



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



In the matter of: )  
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----- ) ISCR Case No. 10-08217  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

October 24, 2011

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s marijuana possession violated federal law, showed poor judgment, and raised security concerns. He stopped using marijuana in January 2011. More time is needed without illegal drug use to fully mitigate security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 4, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). In June 2011,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, alleging security concerns under Guidelines H (drug involvement), J (criminal conduct) and E (personal conduct) (Hearing Exhibit (HE) 1). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

<sup>1</sup> The SOR was undated. Department Counsel and Applicant estimated the SOR was issued in June 2011. (Transcript (Tr.) 12-13, 17-18) I added the “June 2011” date to the first page of the SOR and initialed and dated the change.

amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 8, 2011, Applicant responded to the SOR. (HE 3) The Government requested a hearing. (Tr. 17) On July 22, 2011, Department Counsel was prepared to proceed. On August 1, 2011, the case was assigned to me. On September 7, 2011, DOHA issued a hearing notice setting the hearing for September 29, 2011. (HE 2) The hearing was held as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 19-20), and Applicant offered seven exhibits. (Tr. 21-22; AE A-G) There were no objections to the admissibility of any documents, and I admitted GE 1-3 and AE A-G. (Tr. 20, 22) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On October 12, 2011, I received the hearing transcript.

### **Findings of Fact<sup>2</sup>**

Applicant's SOR response admitted that from August 2008 to November 2008, he used marijuana on more than one occasion (SOR ¶¶ 1.a, 2.a, 3.a); and in January 2011, he used marijuana 10 to 15 times (SOR ¶¶ 1.b, 2.a, 3.a). (HE 3) He denied that he transported marijuana to California after he received a medicinal marijuana prescription in November 2011<sup>3</sup> (SOR ¶¶ 1.c, 2.a, and 3.a). (HE 3) His admissions are accepted as factual findings.

Applicant is a 36-year-old employee of a defense contractor. (Tr. 5) In 1993, he was awarded a high school diploma. (Tr. 5) He has not attended college. (Tr. 5) He has never served in the military. (Tr. 6) He is a self-taught expert in information technology (IT). (AE A at 2; AE B) He is the director of information technology for a firm that supports the U.S. Navy. (Tr. 6) He married his spouse in 1995. (Tr. 42) His son is 17 years old, and his stepchildren are 18 and 22 years old. (Tr. 42) His spouse does not work outside their home. (Tr. 42)

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<sup>2</sup> Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup> At the hearing, Department Counsel made a motion to amend SOR ¶¶ 1.c, 2.c, and 3.c by changing "after receiving a medicinal marijuana prescription for gout/sleep apnea in November 2001" to "in November 2008 and then received a medicinal marijuana prescription for gout/sleep apnea in January 2011." There was no objection and I granted the Government motion to amend the SOR. (Tr. 15-16)

## Drug Involvement<sup>4</sup>

Before Applicant was hired by his former employer in October 2006, he received a drug test. (Tr. 25) He was subject to random drug testing by that employer; however, he was not tested for illegal drug use. (Tr. 25) In October 2008, he began working for his current employer company. (Tr. 26) There is no evidence that Applicant has ever tested positive for the presence of illegal drugs in his system.

When Applicant was 17 or 18 years old, he used marijuana for one year on a weekly basis. (Tr. 27, 29) He did not use marijuana again until August and November 2008, shortly after his father passed away. (Tr. 26-27, 30) His decision to use marijuana in 2008 was affected by stress. (Tr. 27) He used marijuana offered to him at parties by one of his father's friends. (Tr. 27-28) Applicant's decisions to use marijuana at the two parties in 2008 were spontaneous and not the product of deliberation or planning. (Tr. 35) He acknowledged that he enjoyed using marijuana. (Tr. 35) He does not associate with his father's friend, who provided marijuana to Applicant, because the friend lives in a different state from Applicant.

At the party in November 2008 where he used marijuana, he received a quantity of marijuana which he transported when he moved from one state to another state. (Tr. 29; AE A at 2) The marijuana was in his household goods. (Tr. 29) He did not use the marijuana he transported. He flushed it down his toilet. He disclosed his marijuana use in 2008 on his February 4, 2010 SF-86. (Tr. 30)

Applicant has medical problems from gout and sleep apnea. (Tr. 32; AE E, F) Prescriptions for various legal drugs, such as Allopurinol and Indomethacin, and the continuous positive airway pressure (CPAP) machine had side effects or comfort issues that made their use problematic for Applicant. (Tr. 32-33; AE A at 2) He decided to try marijuana to treat the gout and sleep apnea. (Tr. 37-38; AE A at 2) When Applicant obtained a prescription for medical marijuana in January 2011, he believed it legally permitted him to possess and use marijuana. (Tr. 30; AE A at 3) He was unaware that federal law prohibited his marijuana possession. (Tr. 30; AE A at 2-3) He knew when he completed his February 4, 2010 SF-86 that marijuana use raised federal security concerns. (Tr. 31)

Applicant's most recent marijuana possession was when he had marijuana in his home in January 2011. (Tr. 36) After obtaining a prescription to use marijuana, he purchased 20 marijuana cigarettes for \$100. (Tr. 36-37) He wanted to try marijuana cigarettes with different levels of THC or potency. (Tr. 40) He smoked marijuana before going to bed on a daily basis for two weeks. (Tr. 36) Most of the marijuana he purchased was unused after two weeks. (Tr. 36-37)

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<sup>4</sup> On April 2, 2010, Applicant described his marijuana use in 2008 to an Office of Personnel Management (OPM) investigator. (GE 3) In his March 2, 2011 response to DOHA interrogatories, he described his marijuana use in January 2011. (GE 2) All of his statements about his marijuana use are consistent.

Applicant has not used marijuana after January 2011, and he does not intend to use marijuana in the future. (AE A at 3) He submitted a urine sample on July 14, 2011, which tested negative for five illegal substances, including marijuana. (AE D) He stated that he “will not partake in any illegal drug use from this point forward, under penalty of immediate loss of all clearances and access to sensitive information.” (AE C) He volunteered to submit to random drug testing. (AE C)

## **Character Evidence**

Applicant’s “direct manager” for the last three years described Applicant as having shown exceptional initiative, diligence, and dedication as an IT professional. (AE B, G) Applicant has a “stellar reputation,” and is ethical, responsible, and trustworthy. (AE G) His direct manager entrusts Applicant with “the digital security of [their] company’s incredibly valuable intellectual property.” Applicant is scrupulously honest, and he trusts Applicant “completely in any situation.” (AE G)

## **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). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision,

in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines H (drug involvement), J (criminal conduct), and E (personal conduct).

### Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se 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.

Two drug involvement disqualifying conditions in AG ¶¶ 25(a) and 25(c) could raise a security concern and may be disqualifying in this case: "any drug abuse"<sup>5</sup> and "illegal drug possession." These two disqualifying conditions apply because Applicant

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<sup>5</sup> AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

possessed and used marijuana.<sup>6</sup> He possessed marijuana before he used it. He admitted on his security clearance application, to an OPM investigator, and in his SOR response that he possessed and used marijuana on two occasions in 2008. In his response to DOHA interrogatories and at his hearing he described his marijuana use in January 2011. AG ¶¶ 25(a) and 25(c) are established and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

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

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

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

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

(3) an appropriate period of abstinence; and

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

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

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

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no "bright line" rules for determining when such conduct is "recent." The

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<sup>6</sup> AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

(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.

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 (Sch.) I controlled substance. See Drug Enforcement Administration listing at [http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308\\_11.htm](http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm). See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant’s last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”<sup>7</sup>

Applicant’s involvement with marijuana began with his marijuana use in high school and ended in January 2011, when he stopped using marijuana.<sup>8</sup> He recognizes the adverse impact on his life of drug abuse in connection with access to classified information as well as the impact on his family and career. Marijuana possession

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<sup>7</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

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

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, affirmed the administrative judge’s decision to revoke an applicant’s security clearance after considering the recency analysis of an administrative judge stating:

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

<sup>8</sup>The SOR did not allege that Applicant used marijuana during high school. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR misconduct for the five above purposes, and not for any other purpose.

violates federal law. He ended any association with known drug users. AG ¶ 26(a) partially applies to his marijuana-related offenses.<sup>9</sup>

Applicant demonstrated his intent not to abuse illegal drugs in the future. He has ended his association with his drug-using associates and contacts. He has changed or avoided the environment where drugs were used. He provided a signed statement of intent with automatic revocation of clearance for any violation. He has broken his pattern of drug abuse, and he has changed his life with respect to illegal drug use. He has abstained from drug abuse for about nine months. AG ¶ 26(b) partially applies.

AG ¶¶ 26(c) and 26(d) are not applicable because Applicant did not abuse drugs after being issued a prescription that is lawful under federal law. Marijuana was never lawfully prescribed for him under federal law. He did not receive a prognosis of low probability of recurrence of drug abuse.

In conclusion, Applicant ended his drug abuse in January 2011, about nine months ago. The motivations to stop using illegal drugs are evident.<sup>10</sup> He used marijuana about 14 times in January 2011 after completing his security clearance application and his OPM interview. He knew the Department of Defense viewed marijuana use as inconsistent with having access to classified information. He has shown or demonstrated a sufficient track record of no drug abuse to reduce, but not completely eliminate drug involvement as a bar to his access to classified information. Drug involvement concerns remain and will not be mitigated until more time elapses with no marijuana possession or use.

## **Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying: “(a) a single serious crime or multiple lesser offenses” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.”

AGs ¶¶ 31(a) and 31(c) apply. Marijuana is a Schedule 1 controlled substance, and its possession is a federal crime. In 2008, Applicant possessed marijuana on two occasions before he used it, and in January 2011, he possessed marijuana before using

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<sup>9</sup> In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

<sup>10</sup> Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.



it each night for about two weeks. He was never arrested, charged, or prosecuted for marijuana possession. Nevertheless, his marijuana possession raises security concerns under AG ¶¶ 31(a) and 31(c).

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

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

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(b) and 32(c) do not apply because Applicant committed the offense of marijuana possession on multiple occasions, and he was not pressured into committing the offenses. AG ¶¶ 32(a) and 32(d) partially apply. The discussion of the mitigating conditions under the drug involvement guideline is applicable here. Applicant's demonstrated intent not to commit future crimes is encompassed in these two mitigating conditions. He has decided not to possess and use marijuana in the future. His most recent criminal offense occurred in January 2011, which is still relatively recent. He presented strong evidence of job training and solid support from his supervisor. He has had time to contemplate his poor judgment and has committed to abstaining from involvement with marijuana. He understands the importance of refraining from future marijuana involvement to fully mitigate security concerns. He accepted responsibility for his offenses. Criminal conduct will be fully mitigated after the passage of additional time without marijuana possession.

## **Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes three conditions that could raise a security concern in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; and (3) a pattern of dishonesty or rule violations . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

AG ¶¶ 16(c) and 16(d) do not apply. As indicated under the drug involvement guideline, there is credible adverse information that is sufficient for an adverse determination under Guidelines H and J. However, AG ¶ 16(e)(1) applies because marijuana possession and use creates a vulnerability to exploitation, manipulation, or duress, and such conduct adversely affects Applicant's professional standing as an employee of a Department of Defense contractor. There is substantial evidence of this disqualifying condition, and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of

authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(a) and 17(b) do not apply because Applicant has been candid about his drug involvement, and 17(f) does not apply because Applicant admitted his marijuana possession and use. Applicant has met his burden of establishing AG ¶ 17(e) and the SOR allegations under Guideline E are mitigated. His most recent marijuana possession and use was in January 2011, nine months ago. He does not associate with known drug users. He fully disclosed his marijuana possession and use on multiple occasions. His decision to end his marijuana use is a positive step that tends to reduce or eliminate his vulnerability to exploitation, or duress. I do not believe that anyone could use Applicant's history of marijuana possession or use to coerce him into compromising classified information. Personal conduct concerns raised under AG ¶ 16(e)(1) are mitigated under AG ¶ 17(e).

AG ¶ 15 indicates that poor judgment can cause reliability and trustworthiness concerns, resulting in disqualification under the personal conduct guideline. Judgment issues under the personal conduct guideline are more specifically addressed in this case under the drug involvement and criminal conduct guidelines. I find for Applicant under Guideline E because those judgment issues are a duplication of the judgment concerns previously discussed under those two guidelines.

## 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 Guidelines H, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant volunteered to serve his country as an employee of a Government contractor. He has shown great dedication and diligence and developed exceptional IT expertise, making him an important asset to his employer and the Department of Defense. He stopped using marijuana in January 2011. I am confident that he has the ability to abstain from marijuana use. In his February 4, 2010 security clearance application, SOR response and at his hearing, he admitted his history of marijuana use. His statements before and at his hearing were honest and credible. He knows the consequences of marijuana use. There is no evidence of disloyalty or that he would intentionally violate national security. His character and good work performance show some responsibility, rehabilitation and mitigation. I am satisfied that if he continues to abstain from marijuana use and avoids future offenses, he will eventually have potential for access to classified information.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant is 36 years old, and he was sufficiently mature to be fully responsible for his conduct. He risked arrest and prosecution each time he possessed marijuana. Such judgment lapses raise serious questions about Applicant's reliability, trustworthiness, and ability to protect classified information. His marijuana use on a daily basis for two weeks in January 2011 after completing his security clearance application and his OPM interview shows lack of judgment and is the primary reason why security concerns cannot be mitigated at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and

circumstances in the context of the whole person. I conclude drug involvement and criminal conduct concerns are not fully mitigated at this time. Personal conduct concerns are mitigated because the same conduct is more thoroughly addressed under the drug involvement and criminal conduct guidelines. For the reasons stated, I conclude he is not currently eligible for 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
Subparagraphs 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For 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.

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Mark Harvey  
Administrative Judge