time token. Applicant completed a county department of correction and rehabilitation intervention program for substance abusers.

Applicant used marijuana daily for four years. His use can not be said to be infrequent. However, It has been more than four and a half years since his last marijuana use. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring

approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”<sup>4</sup>

Because of his abstention from drug use for four and a half years, and his recognition of the adverse impact on his life of drug abuse, there is reasonable certitude that he will continue to abstain from drug use. This finding is made knowing Applicant had abstained from illegal drug usage for 14 years – from 1987 through 2004 – before using marijuana again. However, Applicant’s return to using marijuana, which he acknowledges was a stupid thing to do, was a misdirected approach to addressing his depression caused by his participation in a clinical study. Applicant did not attempt to hide his arrest or illegal usage. He listed both on his April 2007 SF 86. His marijuana use ending more than four years ago does not cast doubt on his current reliability, trustworthiness, or good judgment. Because he will not use illegal drugs in the future, confidence in his current reliability, trustworthiness and good judgment with respect to drug use is restored. AG ¶ 26(a) applies.

AG ¶ 26(b) applies because he has stated he will not use illegal drugs in the future. He has demonstrated his intent not to abuse drugs in the future by the four and a half years since his last use and by signing a statement of intent with automatic revocation of his clearance for any violation.

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<sup>4</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

AG ¶ 26(c) does not apply because abuse of prescription drugs was not a problem. AG ¶ 26(d) applies because he has satisfactorily completed a drug treatment program, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional. Applicant completed 20 weeks of treatment in 2004 and six weeks of education with IP SA. As of August 2008, no further treatment was necessary.

## **Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

Applicant used marijuana after having been issued a secret security clearance, which was alleged under Guideline H, drug involvement. Under AG ¶ 16 conditions that could raise a security concern and may be disqualifying include AG ¶ 16(d) "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

There is nothing different in listing his use of marijuana after obtaining a clearance under both criminal conduct and personal conduct. The underlying security concern remains the same. Having found for Applicant for this event under criminal conduct, I find no additional disqualifying or additional security concerns under the personal conduct guideline.

Since illegal drug use after having been issued a clearance is specifically covered by Guideline H, drug involvement, I find Guideline E, personal conduct, does not apply to this drug use allegation. I find for Applicant as to SOR ¶ 3 a.

## **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) the 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 security clearance must be an overall commonsense 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. Applicant no longer has a debt to the IRS. Between 1992 and 2004, he was actively attempting to negotiate a settlement with the IRS. He recognized the problem, hired an attorney to help him correct his tax problem, and actively sought to negotiate a settlement of the problem. He is living within his means and is current on his debts.

Applicant has been married 32 years, is hard working, diligent, and responsible. His friends and co-workers praise his character and dedication. He smoked marijuana daily while holding a clearance, but that use ended more than four years ago. He has received treatment and showed remorse. He is active in AA and is sincere when he states he will not use again.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations, drug involvement, and personal conduct.

### **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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a and 1.b: For Applicant

Paragraph 2, Drug Involvement: FOR APPLICANT

Subparagraph 2.a – 2.d: For Applicant

Paragraph 3, Personal Conduct: FOR APPLICANT

Subparagraph 3.a: For Applicant

## **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge