DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-04403
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 20, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana from 1985 to 1995 and in 2006/07. He was convicted of drunk driving offenses committed in 1991 and August 2007. He did not report his illegal drug abuse when he applied for a security clearance in October 2007. Drug involvement, personal conduct, and criminal conduct concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on October 17, 2007. On October 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Guideline J, and Guideline E that provided the basis for its decision to deny him a security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 as of September 1, 2006.

Applicant answered the SOR in writing on December 16, 2008, and requested a decision without a hearing. On January 21, 2009, the government submitted a FORM consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the March 4, 2009, due date. On April 15, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4), eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

In the FORM, Department Counsel moved to amend SOR ¶ 1.c of the SOR to reflect that Applicant had stated in an interview to a government investigator on February 20, 2008, that he might (vice would) use marijuana in the future if the opportunity arose. Department Counsel also moved to add a new allegation, ¶ 2.e under Guideline J, to indicate that Applicant's deliberate failure to disclose his marijuana use on his October 17, 2007, security clearance application, conduct alleged in SOR ¶ 3.a, constituted felonious criminal activity under Guideline J. Applicant was directed to file any objections and/or to respond within 30 days of receipt of the FORM.

There is nothing in Department of Defense Directive 5220.6 that prohibits the government from amending the SOR before a hearing or a decision based on the written record provided the proposed allegations have a reasonable basis, are not confusing, and are relevant to a determination of the applicant's suitability for access. Fundamental fairness requires that Applicant be given notice of any proposed amendment and an adequate opportunity to respond so that he can adequately prepare a defense (*see*, *e.g.*, ISCR Case No. 02-17219 App. Bd. Jan. 7, 2005).

Department Counsel informed Applicant in the FORM of the motion and of his opportunity to respond. The FORM was forwarded to Applicant on January 22, 2009, with clear instructions to file any objections within 30 days of receipt. Applicant received the FORM on February 2, 2009. No response was received by the March 4, 2009, due date. Given Applicant had been placed on notice and had an adequate opportunity to respond, I notified the parties by Order of May 6, 2009, that the SOR was amended per the government's request, and that findings would be made on all allegations in the SOR, as amended, based on the Items in the FORM.

Findings of Fact

In the amended SOR, DOHA alleged under Guideline H (drug involvement) that Applicant used marijuana in 2006 and 2007 (SOR ¶ 1.a), and with varying frequency from 1985 to 1995 (SOR ¶ 1.b), and that he told a government investigator in February 2008 that he might use the drug in the future if the opportunity arose (SOR ¶ 1.c). Under Guideline J (criminal conduct), Applicant was alleged to have been convicted of drunk driving offenses committed in August 2007 (SOR ¶ 2.a) and 1991 (SOR ¶ 2.b), and of an open container violation in 1992 (SOR ¶ 2.c). DOHA also alleged under the criminal conduct guideline that Applicant's falsification of his e-QIP violated 18 U.S.C. § 1001 (SOR ¶ 2.e). Under Guideline E (personal conduct), DOHA alleged that Applicant falsified his October 2007 e-QIP by falsely denying any illegal drug involvement (SOR ¶ 3.a), and by expressing a belief that marijuana use in moderation was "not a bad thing" and that smoking marijuana was "not a big deal" (SOR ¶ 1.c). The government also alleged generally that the conduct under guidelines H and J raised Guideline E concerns as well (SOR ¶ 3.d). Applicant admitted the drug abuse, and that he had told a government investigator that he might use marijuana in the future. However, he added that he would not use marijuana after he was married, that he wished he never started it, and that it would not be part of his future. His fiancée had never used marijuana, and drug use was not part of the life they wanted to impart to their children. Applicant also admitted his alcohol-related criminal conduct, but averred that he had attended a substance abuse program and stopped the abusive behavior. Applicant explained he had not listed his drug use on his e-QIP because he was embarrassed. Applicant offered in mitigation his "impeccable work record" as a contractor for a Department of Defense agency since 1996.

DOHA had alleged under Guideline E that Applicant falsified a May 15, 1998, Questionnaire for Public Trust (SF 85P) by not disclosing his marijuana use that had occurred within seven years of the application (SOR ¶ 3.b). While Applicant admitted he had not disclosed his marijuana use from his first clearance submission, DOHA conceded in the FORM that the question Applicant was alleged to have falsified on the SF 85P only had a one-year scope, and the available evidence did not support the allegation.

After review and consideration of the FORM, including Applicant's SOR response (Item 4), I make the following findings of fact.

Applicant is a 39-year-old senior operations security engineer, who under the employ of a succession of defense contractors, has directly serviced a DoD agency since 1996 (Items 4, 5). Applicant has been a key member of the DoD agency's computer network security team since 1999 (Item 4), and he seeks a security clearance.[1]

[1]Applicant indicated on his October 17, 2007, e-QIP that he had been the subject of a background investigation in August 2005 but was unaware of any final action on his clearance (Item 5). Available information does not confirm or deny the grant of a clearance.

Applicant began to smoke marijuana at age 15. He continued to use marijuana over the next ten years with varying frequency, including while he was in college from August 1988 to March 1994 (Items 5, 6, 7). There were times of heavy use for two months followed by abstinence for six months or so. Applicant purchased at least some of the marijuana from one of his brother's friends (Item 6). In about 1991, Applicant pleaded no contest to a driving under the influence (DUI) charge (Items 4, 7). In 1992, he was cited for having an open container in his motor vehicle (Item 4).

Two months after he was awarded his B.S. degree, Applicant started working as a computer network engineer (Item 5). Placed at a defense contractor agency starting in about October 1996, Applicant completed a SF 85P on May 15, 1998. He listed his DUI offense in response to the police record inquiries. He answered "No" to the illegal drug inquiries, including 21.a. "In the last year, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, tec.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?" (Item 7).

Applicant was passed some marijuana at a friend's halloween party in the fall of 2006. Intoxicated at the time, Applicant believes he smoked the drug with the person who provided it. As of the summer of 2007, Applicant played volleyball on a weekly basis. He drank and partied with teammates after the games. On one occasion that summer, he smoked marijuana given to him by a teammate. Applicant was drunk at the time (Item 6).

In mid-August 2007, Applicant was giving a volleyball teammate a ride home when he was pulled over for speeding. Applicant, who indicates he had consumed "a few beers," after his game, was charged with operating vehicle under the influence of alcohol or drugs (OVI), a first degree misdemeanor.[2] He pleaded no contest to the OVI charge in court in early September 2007, was found guilty, and sentenced to a $750 fine, $305 in costs, 180 days in jail (173 suspended), and his license was ordered suspended for six months with special conditions: limited driving privileges, five days in a work program in lieu of four days jail time, a driving awareness class, a prohibition of alcohol use, and 12-month probation. The speeding charge was dismissed. (Items 5, 6, 8)

On October 17, 2007, Applicant completed an e-QIP for a security clearance for his duties at the defense agency. He responded "Yes" to questions 23c. "Are there currently any charges pending against you for any criminal offense?" and 23d. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?." He disclosed his recent OVI in August 2007 and indicated that he had pleaded no contest, paid fines, was attending a driver intervention program, making a donation to a

[2]The pertinent state punishes operating while under the influence of alcohol or drugs (abbreviated OVI in the statute) under the state's motor vehicle statutes, but it is punishable as a criminal offense. *See* Ohio Rev. Code Ann. § 4511.19.

public library, and attending a MADD (Mothers Against Drunk Driving) meeting. Applicant responded "No" to question 24a. "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?" (Item 5).

On January 3, 2008, Applicant was interviewed by a government investigator in part about his drinking and the recent drunk driving offense. He admitted the OVI and that his parents and his employer were unaware of the offense, although his girlfriend knew about it. He did not want to burden his parents, including his father, who was very ill. Applicant explained his current drinking pattern as two or three beers once or twice per week when out with friends. Applicant denied using any illegal drugs in the last seven years or while holding a security clearance (Item 6).

Applicant was reinterviewed on February 20, 2008, to discuss his previously undisclosed marijuana use. After Applicant was placed under oath, he was again asked whether he had used any illegal drugs in the last seven years and whether he used any illegal drugs while possessing a security clearance. After reportedly some hesitation, Applicant related that he had used marijuana from ages 15 to 25. He was not specific about the frequency other than to indicate that he would use it heavily for two months and then not use for six months. Applicant acknowledged that the marijuana was purchased from a friend of his brother. After being confronted about possible use of marijuana in the fall of 2006,[3] Applicant indicated he might have used it, but he did not remember. He then expressed his belief that he may have smoked it while drunk at a friend's halloween party in fall 2006. Asked about any other occasions, Applicant responded that he smoked marijuana one other time in the summer of 2007 while socializing with teammates after their weekly volleyball game. A teammate who is always at the bar had some marijuana, and Applicant explained that he was drunk and decided to smoke it. He told the investigator that he did not think smoking marijuana was a big deal, and that while he does not seek out marijuana, he would sometimes use it if he is drunk at a party. Applicant added that he might use marijuana again at a party if the opportunity arose, and that he did not consider marijuana use in moderation to be a bad thing. He acknowledged knowing that marijuana use was against the law, and that his employer was unaware of his drug use. Applicant denied any intent to use marijuana to the extent he did when he was younger because he would lose his girlfriend if he did so. Applicant attributed the omission of his marijuana use from his security clearance application to embarrassment (Item 6).

Applicant and his fiancée are planning to wed in 2010. Applicant does not see marijuana playing a part in his future. His fiancée does not use marijuana and they intend to have children together. Applicant attributes his alcohol abuse to the mental strain of having to care for his 78-year-old father who has had Parkinson's disease since

[3]It is not apparent in the available record how the investigator came to learn of Applicant's more recent marijuana use.

2000. Applicant completed a county substance abuse program that led him to realize he had been drinking too much and he had since stopped the behavior. As of mid-December 2008, Applicant was helping care for his father two to three nights per week (Item 4).

Applicant has not allowed his off-duty abuse of alcohol and marijuana to negatively affect his work performance. Since 1999, he has been a key member of the defense agency's network security team responsible for firewalls, encryption devices, and security enclaves to protect its computer system from hackers. He is recognized by his defense agency customer as its top expert in operations security. Applicant has been responsible for several high profile projects during the 13 years and he has earned the trust of the division's operations manager. Applicant was recognized by the defense agency's technology services organization for his "outstanding and commendable performance" during a security accreditation of the defense agency's computer network in fall 2008 (Item 4).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 overarching 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 about 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." Applicant began using marijuana at age 15. Over the next ten years, he smoked the drug with varying frequency, to include months of heavy use. After more than ten years of no apparent involvement, he smoked marijuana at a halloween party in fall 2006 and then again in summer 2007 when socializing with volleyball teammates at a local bar. AG ¶ 25(a), "any drug abuse," applies. Applicant purchased the drug for his own consumption back when he was using it with some frequency, so AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," is also implicated.

During his February 2008 subject interview, Applicant told a government investigator that he might use marijuana in the future at a party if the opportunity arose. Security concerns are raised by an "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use" (*see* AG ¶ 25(h)). Applicant was not willing to commit himself to a drug-free lifestyle at that time. In response to the SOR, Applicant claimed he told the investigator that he would not use marijuana after he was married, although the investigator's report does not reflect any expression of intent on his part to discontinue use. However, Applicant added in his Answer, "My marijuana use is something I wish I would never have started and will not

be part of my future." (Item 4). His recent disavowal of any intent to use marijuana in the future is accepted as credible, so AG ¶ 25(h) no longer applies.

Concerning potential factors in mitigation under Guideline H, Applicant's recent involvement with marijuana was "so infrequent" to fall within AG ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is likely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." However, AG ¶ 26(a) cannot reasonably be applied, given his more extensive marijuana involvement from 1985 to 1995. It is especially troubling that Applicant used marijuana at least twice over the 2006/07 time frame after no apparent involvement for more than 10 years.

AG 26(b), "a demonstrated intent not to abuse any drugs in the future," applies only in very limited part (*see* AG ¶ 26(b)(4), "a signed statement of intent with automatic revocation of clearance for any violation"). His decision to forego future drug involvement is sincere but very recent. Applicant has not shown that he no longer associates with drug users (*see* AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts"), or that he is avoiding the social activities that led him to abuse marijuana in 2006 and 2007 (*see* AG ¶ 26(b)(3), ""changing or avoiding the environments where drugs were used"). His present abstinence (*see* AG ¶ 26(b)(3), "an appropriate period of abstinence") since summer 2007 is insufficient to guarantee against recurrence, given his history of relapses in 2006/07 after no use since 1995. He has not overcome the risk that he will again use marijuana with friends, especially if he is intoxicated as he was in 2006 and 2007.

Guideline J, Criminal Conduct

The security concern about criminal conduct is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." The government did not present any evidence to show that the open container offense was other than a minor violation. However, his drunk driving convictions, although misdemeanors, clearly implicate AG ¶ 31(a), "a single serious crime or multiple lesser offenses." Applicant also used marijuana knowing that it was against the law to do so. Furthermore, by signing his October 2007 e-QIP, Applicant certified his statements on the form were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." He was on notice that a knowing and willful false statement was punishable as a crime. His deliberate omission of his marijuana use from his e-QIP constituted a felony violation of federal law under 18 U.S.C. §1001. Disqualifying condition AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted," also applies.

AG ¶ 32(a), "so much times has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," cannot

reasonably be applied in this case. It has been less than two years since he last used marijuana, was caught driving while under the influence of alcohol, and falsified his e-QIP.

In Applicant's favor, he has a record of significant contributions to a defense agency (*see* AG ¶ 32(d), "there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement"). Yet, he clearly was not thinking of his obligations to the government when he abused marijuana, operated a motor vehicle while under the influence, and lied on his e-QIP. In response to the SOR, he indicated that after his recent OVI offense, he completed a substance abuse program offered by the county and had stopped his abusive behavior. He excused his behavior in part, attributing it to the mental strain of caring for his ill father. However, the evidence implicates instead his partying and socializing with volleyball teammates, and Applicant has not demonstrated a sufficient change in those activities. Furthermore, municipal court records show that one condition of his sentence for the OVI was "no alcohol." He was still on probation for the OVI when he was interviewed in January 2008 about his alcohol consumption, and he detailed drinking two or three beers once or twice a week when out with friends. His apparent failure to abide by an order of the court undermines his claimed reform as to his drunk driving. As for his falsification, Applicant did not correct the record during his January 2008 interview. Instead, he denied any illegal drug use in the last seven years. During his February 2008 interview, he was not forthcoming initially about his recent marijuana use. While there is no indication of any ongoing alcohol or marijuana abuse, or that he is still concealing relevant and material drug abuse from the government, reform is not fully demonstrated where Applicant had to be confronted.

Guideline E, Personal Conduct

The security concern about 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.

Applicant's falsification of his October 2007 e-QIP raises personal conduct concerns as well as criminal conduct concerns. 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. However, as conceded by the government, the evidence does not establish that Applicant falsified his SF 85P completed in May 1998. While Applicant responded "No" to any illegal drug

use, the specific question at issue had only a one-year scope, and there is no evidence that Applicant smoked marijuana (or used any other illegal drug) after 1995 until 2006.

Although Applicant indicates that those persons who really know him, including his fiancée, are knowledgeable of his past drug involvement, his defense contractor employer is unaware. Furthermore, there is nothing in the operations manager's reference letter (Item 4) to indicate that he or anyone else from the defense agency is cognizant of the fact that Applicant used marijuana (albeit off-duty) while a member of the agency's network security team. AG ¶ 16(e), "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing," is also implicated despite his denials of susceptibility to blackmail.

DOHA alleged separately under SOR ¶ 3.c that Applicant exercised poor judgment within the context of Guideline E by expressing to a government investigator in February 2008 that use of marijuana in moderation was not a bad thing, and that smoking marijuana was not a big deal. Applicant explained his comments as follows: "I was candidly speaking from experience on the effects of marijuana use and how if used once is not detrimental but prolonged use will cause problems." Whether or not he was speaking of the effects of marijuana, it would be reasonable to infer that he condoned the use of marijuana despite knowing of its illegality. While it raises general personal conduct concerns under AG ¶ 15, the conduct is more appropriately addressed under Guideline H.

Similarly, Applicant unquestionably exercised poor judgment by driving drunk and using marijuana in violation of the law. Since his substance abuse is already covered under Guideline J (and in the case of drug use Guideline H as well), the government failed to establish its case for application of AG ¶ 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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."

For the reasons set forth under Guideline J, *supra*, none of the mitigating conditions under Guideline E fully apply. He made no effort to rectify his falsification at his first opportunity when he was interviewed in January 2008. Instead, he apparently again denied any illegal drug involvement in the preceding seven years. That conduct could have been alleged in its own right under 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." AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts" does not apply to these facts. His record of security significant misconduct in three distinct areas (drugs, drunk driving, felony false statement) is too recent and repeated to qualify

for mitigation under AG ¶ 17(c), "the offense is 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." AG ¶ 17(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," cannot be completely dismissed because Applicant has resolved not to repeat his mistakes. But Applicant has yet to establish a sufficient track record of reform to overcome all the personal conduct concerns in this case. As recently as February 2008, he exhibited an attitude toward marijuana use that is inconsistent with the law and the sensitive position he held at work. He admitted prior drug use only reluctantly after repeated inquiries, and addressed his reform of his drunk driving only in the most general terms. Finally, he has done little to reduce or eliminate the risk of exploitation, manipulation, or duress that exists because his employer remains unaware of the conduct that calls into question Applicant's judgment, reliability, and trustworthiness. AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," does not apply.

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 in light of 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline H, Guideline J, and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant knew when he used marijuana that it was illegal. He put his personal interest ahead of his obligation of candor. He deliberately falsified his e-QIP, which he now regrets, but compounded the concerns about his judgment and trustworthiness by not candidly disclosing his drug abuse when he was first interviewed in January 2008. In

February 2008, he displayed an attitude toward marijuana use that is unacceptable in someone his age and holding a sensitive position. Now knowing that it could cost him his clearance, he maintains that marijuana will no longer play a part in his future, but that is not sufficient to overcome the credible adverse information in this case.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant

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