DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-06320
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Thomas Albin, Esquire

September 30, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant smoked marijuana, with varying frequency up to twice a month at times, from age 17 to July 1993, again twice in about 2000, and once during the last quarter of 2007. Applicant does not intend to use any illegal drug in the future, and he is not likely to jeopardize his job by using drugs. Personal conduct concerns that arise because of his deliberate omission of drug involvement from his February 2002 SF 86 are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 26, 2007. On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H and Guideline E that provided the basis for its preliminary 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant received the SOR on February 10, 2009, and he submitted an undated answer in which he requested a hearing before an administrative judge. The case was assigned to me on April 2, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On June 2, 2009, I scheduled a hearing for June 17, 2009.

On June 10, 2009, Department Counsel filed an Amended Motion to Amend the SOR, referencing a Motion to Amend dated March 20, 2009, which was provided to me for the first time on June 11, 2009. After considering the respective positions of the parties, I granted the amended motion in part, *infra.*[1]

The hearing was held as scheduled. The government submitted five exhibits (Ex. 1-5), which were entered into evidence without any objections, and offered the testimony of a government investigator. Applicant submitted one exhibit (Ex. A), also entered with no objections, and he and three witnesses testified on his behalf. A transcript (Tr.) of the hearing was received on June 29, 2009.

Procedural and Evidentiary Rulings

On March 20, 2009, the government forwarded a Motion to Amend the SOR to Applicant, seeking to add a new allegation 2.d under Guideline E to allege that he falsified his February 2002 security clearance application (SF 86) by not disclosing that he had used marijuana on at least two occasions in about 1999 or 2000. The motion was not included in the file forwarded to me on April 2, 2009.

Before the hearing was formally scheduled, but after Applicant was provided through discovery with a copy of the motion, the case was transferred to the presently assigned Department Counsel. She moved on June 10, 2009, in an Amended Motion to Amend,[2] to change proposed allegation 2.d, which was the subject of the original motion, to indicate that Applicant deliberately did not disclose that he had used marijuana "on at least two occasions in about 2000." Furthermore, Department Counsel sought to add two new Guideline E security concerns (2.e and 2.f) to allege that Applicant also falsified his February 2002 SF 86 and his November 2007 e-QIP by deliberately failing to disclose his July 1993 arrest for possession of marijuana. Applicant through his attorney objected to the Amended Motion to Amend citing the lack

[1]Before the introduction of any evidence at the hearing, I corrected a typographical error in my order of June 11, 2009, to clarify that the SOR had been amended to add a new allegation 2.d (which was the subject of the original motion to amend) and not 2.e.

[2]Both the Motion to Amend and the Amended Motion to Amend contain incorrect social security numbers for the Applicant.

of reasonable notice, given the hearing was to be held within the week and the government was not relying on newly discovered information. Applicant's counsel conceded on June 11, 2009, that Applicant had not been prejudiced in his ability to respond to the original motion concerning SOR 2.d.

On June 11, 2009, Department Counsel provided me with a copy of the original Motion to Amend and Applicant's objections. After considering the parties' respective positions, I granted the amended motion to the extent that 2.d, as newly drafted, clarified the concern that had been the subject of the March 20, 2009, motion of which Applicant had adequate notice. Accordingly, the SOR was amended to add a new subparagraph 2.d under Guideline E, as follows:

> 2.d. You falsified material facts on a Security Clearance Application, Standard Form 86, signed by you on February 6, 2002, in response to Question 27 which asks "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.), hallucinogens (LSD, PCP, etc.), or prescription drugs?." You answered "no" and deliberately failed to disclose that you had used marijuana on at least two occasions in about 2000.

Applicant's objections were sustained as to proposed SOR 2.e and 2.f. The government possessed the documents upon which the allegations were based as of March 20, 2009, if not when the SOR was issued on February 3, 2009. Previously assigned Department Counsel reviewed the documents, and with discovery to Applicant, filed a motion to amend which could have included allegations similar to proposed 2.e and 2.f but did not. Transfer of the case to a government counsel who views the evidence differently is not good cause to add new allegations at the eleventh hour.

Findings of Fact

In the SOR as amended, DOHA alleged under Guideline H, drug involvement, that Applicant used marijuana from about 1989 to 1993 and from 2000 to at least after about November 2007 (SOR 1.a), including after he had been granted a security clearance in about February 2002 and after he had submitted his security clearance application[3] on November 26, 2007 (SOR 1.d); that he purchased marijuana (SOR 1.b); and that he was arrested in July 1992 for possession of marijuana and possession of fireworks and fined (SOR 1.c). Under Guideline E, personal conduct, Applicant was alleged to have used marijuana after he had been granted a clearance in about February 2002 (SOR 2.a) and after he had submitted his security clearance application on November 26, 2007 (SOR 2.b); to have falsified his November 2007 application by

[3]The November 26, 2007, security clearance application was referred to as a Questionnaire for National Security Positions (Standard Form 86) in SOR 2.c. The QNSP is a form included within the e-QIP.

responding "no" to the illegal drug inquiry in question 24.a (SOR 2.c), and as noted above, to have also falsified his February 2002 security clearance application by responding "no" to the drug inquiry and not disclosing that he had used marijuana on at least two occasions in about 2000 (SOR 2.d).

Applicant admitted that he had used marijuana, but only from 1989 to 1993. He also admitted the purchase of marijuana and his arrest in 1993. He denied any involvement with marijuana after he had been issued his security clearance in February 2002 or after he had completed his latest e-QIP in November 2007. Applicant also denied the falsification allegations. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 36-year-old rigger who has worked for a defense contractor since March 2002 (Ex. 1). He had previously served on active duty in the U.S. military from April 1994 to September 2000, and held a secret-level security clearance (Ex. 1, Tr. 125). That clearance was restored to him in about February 2002 for his duties with his current employer (Ex. 1, Tr. 126).

Applicant began using marijuana in about 1989 when he was 17 years old. He smoked it twice a month at times, some months not at all, until July 1993 (Ex. 4, Tr. 128-29), when during a traffic stop, he was arrested for possession of marijuana on his person and illegal fireworks in his vehicle (Tr. 115). He submitted a urinalysis sample at the station which was positive for marijuana (Ex. 4). He was charged only with possession of marijuana and illegal fireworks (Ex. 5). On the advice of his attorney, he submitted to weekly drug screens at a local clinic for three months and obtained counseling. In October 1993, he was sentenced to a six month diversion program, six months license suspension, and a fine. He paid his fines, and completed the screening program. In April 1994, the charges were dismissed (Ex. 5). He understood from the judge that the offense was expunged and would not be on his record (Ex. 4, Tr. 117, 119). Applicant stopped using marijuana after his arrest because he planned to enter the U.S. military (Ex. 4).

Applicant discussed his 1993 arrest with his military recruiter, but he did not mention his use of marijuana in high school (Tr. 146). In March 1994, he was accepted for enlistment under a delayed enlistment program (Ex. 4, Tr. 120). He completed a security clearance application (National Agency Questionnaire) on March 4, 1994. He disclosed the 1993 drug charge in response to question 19 concerning any arrests. Applicant also checked "Yes" in response to question 20.a concerning whether he had ever used or possessed any controlled drug except as prescribed by a licensed physician, and added under the remarks section that he had smoked marijuana one time in July 1993 ("experiment use") and did not intend to use marijuana in the future

(Ex. 2).[4] Applicant was granted a secret clearance for his duties in about July 1994 (Ex. 1).

Applicant abstained from illicit substance use for the duration of his active duty service. He received the National Defense Service Medal, two Meritorious Unit Commendations, the Armed Forces Expeditionary Medal, Second Good Conduct Award, and deployment ribbon for his service (Ex. 4). In April 2000, he and his spouse married (Ex. 1). They had a son in August 2000, and in September 2000, Applicant was honorably discharged from active duty into the reserves (Ex. 4).

After a few months of unemployment, Applicant worked as a calibration technician for a local company until March 2002, when he started with his present employer. Before he reported for work with the defense contractor, he executed a security clearance application (SF 86) on February 6, 2002. He responded "No" to question 27 concerning any illegal use of a controlled substance since age 16 or in the last 7 years. He also answered "No" to question 24 concerning whether he had ever been charged with or convicted of any offense(s) related to alcohol or drugs. He was granted a secret clearance for his duties (Ex. 1).

In conjunction with a periodic reinvestigation of his security clearance, Applicant executed an e-QIP on November 26, 2007. He answered "No" to question 23.d regarding whether he had ever been charged with or convicted of any offense related to alcohol or drugs. He also answered "No" to question 24.a concerning the illegal use of a controlled substance, including marijuana, since the age of 16 or in the last seven years, whichever was shorter (Ex. 1).

On February 1, 2008, Applicant was interviewed by a contract investigator for the U.S. government about the unlisted charges of possession of marijuana and illegal fireworks in 1993. The investigator took notes during the interview, which she then read back to Applicant to confirm their accuracy (Tr. 42, 131). After the interview, she generated a written report based on those notes (Tr. 33-35, 43). The investigator reported that Applicant had told her that he had not disclosed his 1993 arrest for marijuana possession "on his case papers" because he had been told by the judge that he would not have a record after he completed the drug screening program and paid his fines. She also reported that Applicant had detailed marijuana use from age 17 twice monthly until his arrest in July 1993, that he had quit smoking marijuana due to his upcoming entry into the Navy, but also that he had used marijuana three times after he was discharged from the military: twice when he first got out, and once four months ago with an old friend named Pat. The investigator further reported, "SUBJECT ANSWERED 'NO' TO USING MARIJUANA WHILE POSSESSING A SECURITY

[4]Applicant now denies that he wrote "one-time" use of marijuana on his NAQ (Tr. 151). He was either unable or unwilling to indicate who had indicated that he used marijuana only once ("I would have to guess that either my recruiter or someone at the MEPS office in New York wrote that.") (Tr. 151-52). Even assuming that it was in his recruiter's handwriting, it is reasonable to assume that the recruiter wrote what Applicant told him. Furthermore, Applicant signed the form certifying that his responses were accurate to the best of his knowledge and belief.

CLEARANCE IN THE LAST SEVEN YEARS ON HIS CASE PAPERS DUE TO SUBJECT USED THE MARIJUANA AFTER COMPLETING THE CASE PAPERS" (all capitals in original). Applicant denied any intent to use marijuana in the future (Ex. 4).

In September 2008, Applicant was asked by DOHA to review the report of his February 2008 subject interview and to verify its accuracy. On September 29, 2008, Applicant indicated that the report of investigation did not accurately reflect the information he had provided to the investigator. He explained that he had omitted his 1993 arrest because he did not think he had a record, as the judge had indicated that offense would be expunged. Citing his defense contractor employment and family responsibilities, he maintained he had no room for alcohol or drugs in his life. With regard to illegal drug involvement, he submitted the following corrections:

> Subject may have smoked marijuana twice monthly, some months not at all from age 17 until 07/93 incident.
>
> Subject bought marijuana three times in dime bag form, and/or 1/8 ounce package before 07/93 incident.
>
> Subject last drove after smoking marijuana at time of incident 07/93 and does feel effects of driving.

(Ex. 4). Nowhere in his response to DOHA interrogatories did Applicant specifically challenge the accuracy of the investigator's report concerning admissions by him of marijuana use in 1999 or 2000 and in 2007. And he did not challenge that he had omitted his most recent use of marijuana from his November 2007 e-QIP because it happened after he completed his security clearance application.

When he responded to the SOR, and at his hearing, Applicant denied that he had used any marijuana after his arrest in July 1993 (Tr. 129, 136, 138, 141), and he attributed any reference to him using marijuana after 1993 to an "inaccurate timeline of events on the investigation report." (Tr. 130). He admitted that he used marijuana in high school, but on a random basis, once in awhile (Tr. 145). When asked why he had listed only that he had used marijuana once in July 1993 on his 1994 NAQ, Applicant responded that the statement was not in his handwriting and it was 16 years ago (Tr. 157). Applicant denied ever telling the investigator that he had omitted his marijuana use from his November 2007 e-QIP because it happened after he had completed the form (Tr. 192). He attributed his failure to correct that claimed inaccuracy to not being thorough enough (Tr. 195). Applicant testified he had not raised the issue of any inaccuracies in the investigator's report with the investigator because he didn't have any way of contacting her (Tr. 196). He does not recall receiving a business card from the investigator (Tr. 200).

For her part, the investigator was unable to recall her interview with Applicant (Tr. 31, 35). She testified that the report of her interview with Applicant was written in her "usual style" (Tr. 32, 38). She described her normal procedure in conducting the

interview, asking questions according to a prescribed format (Tr. 38), taking notes on what was said to her, reviewing the notes with the subject of the interview (Tr. 34, 42), leaving a business card with her name with the subject (Tr. 44), and following the interview, typing up a report directly with no deviation from the notes taken during the interview (Tr. 34-35). There is no indication that the investigator had any motive to report other than what Applicant told her or to indicate inadvertent error in her reporting the substance of her interview with Applicant. Applicant's denials of any drug abuse after July 1993 are less credible.

Applicant has been an excellent worker for the defense contractor (Ex. A). His general foreman and his direct supervisor have no complaints about his professionalism or dedication to his duties. He sets an example for his peers (Tr. 69) and is considered a "valuable asset" (Tr. 85, 88). Applicant informed his direct supervisor that the government has raised allegations of marijuana use by him in the present decade but that there is no truth to the allegations (Tr. 93). Applicant wants to retain his employment which he understands he will lose if his clearance is not maintained (Tr. 190).

Applicant coaches youth sports (soccer, basketball) in his local community. He is also involved with scouting (Tr. 98-102, 143). A neighbor who has known him for the past six or seven years was given the impression that the information of security concern related to a 1993 incident which "got dated as if it was today and that wasn't the case." (Tr. 109).

Applicant does not currently associate with any known drug users. He does not intend to use any illegal drug in the future (Tr. 184, 189).

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 that "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 used 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 commonsense 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 that 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 admits that he smoked marijuana from age 17 until his arrest in July 1993 for illegal possession. AG ¶ 25(a), "any drug abuse," applies. He also admits that he purchased marijuana on three occasions up to July 1993, so AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," also applies.

Applicant denies any use of marijuana after his arrest in July 1993. However, representations of more recent drug use, made by him during his subject interview of February 2008, are considered more credible than his claim that the investigator somehow erred in reporting the time line of his drug use. As reflected in Exhibit 4, a contract investigator for the government reported that Applicant told her he smoked marijuana twice shortly after his discharge from the military and once about four months before his February 2008 interview. Any use of marijuana by him during the last quarter

of 2007 would have occurred while he was a defense contractor employee with a secret clearance (*see* AG ¶ 25(g), "any illegal drug use after being granted a security clearance"). While the investigator could not recall her interview of Applicant, she recognized the report of interview as written by her in her usual style. She testified about required procedures, including that notes taken during questioning are reviewed with the interviewee, and that a report is then prepared from those notes. Applicant acknowledged that the investigator read her notes back to him, albeit he claims "very briefly" (Tr. 131). Since the investigator was required to type the report herself from the notes (Tr. 46), confusion or misunderstanding is less likely. The investigator had no motive to misrepresent what Applicant told her. Applicant had an opportunity to review the investigator's report in September 2008. His correction, that he "may have smoked marijuana twice monthly, some months not at all from age 17 until 07/93 incident," is not a clear denial of any drug use after July 1993. Furthermore, his explanation for not listing his marijuana use on his November 2007 e-QIP (that it had not yet happened) implies that he had used marijuana within months of his interview and after completion of his e-QIP. Most importantly, he agreed with, and adopted, the investigator's summary without clarifying or denying the statement that he omitted his marijuana use from his e-QIP because it occurred after he completed the form.

It is difficult to conclude that Applicant acted in good faith in light of his history of incomplete disclosure about his marijuana involvement, including on his 1994 NAQ, and his minimization of his drug abuse at his hearing. He told the investigator he used marijuana twice monthly. In September 2008, he told DOHA that he "may have smoked marijuana twice monthly, some months not at all" before his arrest. When asked at his hearing about his marijuana use in high school, he testified, that it was random, once in awhile (Tr. 145), and he denied any use of marijuana after 1993. AG ¶ 25(g) applies because of his use of marijuana in 2007. It is unclear whether he held a security clearance when he abused the marijuana shortly after his discharge from the Navy. He was unemployed from his discharge in September 2000 to March 2001 and then worked as a calibration technician in the civilian sector until March 2002.

Given the evidence of relatively recent marijuana involvement in 2007 after he had abstained since about 2000, 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," does not apply in mitigation. But AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," applies. Applicant is no longer associating with drug users (AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts"). While he has not executed the signed statement required under AG ¶ 26(b)(4), "a signed statement of intent with automatic revocation of clearance for any violation," he has expressed a credible intent to abstain from future illegal drug use. There is nothing about his present activities involving his son and family that is conducive to drug use and he is not likely to risk his employment by using marijuana in the future. There is no evidence that he sought out marijuana on the very limited occasions that he used it after he was discharged from active duty. His involvement with marijuana while he held a security

clearance is not condoned, but it also appears to be an aberration in an otherwise stable, law-abiding lifestyle.

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.

DOHA alleged personal conduct concerns because Applicant smoked marijuana after he had been granted a security clearance in 2002 (SOR 2.a) and after he had submitted his e-QIP on November 26, 2007 (SOR 2.b). Applicant told a government investigator that he used marijuana four months before his February 1, 2008, interview. He also told the investigator that he had not listed this marijuana use on his e-QIP because it occurred after he completed the e-QIP, which would have been only a couple of months before his interview. If Applicant smoked marijuana after he submitted his November 2007 e-QIP (SOR 2.b), then he could not have falsified his November 2007 e-QIP by failing to disclose that abuse (SOR 2.c). It is more likely that the four months was an estimate, and that he last smoked marijuana after he completed his November 2007 e-QIP. Applicant displayed poor judgment within the general concerns underlying Guideline E when he used marijuana while he held a security clearance, and after he completed his November 2007 e-QIP, but those concerns are more appropriately addressed under Guideline H, *supra*.

The government did not establish that Applicant falsified his November 2007 e-QIP by failing to disclose illegal drug use in the preceding seven years (SOR 2.c). Applicant reported to the investigator that he stopped smoking marijuana after his arrest in July 1993 due to his intended enlistment in the military. He reported using marijuana three times after his discharge, which he recalled to be in 1999 or 2000, including just after he was separated from active duty. Records of his discharge from active duty (Ex. 4) show he was discharged on September 19, 2000. His marijuana use could have occurred after his discharge but before late November 2000, and it would have been outside of the seven-year scope of question 24.a on the November 26, 2007. Yet, that use would clearly have fallen within the time frame covered by the drug inquiry on his February 6, 2002, SF 86 (SOR 2.d). Applicant responded "NO" to question 27, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" His failure to report his abuse of marijuana in 2000 on his February 2002 SF 86 is reasonably inferred to have been knowing and deliberate. The security

concerns under 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," are established.

None of the mitigating conditions apply. The evidence shows Applicant has a history of misrepresentation concerning his illegal drug involvement which extends to the present. When he completed his NAQ for his first clearance in March 1994, he responded "Yes" to question 20 concerning whether he had ever tried, used, or possessed any narcotic, depressant, hallucinogen, or cannabis, but indicated only the use one-time in July 1993 on the occasion of his arrest. He did not disclose on the form that he had smoked marijuana in high school. This drug abuse was recent and should have been reported. Even if that particular statement was not in his handwriting, he signed the form certifying that his response to the drug inquiry was accurate when it was not. Applicant admitted at his hearing that he had not informed his military recruiter about his use of marijuana in high school, which lends credence to a finding of deliberate concealment as well on the NAQ. Applicant subsequently falsified his February 2002 SF 86 by denying any illegal drug use in the last seven years as alleged in SOR 2.d. As noted, the evidence does not conclusively establish that he falsified his November 2007 e-QIP, but he was not candid when he responded to the SOR or at his hearing about his drug involvement after July 1993. His failure to provide a candid statement at his hearing concerning his drug use casts "doubt on [his] reliability, trustworthiness, and good judgment."

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.

Applicant's use of marijuana in high school is attributed to his immaturity and peer pressure. His abuse of marijuana on three occasions since September 2000, most recently during the last quarter of 2007, casts doubt about his personal judgment. However, his drug abuse was situational and not characteristic of his lifestyle, which has revolved around his son's activities (scouting, youth sports) and work as an accomplished rigger. Personal conduct concerns persist because of his ongoing lack of candor about his history of illegal drug involvement. Applicant was not completely forthcoming about his drug abuse when he first applied for a security clearance for his work with his present employer. The ameliorative impact of his disclosures during his February 2008 interview have been undermined by recent retractions of his previous admissions. While his illegal drug use is not likely to recur, I am not persuaded that Applicant has been "railroaded" because of "something that happened to [him] in '93" (*i.e.*, the illegal marijuana possession offense) (*see* Tr. 145). It is more likely that Applicant, fearing that his disclosure of recent drug use could cost him his clearance, put his personal desire to keep his job ahead of his fiduciary obligation to the government. The government must be able to fully rely on the representations of those persons granted access to classified information, and Applicant has created considerable doubts about his trustworthiness. While his work record is commendable, it is insufficient to overcome the concerns generated by his lack of candor.

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