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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 09-04895 |
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| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

April 19, 2011

## Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused marijuana on a monthly basis from 1978 until he was arrested for illegal drug possession in 1981. He smoked it again from 1985 until mid-1987, and once each around December 2003 and February 2004 on a boat. He abused cocaine and amphetamines on limited occasions more than 20 years ago. His illegal drug involvement is mitigated by his abstention over the past six years and commitment to abstain. Personal Conduct concerns established by his falsification of a May 1988 security clearance application are mitigated by subsequent efforts to correct the record. Clearance granted.

## Statement of the Case

On May 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct), which provided the basis for its preliminary decision to revoke his 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on May 26, 2010, and requested a hearing if his explanations were insufficient for a favorable adjudication. On August 24, 2010, 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 Applicant. On September 2, 2010, I scheduled a hearing for October 7, 2010.

I convened the hearing as scheduled. Five Government exhibits (Ex. 1-5) and six Applicant exhibits (Ex. A-F) were entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on October 14, 2010.

## Procedural Rulings

At the hearing, before the introduction of any evidence, the Government moved to amend ¶ 2.a under Guideline E to substitute 1.b for an inadvertent erroneous cross-reference to 1.c. The Government also proposed to clarify the SOR by correcting the omission of a paragraph designation and allege under ¶ 2.c that Applicant stated in his subject interview of August 11, 1988, that he had no future intent to use illegal substances. The SOR was amended without objection.

## Summary of SOR Allegations

The amended SOR alleged under Guideline H, Drug Involvement, that Applicant used marijuana with varying frequency from about 1975 to at least February 2004 (SOR 1.a), including after he had been granted a security clearance in about March 1998 (SOR 1.b); that he purchased marijuana (SOR 1.c); that he used cocaine about four times from 1986 to 1987 (SOR 1.d); that he purchased cocaine (SOR 1.d); that he had used (SOR 1.f) and purchased (SOR 1.g) amphetamines; and that he was found guilty of June 1981 offenses of drunk driving and possession of marijuana and amphetamines (SOR 1.h). Applicant was alleged under Guideline E, Personal Conduct, to have falsified his January 28, 2008 Electronic Questionnaire for Investigations Processing (e-QIP) by falsely denying that he had ever illegally used a controlled substance while possessing a security clearance (SOR 2.a); to have falsified his May 24, 1988 Personnel Security Questionnaire (PSQ) by indicating that he had experimented with marijuana when he had in fact also used cocaine and amphetamines (SOR 2.b); and to have stated during his August 11, 1988 subject interview that he had no future intent to use illegal substances (SOR 2.c).

## Findings of Fact

In his answer to the SOR, Applicant admitted the use and purchase of illegal drugs as alleged under Guideline H, although he indicated that he smoked marijuana once in February 2004 while he held a security clearance as a part-time on-call employee. Concerning the June 1981 offense, he was fined for drunk driving only. While he also

responded "I admit" to the Guideline E allegations, he indicated that he had misinterpreted the e-QIP inquiry into any illegal drug use while employed in sensitive positions and responded "No" because he had never been employed as a law enforcement official, prosecutor, or courtroom official. Furthermore, he was not in a position directly and immediately affecting public safety when he used the marijuana in February 2004. Applicant admitted that he had not disclosed his amphetamine and cocaine abuse on his initial security clearance application submitted in May 1988, although he disclosed the information in an August 1988 subject interview. Applicant indicated that he did not intend any future illegal drug use as of his interview in August 1988, as he does not now intend any future illegal drug use. His admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is 49 years old, married, and has a 15-year-old son. He has been employed since December 1997 with a federal contractor, during the last few years as a manager in communications services. (Ex. 1; A; Tr. 48.) From June 2002 to June 2004, he was on "sabbatical" from his daily duties, in a part-time on-call status. (Tr. 37.) He seeks to retain a Secret security clearance for his duties, which include supervising a team of technicians responsible for the maintenance and operation of corporate facilities where classified meetings are held. (Ex. 1; A.)

Applicant began drinking alcohol and using illegal drugs as a teenager. While truant from school one day during the fall in 1975, he smoked marijuana provided by friends because he wanted "to act cool." He abstained from illegal drugs for the next three years, although he abused alcohol as a minor. From the fall of 1978 to 1981, he smoked marijuana monthly in social situations. Applicant paid about $10 for a "dime" bag twice yearly, which was enough for a couple of joints. Between March 1979 and September 1981, he also abused amphetamines ("black beauties" and "cross tops") once or twice a week. Applicant and his friends took turns purchasing and sharing amphetamines. Applicant bought the drug every other month at a cost of $10 each time. (Ex. 4.)

By 1980 or 1981, Applicant was drinking to intoxication almost daily. In June 1981, Applicant was pulled over for an equipment violation. He was arrested for driving under the influence of alcohol (DUI) on the highway, and misdemeanor possession of a controlled substance. (Ex. 4; 5.) He had an eighth of an ounce of marijuana in his car and 10 to 15 amphetamine pills. He was fined $333 for DUI and $50 for possession of marijuana. Applicant failed to pay the fine for the DUI, and was cited for contempt of court. He spent 17 days at a work camp, five of which were in lieu of paying the fine. Applicant did not attend a court-ordered alcohol education program because the cost was too high, and he moved. (Ex. 4.) Around summer 1983, Applicant was charged with his second DUI, although he pleaded guilty to a reduced charge of reckless driving. (Ex. 2; 4.)

Applicant abstained from illegal drugs after September 1981 until mid-1985, when he resumed smoking marijuana. Until summer 1987, he smoked the illegal drug at parties or other social settings about once every three months when it was offered to him. In spring 1986, Applicant snorted cocaine at a party when it was offered to him for free. Although he

did not enjoy its effects, he snorted the drug three more times, with his last use in September 1987. Applicant bought cocaine twice, paying $25 for a quarter gram that he shared with friends. (Ex. 4.)

As of May 1988, Applicant had attended a couple of colleges without earning a degree, but he had earned a certificate from a technical school. He started working as a junior illustrator for a defense contractor. (Ex. 1.) On May 24, 1988, he completed a PSQ for a Secret clearance. He disclosed his arrest record, including his conviction for DUI and marijuana possession, albeit mistakenly dated the offense as occurring in June 1980 rather than June 1981. He also responded affirmatively to question 15.a, "Have you ever used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) or Cannabis (to include marijuana or hashish) except as prescribed by a licensed physician?" He indicated that he "experimented with marijuana" approximately between 1978 and 1981, and that he possessed marijuana in quantity never more than an ounce. (Ex. 2.) Applicant was just starting out in his career in art, and he was worried about how information regarding drug use would be viewed for his security clearance and continued employment. (Tr. 44.)

On August 11, 1988, Applicant was interviewed by a Defense Investigative Service (DSS) special agent, in part about his illegal drug abuse and why he omitted his amphetamine and cocaine abuse from his PSQ. He detailed his illegal drug involvement, which he indicated ended with a last use of marijuana the previous summer. He stated he had "no intentions of being involved with any illegal drugs in any way in the future." Applicant acknowledged that he failed to list his amphetamine and cocaine usage on his PSQ because he was concerned about the impact of that information. He added that he had fully volunteered the information during his interview. (Ex. 4.) Applicant was granted an interim Confidential clearance, but he left the job after only about six months when he relocated to his present area for employment. He was granted a Confidential security clearance in 1988 or 1989. (Tr. 35.)

In August 1989, Applicant married his spouse. Applicant attended an art institute from September 1993 to May 1995, and a college from May 1995 to May 1997, although he did not complete a degree. In March 1996, Applicant and his spouse had a son. (Ex. 1.) In December 1997, Applicant began working for his current employer. He was apparently granted a Secret clearance in March 1998. (Ex. 1; Tr. 35.)

Around June 2002, Applicant went on part-time on-call status with his employer at the request of his director. (Tr. 29.) Applicant could decline work offered by his employer, but he also had no benefits and no guarantee that he would be able to return to his previous job. However, Applicant was placed on on-call status to make it as easy as possible for him to return to work on completion of the sabbatical. (Answer.) He did not inquire into, and was not told, whether his security clearance would remain valid (Tr. 29.), and he still is not certain whether his clearance was in effect or put on hold while he was in an on-call status. (Tr. 41-42, 46.) Applicant was not debriefed from his classified responsibilities when he left full-time status in June 2008, although he denies knowing then that he should have been debriefed, if his clearance was withdrawn or put on hold. (Tr. 46-47.)

Through December 2002, Applicant, his wife, and his son sailed between ports off the Atlantic Coast of the United States. He worked for his employer for four days in November 2002, and did not access classified information during that time. (Tr. 36-38, 47.) Applicant and his family spent from January 2003 through March 2004 sailing between Caribbean ports. (Tr. 37-39.) Applicant smoked marijuana on two occasions when it was offered to him on another person's boat in the Caribbean; in December 2003 and around late February 2004. (Tr. 38-39.) Once back in U.S. waters, Applicant stopped off in a U.S. port in April 2004 and worked for his employer for one week. (Tr. 38.)

Applicant returned to full-time employment with the defense contractor. On January 28, 2008, Applicant completed his e-QIP for a Secret clearance. Applicant reported that he had been on-call from his work and sailing throughout the Caribbean from January 2002 until March 2003 [sic], apparently based on a log kept onboard his sailboat. In response to question 24.a concerning any illegal drug use in the last seven years, he indicated that he used marijuana one time each around March 2002 [sic] and around December 2003, and that he did not intend to use marijuana again. He responded negatively to question 24.b, which inquired in part whether he had ever illegally used a controlled substance while possessing a security clearance. (Ex. 1.)

In response to inquiries from DOHA about any current use of illegal drugs, Applicant indicated on September 30, 2009: "Tried marijuana while in [the Caribbean] in February 2004. It was one cigarette. My status of employment was Part Time On Call during a two year sabatical [sic]." Applicant denied any intent to use any illegal drugs in the future. He admitted his use of marijuana in February 2004 when asked to list any illegal drug use since receiving his Secret clearance in March 1998. (Ex. 3.)

In his May 2010 answer to the SOR, and at his hearing on his continued security clearance eligibility, Applicant indicated that he was off by a full year on his e-QIP when he indicated he traveled in the Caribbean starting in January 2002 and used marijuana in March 2002. (Tr. 32, 39.) He indicated he misread question 24.b to be asking whether he ever used illegal substances while employed as a law enforcement officer, prosecutor, or courtroom official holding a security clearance. He answered "No" because he had never been employed as a law enforcement officer, prosecutor, or courtroom official. (Tr. 40.)

On October 7, 2010, Applicant expressed a willingness to sign a statement to the effect that he would not use any illegal substances in the future. (Tr. 29.) Before the hearing ended, he wrote in his own hand the following: "I [name omitted] am willing to accept automatic revocation of my clearance if any use of illegal substance is found to be true." (Ex. F.) Applicant affirmed on the record that he did not intend to use any illegal substances in the future, and that he was willing to accept the loss of his clearance if he used illegal drugs in the future. (Tr. 52.)

Applicant is often required to attend Secret-level meetings to support and facilitate the technical requirements of the meetings. From September 2009 to September 2010, Applicant was responsible for over 64 Secret-level classified meetings where sensitive

material was discussed, presented, or displayed. (Ex. A.) There is no indication that he performed his duties inappropriately. Applicant's finances appear to be stable (Ex. B.), and he has no criminal record in the state where he and his spouse have had their permanent residence for the past 20 years. (Ex. 1; C.) As of October 2010, Applicant was enrolled in college with a 3.418 cumulative grade point average. (Ex. E.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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 adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. 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 to obtain 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

### Drug Involvement

The security concern for 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.

Under AG ¶ 24(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),[1] and
>
> (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Three disqualifying conditions under AG ¶ 25 are implicated.

AG ¶ 25(a), "any drug abuse," applies because of Applicant's abuse of marijuana once in the fall of 1975, monthly from the fall of 1978 to 1981, once every three months from mid-1985 to 1987, and once each in December 2003 and late February 2004. AG ¶ 25(a) is also implicated because of his abuses of amphetamines once or twice weekly from March 1979 to September 1981, and of cocaine four times between spring 1986 and September 1987. AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," is established because of Applicant's purchases, albeit now very dated, of marijuana, amphetamines, and cocaine, and of his possession of illegal drugs when he used them and on the occasion of his arrest in June 1981. AG ¶ 25(g), "any illegal drug use after being granted a security clearance," must be considered because Applicant smoked marijuana at least twice after he had been granted a Secret clearance in 1998. However, the evidence falls short of proving that Applicant knowingly abused marijuana in disregard of his clearance obligations. Although Applicant was not debriefed from his security responsibilities when he left full-time employment in June 2002, he maintains he was unaware of the effect of his on-call status on his clearance. Applicant should have confirmed his clearance, but because his on-call work in November 2002 did not involve

[1]Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance.

classified material, I accept his testimony that he was unaware whether his clearance remained in effect while he was sailing around the Caribbean.

Applicant satisfies some components of the relevant mitigating conditions AG ¶¶ 26(a) and 26(b). He has not abused amphetamines or cocaine in over 20 years, so his abuse of those drugs would fall within 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." However, Applicant's dated drug abuse cannot be evaluated in isolation from his marijuana abuse in December 2003 and in February 2004, after he had resolved to abstain from all illegal drugs in the future.

As to whether AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," is established, there is no evidence that Applicant currently associates with the persons with whom he abused illegal drugs. AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts," applies, but it is not controlling in mitigation given Applicant's abuse of marijuana at age 42, some 16 years after he had presumably put his drug use and his socializing with drug abusers behind him. Similarly, while the circumstance of his latest drug use, on a boat in the Caribbean, may be unlikely to reoccur, AG ¶ 26(b)(2), "changing or avoiding the environment where drugs were used," does not guarantee against recurrence of future abuse. That said, there is no evidence that Applicant sought out the marijuana that he smoked in 2003 and 2004. Nothing about Applicant's present lifestyle appears to be conducive to illegal drug involvement. His employment is stable. Applicant and his spouse are happily married and their finances are sound. Applicant has demonstrated an ability to abstain from illicit drugs while actively carrying out his responsibilities for the defense contractor, including for the last six years since he resumed his full-time status. And his abuse, while on call in the Caribbean, appears to be an aberration in otherwise law-abiding conduct for the past 20 years. Despite Applicant's relapse after 16 years of being drug-free, his present 6.5 years of abstinence qualifies as "an appropriate period of abstinence" under AG ¶ 26(b)(3). If it was not clear to him before, he now knows that any future illegal drug involvement, on or off the job, in full-time or on-call status, could result in the loss of his security clearance and potentially his employment. He has demonstrated a willingness to comply with Department of Defense requirements by executing the "signed statement of intent with automatic revocation of clearance for any violation" required under AG ¶ 26(b)(4). He is unlikely to abuse any illegal drug in the future.

**Personal Conduct**

The security concern for personal conduct is set out in Guideline E, 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.

Personal conduct security concerns are raised by Applicant's acknowledged misrepresentation of his illegal drug abuse history on his May 1988 PSQ. Applicant not only omitted his abuses of amphetamines and cocaine as alleged in SOR 2.b, but he also minimized the extent of his marijuana involvement. His abuse on the order of monthly from the fall of 1978 to 1981 and once every three months from mid-1985 to summer 1987 clearly went beyond the experimentation he reported on his PSQ. Applicant's intentional misrepresentations implicate 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."

However, Applicant denies that he intentionally falsified his January 2008 e-QIP when he responded "No" to whether he had ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety. Accordingly, the burden is on the Government to prove Applicant lied on his e-QIP. A finding of intentional falsification can be inferred if the evidence shows that the answer was false and not attributable to good-faith mistake or inadvertence. Applicant asserted in his answer and at his hearing that he misinterpreted the question to pertain only to those persons who had been employed as a law enforcement officer, prosecutor, or courtroom official. By logical extension, had Applicant properly understood the question to apply to any persons holding a security clearance, he would have responded "Yes" because he knew he had smoked marijuana after he had been granted a security clearance. Yet, Applicant also testified at his hearing that he did not come to know that his security clearance was in effect when he smoked the marijuana while on sabbatical until he had to respond to questions about using marijuana while he held a clearance. (Tr. 41.) Although not entirely clear whether Applicant was referring to the e-QIP, the interrogatories, or even his answer, DOHA asked Applicant in September 2009 to respond to the following statement: "You have been a cleared Department of Defense contractor, holding a Secret level clearance since March 1998. Please list any illegal drug use, to include narcotics, dangerous drugs, psychoactive or controlled substances, marijuana or hashish that you have used since receiving your clearance." DOHA's assertion about his clearance would give Applicant reason to believe that his clearance was valid during his on-call status, which he may well have not understood when he completed his e-QIP.

The variation in Applicant's accounts of his most recent marijuana abuse must be considered in assessing whether to accept that he acted in good faith. Under section 9 of the e-QIP concerning where he has lived for the last seven years, Applicant accurately indicated that he lived aboard his sailing vessel with his spouse and son outside the United States from January 2003 to March 2004. He reported that they then sailed in U.S. waters until August 2004, although according to his hearing testimony, his sabbatical ended in June 2004. Yet, despite the accurate reporting of when he was outside of the United States

in answer to section 9, he was off by one year when he listed his visits to Caribbean nations in section 18 as occurring between January 2002 and March 2003. There is little information available that could shed light on the process Applicant undertook to gather his travel data and complete the e-QIP. Even with estimating his drug use on his e-QIP, he provided no credible explanation for why he was off by two years in reporting marijuana use in March 2002, but was seemingly accurate about his December 2003 abuse. That said, the evidence falls short of demonstrating that Applicant deliberately falsified questions 24.a or 24.b on his recent e-QIP. Whereas Applicant listed two uses of marijuana on his e-QIP in the last seven years, including a last use in December 2003 [sic], and he corrected the date of his last use when he responded to DOHA interrogatories, it does not appear that he intended to conceal information from the Government. He indicated in response to question 26 that he was granted a Secret clearance based on a background investigation around March 1998, and he listed marijuana use after that date on his e-QIP, so it is difficult to see what Applicant would have gained from a negative response to question 24.b concerning any drug use while he had a clearance.

Concerning potential mitigation of his May 1988 PSQ falsification, 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 without evidence that Applicant corrected the record voluntarily, before he was questioned during his August 1988 subject interview. However, he was candid about his abuse of illicit substances during that interview, and "so much time has passed" since he minimized his drug use on his May 1988 PSQ to apply 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," to the falsification. 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," is also implicated in that Applicant, who is the sole source of information about his latest marijuana use, corrected the record when he responded to DOHA interrogatories, well before the SOR was issued.

Applicant's abuse of marijuana in Caribbean waters around December 2003 and February 2004 was an exercise of poor judgment (SOR 2.c), but it does not preclude me from accepting that he had no intent to smoke marijuana in the future as of his DSS interview in August 1988. There is no evidence that Applicant abused any illegal drug over the next 15 years, which in and of itself would tend to substantiate that he did not intend to use any illegal drug again and that he was not lying when he denied any future intent to the agent. His recent abuse bears implications for whether he can be counted on to abide by his written statement of intent to abstain with automatic revocation of his clearance should he use any illicit substance, but those concerns have been resolved in his favor, largely because of his recent candor about his marijuana use and a present lifestyle not conducive to illegal drugs.

## 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 his conduct and all relevant 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant exercised poor judgment by smoking marijuana on two relatively recent occasions, more than 15 years after he had put his drug use behind him. The circumstance of the use on another person's boat in the Caribbean, while Applicant was in an on-call status for his employer, does not minimize the security concerns, especially where Applicant's clearance was apparently still valid. That said, Applicant was the sole source of the information about that drug abuse, and he is not likely to risk his employment by using illegal drugs in the future. His drug abuse is not to be condoned, but it was sufficiently limited to where he can be counted on to abide by his stated willingness to abstain with automatic revocation of his clearance should he again abuse any illicit substance.

## 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:

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| 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 |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraph 1.h: | For Applicant |

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: For Applicant
Subparagraph 2.c: For Applicant

## Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge