



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-04456  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro Se*

June 3, 2009

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana with varying frequency from about 1973 to at least August 2007, including while he held a security clearance, and he was diagnosed with marijuana dependence. He deliberately omitted his marijuana involvement from security clearance applications completed in January 2000 and August 2007 and during in-person interviews in October and November 2007. He also misrepresented the extent of his abuse in his June 2008 response to interrogatories. Drug abuse and personal conduct concerns are not fully mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 14, 2007. On November 26, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline H and Guideline E that provided the basis for its action to deny him a security clearance and refer the matter to an administrative judge.

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 January 13, 2009, and requested a hearing before a DOHA administrative judge. The case was assigned to another DOHA administrative judge on February 18, 2009, and transferred to me on March 3, 2009. On March 13, 2009, I scheduled a hearing for April 1, 2009.

I convened the hearing as scheduled. The government submitted four exhibits (Ex. 1-4) and Applicant one exhibit (Ex. A), which were admitted without any objections. Applicant testified on his behalf, as reflected in a hearing transcript (Tr.) received on April 9, 2009.

At Applicant's request, I held the record open for two weeks after the hearing for Applicant to submit a written, signed statement of his intent to refrain from illegal drug use in the future. Applicant forwarded a notarized statement on April 13, 2009. On April 16, 2009, Department Counsel indicated the government did not object to its admission, and the document was marked and admitted as Exhibit B.

### **Findings of Fact**

DOHA alleged under Guideline H (drug involvement) that Applicant used marijuana with varying frequency from at least 1996 to August 2007 (SOR ¶ 1.a), including after he had been granted a security clearance in September 2000 (SOR ¶ 1.c); that he purchased marijuana at times over an extended period for his personal use (SOR ¶ 1.b); and that he received outpatient treatment from 1996 to July 2008 for diagnosed alcohol and marijuana dependence, major depression, and anxiety (SOR ¶ 1.d). Applicant was alleged under Guideline E (personal conduct) to have falsified a January 2000 security clearance application (SF 86) (SOR ¶ 2.a) and an August 2007 e-QIP (SOR ¶ 2.b) by falsely denying any illegal drug use in the last seven years; to have also falsified the August 2007 e-QIP by falsely denying any illegal drug use while possessing a security clearance (SOR ¶ 2.c);<sup>1</sup> to have deliberately failed to disclose during an October 2007 interview that he had been treated for marijuana dependence as well as for alcohol abuse and to have claimed he was sober when he was drinking alcohol on a daily basis (SOR ¶ 2.d); to have failed to disclose during a followup interview in November 2007 that he had been diagnosed with and treated for marijuana dependence, major depression, and anxiety (SOR ¶ 2.e); and to have misrepresented his marijuana use in his June 2008 response to interrogatories (SOR ¶ 2.f). Applicant

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<sup>1</sup>DOHA misquoted the question in the SOR to allege whether Applicant had ever illegally used a controlled substance while "processing" rather than the correct "possessing a security clearance." However, Applicant expressed no confusion and he admitted the allegation.

admitted the allegations, and the facts admitted are incorporated in the factual findings. After review and consideration of the pleadings, exhibits, and hearing transcript, I make the following additional findings of fact.

Applicant is a 52-year-old “principle specialist-technical writer” who has worked for his employer, a defense contractor, since December 1999. He seeks a top-secret security clearance after having held a secret clearance since 2000 (Tr. 26).

Applicant served four years in the U.S. military from November 1976 to October 1980 (Tr. 32). In June 1983, he married his first wife and they had two sons, who were born in 1986 and 1988. Applicant’s first marriage ended in divorce in December 1998 (Ex. 1). His sons resided with him (Ex. 2).

Applicant was granted his bachelor’s degree in electrical engineering in June 1986 (Ex. 2, Tr. 31). Shortly thereafter, he was granted a secret-level security clearance for his job with a defense contractor (Ex. 2, Tr. 32-33). He held that clearance until mid-1988 when he became unemployed. He did not require a security clearance for his work in the commercial sector as a controls engineer from January 1989 to November 1994 and then as an electrical engineer from November 1994 to February 1997 (Tr. 32). Following six months of unemployment, he worked as a contract engineer for little over two years before commencing his current employment in late December 1999 (Ex. 1, Ex. 2).

Applicant began using marijuana at age 16 in social contexts (Tr. 32, 44).<sup>2</sup> As the years passed, he began to use marijuana to self-medicate, to deal with the emotional toll of marriage to a woman with serious mental health and physical incapacitation issues (Ex. 3, Tr. 44-46). He obtained the drug from in-laws and friends (Tr. 44), buying it on occasion for his personal use. In about 1997, Applicant began outpatient counseling for diagnosed major depression and marijuana dependence (Ex. 4). He was placed on Wellbutrin medication by a psychiatrist at the treatment center, and continued to take the drug on and off. He did “extremely well” when he took the medication, but felt isolated and depressed when he was off the drug. Applicant had his medication renewed every month or two from April 1998 to March 1999. During a session in July 1999, Applicant indicated that he could not take time off from work for a therapy appointment, but that he was not using any mood-altering substances. In October 1999, he telephoned the counseling center and requested Wellbutrin. He met with the psychiatrist in December 1999 and reported a significant decrease in stress in that he had a new job with a defense contractor and he had a girlfriend who was moving in with him (Ex. 4).

On January 21, 2000, Applicant completed a security clearance application (SF 86) for a secret-level security clearance for his new job. He responded “No” to question 27 concerning whether he had illegally used any controlled substances since the age of

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<sup>2</sup>Applicant admitted that he first used marijuana at age 16, well before the time frame alleged in the  
SOR.

16 or in the last seven years, whichever was shorter. He also responded “No” to whether he had ever illegally used a controlled substance while possessing a security clearance (Ex. 2). Applicant chose to not disclose his past marijuana use because of a perceived stigma attached to illegal drug involvement (Tr. 27-28, 35). Applicant was granted his secret clearance in September 2000 (Answer).

Applicant met with his psychiatrist in March 2000 and in June 2000. By the latter session, he had stopped taking the Wellbutrin on his own because he felt “great.” There is no indication that he met with his psychiatrist at the center in 2001. In October 2001, Applicant married his second wife, becoming a stepfather to three young adults and a 12-year-old (Ex. 1). Applicant had met his second wife at a Narcotics Anonymous meeting. Applicant and his spouse both drank alcohol, but he did not recognize it as a problem because he could leave alcohol alone after one or two drinks (Ex. 4).

By September 2002, Applicant was smoking marijuana chronically, smoking the drug “nonstop” at times. On September 30, 2002, he met with the psychiatrist at the center. Applicant admitted he had used marijuana within the last two weeks, to relax and because it lessened his depression. He reported mood swings when he ran out of marijuana. Applicant also reported drinking alcohol when angry and depressed, increased drinking with his spouse, and altercations when they drank. Applicant was diagnosed with major depression, marijuana dependence, and alcohol abuse. In the opinion of the psychiatrist, he had fairly good insight but exhibited some minimization of his drinking problem and some ambivalence about getting sober (Ex. 4).

Applicant managed only short periods of sobriety from marijuana and alcohol thereafter, although alcohol eventually became his drug of choice.<sup>3</sup> By the summer of 2004, he was drinking alcohol on a daily basis, but he managed to earn a second bachelor’s degree in June 2004 (Ex. 1, Ex. 4). In the summer of 2004, Applicant had a serious altercation with his spouse, who was also an active alcoholic. Applicant left the house and was followed by his 18-year-old son, who brought him back home. His son then drove off only to be arrested for operating without a license. Applicant resolved to work on regaining his sobriety after this incident. He reconnected himself to self-help (Alcoholics Anonymous or AA) meetings and went back to the psychiatrist in November 2004 for medication management and a psychiatric evaluation. Applicant was diagnosed with marijuana dependence, alcohol dependence, and recurrent major depression, and restarted on Wellbutrin. He was advised to return to the clinic in two to three weeks. Applicant continued to meet with the psychiatrist on a monthly basis through mid-May 2005. He reported improved mood with sobriety and meetings, but his spouse was still drinking as of mid-February 2005. In early April 2005, Applicant reported a relapse in March 2005, but that he had been sober for the two weeks preceding his session. He was started on Campral to treat increased cravings for alcohol but stopped taking the medication on his own. He continued to meet with his

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<sup>3</sup>Applicant testified that alcohol became his drug of choice about a year into his second marriage. Although he indicated it occurred in 2001 (Tr. 54), medical record information indicates he was using marijuana heavily in September 2002 (Ex. 4).

psychiatrist for medication management until September 2005. In a follow-up session with the psychiatrist for medication management on September 28, 2005, Applicant reported he was still taking his Wellbutrin and his mood was stable, but that he had resumed drinking alcohol with his spouse. He was ambivalent about medical advice to abstain (Ex. 4).

Applicant and his second wife separated in April 2007 over parenting issues. Applicant's spouse moved to an apartment with her teenage son while her other children lived on their own (Ex. 1). On August 6, 2007, Applicant returned to the psychiatrist for medication. He had recent slips with drinking and marijuana use. He was diagnosed with major depression, alcohol dependence, and marijuana dependence, and his Wellbutrin and Campral medications were renewed. Applicant declined psychotherapy treatment,<sup>4</sup> and the psychiatrist recommended that he complete 90 AA meetings in 90 days (Ex. 4).

On August 14, 2007, Applicant completed an e-QIP in application for a top-secret clearance (Tr. 26). He listed alcohol-related and mental health treatment with the psychiatrist in response to inquiries about his medical record and uses of alcohol from about June 2000 to present. He responded "No" to question 24.a concerning illegal use of any controlled substance in the last 7 years or since age 16, and to question 24.b concerning any illegal use of a controlled substance ever while possessing a security clearance. By signing the e-QIP, he certified that his statements on the form were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." (Ex. 1). He knowingly withheld the information about his illegal drug use, again because of the stigma attached to such drug abuse (Tr. 35-36).

Applicant met with his psychiatrist on October 5, 2007, for about 15 minutes to assess his need for ongoing medication. Applicant reported that he was drinking alcohol daily but not using illegal drugs. He was diagnosed with alcohol dependence and referred for possible detoxification treatment. No medication was prescribed for him during that session (Ex. 4).

On October 9, 2007, Applicant was interviewed by a government investigator about his contacts with the psychiatrist and his drinking. He averred that he had received voluntary alcohol treatment with the psychiatrist on average once a month since 2000.<sup>5</sup> Concerning his drinking, he indicated it escalated after his first marriage ended, and he drank hard liquor to intoxication three to four times a week. He claimed he had been sober for about a year. He denied any illegal drug involvement, and

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<sup>4</sup>Applicant testified that he has seen a therapist at the center every two to three weeks for the past ten years. The record available for review does not include any notes of any sessions from the therapist. To the contrary, there is no indication he was seeing the therapist in 2004, and his psychiatry progress note of April 18, 2008, indicates that he was seeing the therapist rarely. (Ex. 4)

<sup>5</sup>The psychiatry progress notes included in the record fail to confirm any sessions between June 2000 and September 2002, from October 2002 to November 22, 2004, or from October 2005 to August 2007 (see Ex. 4).

asserted that his SF 86 was accurate with some exceptions. He made no effort to correct his negative responses to the illegal drug questions (Ex. 3, Tr. 27, 36). On November 20, 2007, Applicant was reinterviewed for further details about his counseling. Applicant admitted that he had been diagnosed as alcohol dependent but denied he had been diagnosed with any other issues or involvement with drugs other than alcohol. He expressed drinking was no longer problematic for him as he was abstaining from alcohol (Ex. 3).

Applicant told his psychiatrist during a session on April 18, 2008, that he had been sober about 30 days and was attending meetings. He again declined any ongoing psychotherapy and requested that he remain off any medications. He was advised of the potential risks/dangers of recurrence but was given no prescriptions (Exhibit 4).

In response to interrogatories from DOHA inquiring in part about whether he had ever used any illegal drug, Applicant indicated on June 5, 2008, that he had used marijuana "sporadic periodically 2-3 occurrences every 1 to 2 years" and that he had abstained since about August 2007 and had no future intent to use illegal drugs. He answered "Yes" to whether he had ever possessed any drug paraphernalia and added, "Marijuana, various sporadic occurrences, alone at home." He also answered "Yes" to any purchase of illegal drugs, and indicated "Marijuana, random infrequent past occurrences, circumstances, and expenditures." He denied any current association with persons or places with a potential for illegal drug activity. He provided a letter from his psychiatrist dated May 23, 2008, in which she indicated he was compliant with his current treatment, and she found no active symptoms that would indicate a flaw in his judgment or reliability in the context of safeguarding classified information (Ex. 3). At his next session with the psychiatrist on July 11, 2008, Applicant reported he had been "clean and sober" since March 8, 2008. At his request, he was restarted on Wellbutrin for diagnosed major depression and anxiety. He was advised to continue with AA meetings and to return in one month (Ex. 4).

As of February 27, 2009, Applicant was still under the care of his psychiatrist. He was seeing her once every six months (Tr. 41). To the psychiatrist's knowledge, Applicant remains fully compliant with his treatment and highly motivated for sobriety with regular AA attendance (Ex. A). On April 13, 2009, Applicant submitted a notarized statement of his intention to permanently abstain from the use of alcohol and drugs with the understanding that his failure to do so would result in automatic revocation of his security clearance. Applicant also express a willingness to submit to random drug and alcohol testing to confirm his compliance (Ex. B). As of early April 2009, Applicant was attending AA meetings six to eight times a week (Tr. 42). He has had his current sponsor in AA since April 2008 (Tr. 50). His sponsor has 15 years of sobriety (Tr. 51). Applicant's employer and coworkers are still unaware of his past involvement with marijuana (Tr. 43).

## 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**

### **Drug Involvement**

The security concerns raised by illegal drug involvement are 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Applicant started using marijuana socially at age 16. He eventually turned to marijuana to cope with the stress of marriage to his first wife, and in 1997, he was diagnosed with marijuana dependence by his psychiatrist. As of September 2002, he was using marijuana at times “nonstop.” Applicant’s psychiatrist again diagnosed him with marijuana dependence in September 2002 and in November 2004. While he had turned primarily to alcohol in recent years, he continued to smoke marijuana on occasion until about August 2007. He bought the drug for his personal consumption over the years from family and friends. Under Guideline H, four potentially disqualifying conditions are implicated: AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; 25(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence”; and 25(g), “any illegal drug use after being granted a security clearance.”

Even though Applicant’s abuse of marijuana had declined in recent years, to as infrequently as two or three times yearly or every two years (Tr. 39), the chronic nature of his previous abuse and the duration of his marijuana involvement (over 20 years) precludes the application of AG ¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not



cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," applies in that he avoids situations and persons who use illegal drugs (AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts"), and he submitted "a signed statement of intent with automatic revocation of clearance for any violation" (AG ¶ 26(b)(4)). It must be noted in his favor that there is no clear evidence of marijuana use after summer 2007 despite increased feelings of anxiety and stress. He showed good judgment in returning to his psychiatrist and asking to be restarted on Wellbutrin as of July 2008. As of February 2009, his psychiatrist found him to be highly motivated for sobriety, based at least in part on Applicant's self-report of sobriety and continued regular attendance at AA. Applicant has a favorable prognosis by a duly qualified medical professional under AG ¶ 26(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," although I cannot conclude that Applicant has completed a drug treatment program of the type contemplated within AG ¶ 26(d). His sessions with the psychiatrist are only 15 minutes in duration and appear to be focused on adjusting his medication for his depression. Available progress notes of his outpatient sessions do not confirm ongoing counseling with a therapist as of 2008. Applicant presented nothing from his AA sponsor or others in AA to corroborate progress made in his recovery through the AA program.

## **Personal Conduct**

The security concerns about personal conduct are 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 intentionally concealed his involvement with marijuana when he first applied for his security clearance for his present employment in January 2000. He responded "No" to question 27 (any illegal use of controlled substances, including marijuana since age 16 or in the last seven years) on his January 2000 SF 86 because of the stigma associated with such drug use. He was issued his secret clearance in September 2000 based on false information. On an August 2007 e-QIP completed for a clearance upgrade, he reported his counseling with the psychiatrist, but responded "No" to questions 24.a concerning any illegal drug use in the last seven years, and 24.b, any illegal use of a controlled substance ever while possessing a security clearance. He knowingly concealed his drug involvement, again because he feared the stigma attached to illegal drugs. Disqualifying condition 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,” is implicated because of his falsifications of his security clearance applications.

Moreover, 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,” must also be considered as a disqualifying factor. Applicant falsely denied during a personal subject interview on October 9, 2007, that he had been involved with illegal drugs. He also indicated that he had been sober for the past year when only two days before, he had told his psychiatrist that he was drinking alcohol on a daily basis, and his psychiatrist had referred him for possible detoxification treatment. He made several corrections to his security clearance application during the interview, but did not correct his negative responses to the drug inquiries. When he was reinterviewed on November 20, 2007, to discuss his counseling, he denied any diagnoses other than alcohol dependence, and again denied involvement with drugs other than alcohol. Applicant now submits that in contrast to his first interview, his intent in November 2007 was to disclose his drug involvement “in the medical context” (Tr. 37), and that he signed releases for the treatment records that would reflect his drug use. The available record does not contain the releases that Applicant claims he signed at the time, nor do the investigator’s summaries of the interviews indicate that Applicant signed releases. On June 5, 2008, in response to DOHA interrogatories, Applicant answered “Yes” to whether he had ever used any illegal drug, to include cannabis, but he described his marijuana involvement as “sporadic, periodically 2-3 occurrences every 1 to 2 years” with abstinence since about August 2007. Admission of limited drug use, and through medical records his more extensive abuse of the past, does not eliminate the personal conduct concerns.

Applicant’s concealment of his illegal drug use from his security clearance applications and during his subject interviews also implicates 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 is known, may affect the person’s personal, professional, or community standing.” While Applicant is not required to inform his coworkers about his drug abuse, he continues to conceal his involvement even from his employer (Tr. 43).

None of the mitigating conditions in AG ¶ 17 fully mitigate the personal conduct concerns raised by his repeated concealment of relevant and material facts concerning his drug involvement. Applicant deliberately concealed his marijuana use when he completed his January 2000 SF 86 and his August 2007 e-QIP, and during two personal subject interviews in the fall of 2007. 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. His unacceptable tendency to put his personal interest ahead of his obligation of candor raises serious doubts about his judgment, reliability, and candor, so 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,” is also not satisfied.

Applicant has partially acknowledged his behavior in that he authorized the release of his treatment records to DOHA on October 14, 2008 (Ex. 4), and he admitted during his hearing that he had knowingly and willfully withheld information about his marijuana involvement from his security clearance applications and during his first subject interview because of the stigma associated with illegal drug use. Admitting error is an essential element in rehabilitation and is required under 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.” Yet, when asked about his May 2008 disclosure of only sporadic marijuana involvement on two to three occurrences yearly or every two years, Applicant responded that it was his actual use as best as he could recall (Tr. 39). This account of his marijuana use cannot be reconciled with the diagnosis of marijuana dependence, or with his subsequent admission that marijuana became an addiction issue until alcohol began to take over (Tr. 44). When asked about the diagnosis of marijuana dependence, Applicant responded, “I mean some of this terminology, just, to me, it’s pretty highly subjective terminology, I just, I mean as far as sporadic versus periodic or chronic.” (Tr. 51). Although he had told DOHA that he had last used marijuana in about August 2007, he now claims to not recall the date of his last use other than he has been clean and sober since March 2008 (Tr. 49). The government still does not have a reasonably accurate accounting from Applicant of his history of marijuana use. In light of his extensive abuse at times in the past as the diagnosis of marijuana dependence would indicate, it is understandable that he would be unable to recall the specific dates on which he used marijuana. At the same time, it is difficult to believe he would not remember the circumstances of his use of marijuana. While he denies vulnerability because of his efforts to conceal his marijuana use, based on the facts of record, I am unable to fully apply either AG ¶¶ 17(d) or 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

### **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 have incorporated my comments under Guideline H 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's abuse of marijuana spanned more than 20 years. He turned to the drug to cope with stress while he held a security clearance. Even after he married his second wife, and he began to drink more heavily, he continued to smoke marijuana on occasion. As of September 2002, he described his marijuana involvement to his psychiatrist as "nonstop." He has a history of relapses into drinking and marijuana use in subsequent years, usually coinciding with times when he was not taking his medication for his depression. His sobriety since March 2008 is a positive development in overcoming his addictions, but it is too soon to conclude that his marijuana abuse is safely in the past given his history. Furthermore, his recent admissions of illegal drug involvement are not sufficient to overcome the judgment concerns raised by his repeated deliberate falsifications. Based on all the information presented, I am unable to conclude that it is clearly consistent with the national interest to grant or continue his access to classified information.

### **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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant <sup>6</sup>
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant

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<sup>6</sup>Treatment is not viewed negatively. A finding against Applicant is warranted because of history of relapses, including chronic use of marijuana at times, after he began a therapeutic relationship with his psychiatrist.

## **Conclusion**

In light of the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI  
Administrative Judge