DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-08437
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Between 1995 and 2009, Applicant was arrested numerous times. In June 2009, he was arrested for marijuana possession. He provided false answers related to his marijuana usage and arrests on his May 2010 Electronic Questionnaires for Investigations Processing (e-QIP). He mitigated the criminal conduct and drug involvement security concerns, but failed to mitigate the personal conduct security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,[1] on August 1, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's

[1] Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

security clearance. On September 7, 2012, Applicant answered the SOR and requested a hearing. On November 15, 2012, I was assigned the case. On November 20, 2012, DOHA issued a Notice of Hearing for a hearing convened on December 4, 2012. I admitted Government's Exhibits (Ex) 1 through 7 and Applicant's Exhibits A through D, without objection. On December 12, 2012, DOHA received the hearing transcript (Tr.).

Procedural Matters

On May 18, 2010, Applicant signed the signature forms page on his e-QIP and two additional release of information forms. SOR ¶ 3.a references that May 18, 2010 date and SOR ¶¶ 3.b and 3.c reference an October 27, 2010 date. Department Counsel moved to change all the e-QIP dates to reflect May 19, 2010. (Tr. 16) Applicant did not object to the change. The change to the SOR was made. However, I find the e-QIP was signed on May 18, 2010, and not May 19, 2010. The May 18, 2010 date will be used throughout this decision.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, with explanation, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 35-year-old mechanic who has worked for a defense contractor since October 2008. As a mechanic on Bradley track vehicles, he spent eight months overseas providing services. (Tr. 30, 32) He has also made numerous trips to state-side posts to provide services. (Tr. 33) In 2010, he was home only two and a half months. (Tr. 33) Applicant called no witnesses other than himself, but did produce three letters of character reference. (Ex. A, B, C). Applicant's co-workers, supervisors, and friends state Applicant demonstrates a never-ending drive to go above and beyond his duties. He is a devoted family man, is hard-working, loyal, honest, straightforward, and trustworthy.

In his youth, Applicant hung around with the wrong crowd and made a lot of bad decisions. (Tr. 27) He was the oldest of three siblings raised by a single parent. (Tr. 27) He believes he was more rebellious not having a father present. (Tr. 57) He grew up in a rough, drug-infested neighborhood. (Tr. 57) On return visits to Applicant's former state to visit his children and grandparents, many former acquaintances are now deceased or in jail. (Tr. 41) Many others there have made little of their lives.

Applicant admits he was arrested in November 1995 for forgery, however, he denies committing the crime. The charge was dismissed in August 1996. (Ex. 5) Applicant – then age 17 – skipped high school with two friends. (Ex. 7) They stopped to buy beer and his friend used a stolen check to pay for the beer. Applicant was unaware the check was stolen. He was given the option of probation for four years or joining the military. (Tr. 27) He chose the latter. He was a member of the U.S. Army from January 1997 through July 1998. (Ex. 1)

Applicant first used marijuana in 1994 when he was 14 years old. His use was on and off over a period of years. He last used it in 2007, but admitted possessing marijuana in 2009. (Ex. 7, Tr. 48) At times, when using marijuana he smoked two joints three or four times a week. (Ex. 7) He used it with friends on weekends and after work. (Ex. 7, Tr. 49) Whenever he was on probation, he would not use marijuana, but would return to using it when probation period ended. (Ex. 7, Tr. 49) He asserts he last used marijuana before he changed states and moved to his current location. (Tr. 40)

In December 1996, Applicant was in a car with three others. Marijuana was passed around. The police walked up to the car, smelled marijuana, and all in the car were arrested. (Ex. 7) Applicant was convicted for possession of marijuana (misdemeanor). He was fined $350. On January 14, 1998, he tested positive for marijuana during a command directed urinalysis. (Ex. 3, 4) In April 1998, he received an Article 15, nonjudicial punishment under the Uniform Code of Military Justice (UCMJ), for wrongful use and possession of marijuana. The Report of Unfavorable Information for Security Determination stated his security clearance was revoked. (Ex. 4) He was administratively separated from the Army with a general discharge for wrongful use of marijuana. (Tr. 31)

In December 1998, Applicant was arrested and charged with driving on a suspended or revoked license (misdemeanor). He was fined $500, sentenced to jail for two days, and placed on probation for 12 months. In May 1999, the was again arrested for driving on a suspended or revoked license (misdemeanor), fined $1,000, sentenced to 10 days in jail, and placed on probation for 12 months. (Ex. 5)

In December 1999, Applicant's fiancée was having a baby. He was looking for the doctor's office when he stopped in front of a police station to ask for directions. (Ex. 7) He was arrested for felony drug purchase/possession/control and misdemeanor willful obstruction of law enforcement officers. (Ex. 5, 7) The record contains no disposition of the charges. Applicant asserts the charge was dismissed for lack of evidence. (Tr. 7) He admits being arrested, but denies having any unlawful substance.

In May 2003, Applicant was stopped for having tinted windows. The officer smelled marijuana and Applicant admitted he had a small amount of marijuana in his pocket. (Ex. 7) He was arrested for marijuana possession (misdemeanor). He was fined $725 and placed on probation for 12 months. In September 2003, he was arrested and charged with felony theft. He was fined $1,000, placed on probation for five years, and the disposition of the charge was deferred. He admits being arrested, but asserts the goods he took were his goods. (Ex. 5) The matter was deferred under the state's first offender act. (Ex. 5, 7)

Also in September 2003, Applicant – then age 23 – was working the night shift as a forklift operator for soft drink company. The police arrested six of the eight employees for theft, including Applicant. He had been told by his night shift manager that he could take expired product because that product would simply be thrown away. (Tr. 43) He did not know his supervisor was stealing product and allowing others to steal goods. (Ex. 7) Even though his supervisor took responsibility and told the court he had told the

employees they could take the outdated product, Applicant was still charged. (Tr. 44) He chose disposition under the first offender act, paid a $5,000 fine, and received probation for five years.

In April 2004, Applicant had just picked up his step-brother who had been released from prison for auto theft. The police stopped the car and searched it. Although he asserts the police found nothing illegal, he was arrested for felony drug purchase/possession/ control. He admits being arrested, but denies possession of any unlawful drugs. The record contains no disposition of the charge. Applicant asserts the matter was dropped for lack of evidence. (Ex. 7)

In March 2007, Applicant was at home with his girlfriend when an argument started over money and grew into an altercation. (Ex. 7, Tr. 37) He wanted to leave to allow his girlfriend to cool off, but she did not want him to leave. She hit him and there was some pushing and shoving. (Tr. 36) She threw his keys into the woods. Applicant got another set of keys and left the home for two or three hours. Upon his return, the police were waiting for him and he was arrested for simply battery – family violence (misdemeanor). This girlfriend lied to police telling them she was pregnant. He spent two weeks in jail. The 911 call revealed that his girlfriend said he had not hit her. (Ex. 7) He was found not guilty of the charge. (Ex. 5) He denies he was ever abusive. He has not seen the woman since 2007.

Three weeks after the incident Applicant moved to his current location in a different state. (Tr. 37) He moved in with his cousin, a sergeant first class (E-7) in the U.S. Army. Applicant was surrounded by other first sergeants and other professional people. (Tr. 46) This association changed him for the better. He stopped using drugs, which helped him to think clearer. (Tr. 46) He started attending church and reconsidered where his life was heading. Applicant stopped using illegal drugs after his 2007[2] move to his current location. (Tr. 42) In response to the SOR, he admitted using marijuana until 2009 because that was when he was arrested for marijuana possession. (Tr. 48) He says he was unclear about the SOR question, did not want to lie or make a mistake, and answered it as he did. (Tr. 48)

In June 2009, Applicant was moving and his car was packed with clothes and household goods. He was stopped for speeding. The police officer informed Applicant he had an outstanding warrant for an unpaid speeding ticket. (Ex. 7) Subsequent to the stop, marijuana was found. He has given various stories about the ownership of the marijuana. In his response to written interrogatories when asked about his marijuana possession he stated, "My admittance to the officer about it being my personal use." (Ex. 7) After informing the officer he had a small bag of marijuana, he was charged with marijuana possession. (Ex. 6) He paid $644 for the outstanding warrant for speeding. He pleaded *nolo contendere* to the possession charge. (Tr. 39) He was sentenced to six months of community supervision during which he was subject to urinalysis testing every two weeks. (Tr. 39) In April 2011, the possession charge was dismissed upon

[2] Applicant also stated the move occurred in April 2008. (Tr. 40, 61)

successful completion of the community supervision. (Ex. 7) The order terminating deferred adjudication community supervision was entered on October 20, 2011. (Ex. 7)

In Applicant's June 2010 personal subject interview, he stated:

> Marijuana was not his and belonged to his roommate, Broderick, last name unrecalled. The subject had it because when he was moving, Broderick had asked the subject to make sure he didn't leave it behind. The subject was only holding it for Broderick and had no intention in using the marijuana. (Ex. 7)

At the hearing, Applicant stated he did not know anyone named Broderick and said the investigator must have misinterpreted him when Applicant said the marijuana belonged to his brother. Applicant stated that after being stopped, his vehicle was searched and a used baggie containing marijuana residue was found in his brother's pants. (Tr. 38)

Shortly after the 2009 arrest, Applicant received custody of his son. He stopped using marijuana because he wanted to become a better father, husband, and person. (Ex. 7) He no longer associates with individuals who use drugs. (Ex. 7) He has no intentions of using marijuana in the future. (Ex. 7) He is now engaged in other positive activities. In October 2010, he remarried and has responsibility for four children ages 13, 12, 9, and six months. (Tr. 29, 33, 35, 36) His wife is an attorney. (Tr. 29) He and his family regularly attend church. (Tr. 30, 58) He will not return to using marijuana because of the person he has become, that he has learned from his past mistakes, and now puts his family first. (Tr. 50) He focuses on being more responsible. He estimates his chances of getting in trouble again as "very, very slim." (Tr. 54)

On his May 2010 e-QIP, Applicant failed to list in Section 13C: Employment Record, that he had been fired from a job in September 2003. When he completed the form, he was not thinking about what had occurred seven years before. (Tr. 43) He asserts he did not knowingly falsify the questionnaire. In response to questions in Section 22: Police Record, he indicated he had been arrested, had been charged with a felony offense, and been charged with offenses related to drugs. However, he only listed his September 2003 theft arrest. At the hearing, Applicant said there were so many arrests and so much happening when he was completing the form; he did not want to provide any false information on the form so he did not list his arrests. (Tr. 45)

In response to questions in Section 23: Illegal use of Drugs or Drug Activity, he answered "no" to Question 23a, which asked if he had illegally used any controlled substance to include marijuana during the previous seven years. He answered "yes" to Question 23.c, which asked if he had been involved in illegal possession, purchase, etc. of controlled substances. He listed the June 2009 marijuana possession charge and indicated the case was being dismissed.

Applicant knew he had a number of arrests in his former state and tried to get a national background check to verify time and dates. (Tr. 50) Being outside the state made this impossible in the 14 days he was given to complete the e-QIP. (Tr. 51) Not

wanting to falsify anything, he thought it may appear nonchalant for him simply to have stated he had a number of arrests in his former state and could not remember the details. (Tr. 51)

Applicant was unaware of a state tax lien for his 2010 individual income tax. When he learned of the lien ($558), he paid it. (Ex. D)

Policies

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 must 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 interests of 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

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.a states it may be disqualifying where there is "a single serious crime or multiple lesser offenses." Similarly, AG ¶ 31.c provides that an "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted" may be disqualifying. Applicant was arrested ten times between 1995 and June 2009.

Security concerns raised by criminal conduct may be mitigated under certain circumstances. AG ¶ 32.a provides conditions that could mitigate security concerns if "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." There was nothing unusual about the arrests nor did they happen under unusual circumstances. The number and nature of the arrests casts doubt on Applicant's reliability, trustworthiness, and good judgment. The last arrest occurred in June 2009, which is three and a half years ago. This mitigating condition does not apply.

Under AG ¶ 32.d, criminal conduct may be mitigated if "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."

The majority of Applicant's arrests were marijuana related. His last marijuana use was in 2007. He has since moved to a new state, now surrounding himself with a different group of associates. He has married and has a six-month-old daughter. He is a family man who places his family first. He regularly attends church and has reconsidered where his life was heading. He has learned from his past mistakes and is trying to be a better man and move forward. He focuses on being more responsible.

There are no "bright line" rules for determining when conduct is "recent." The 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."[3] The mitigating condition set forth in AG ¶ 32 (d) applies to Applicant's criminal conduct due to the changes in his life and the time since his last arrest.

The other potentially mitigating conditions were carefully considered and do not apply. There is no evidence Applicant was pressured or coerced into committing the act and those pressures are no longer present in the person's life. (AG ¶ 32.b) Nor is there evidence that the person did not commit the offense (AG ¶ 32.c) applies to Applicant's 1995 forgery arrest where he waited in the car while two friends used a stolen check to buy beer and his 2007 arrest for simple battery – family violence in which he was found not guilty. AG ¶ 32.c does not apply to his other arrests.

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement: "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."

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

---

[3] 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, considered 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.

a. any drug abuse;

b. testing positive for illegal drug use;

c. illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

g. any illegal drug use after being granted a security clearance.

From 1994—when Applicant was 14 years old—until 2007—when he was 29 years old, he used marijuana. There were periods when he was on probation and refrained from using marijuana, but would return to smoking it after his probation ended. At times, he would smoke two joints of marijuana three or four times a week. He smoked on weekends and after work with friends. In 1998, while in the U.S. Army and while holding a security clearance, he tested positive for marijuana in a urinalysis. As a result he was administratively separated from the Army.

AG ¶ 25.a drug use, AG ¶ 25.b testing positive for illegal drug use, AG ¶ 25.c purchase and possession, and AG ¶ 25.g illegal drug use after have being granted a security clearance all apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

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.

Applicant last used marijuana five years ago and last possessed marijuana more than three and a half years ago. His use of marijuana was not infrequent resulting in numerous arrests for possession and his discharge from the Army. As previously stated, Applicant no longer uses marijuana and the changes in his life indicate he will not use in the future. As previously stated, there are no “bright line” rules for determining when conduct is “recent.” However, his last marijuana use occurred in 2007, more than five years ago, which is not recent. AG ¶ 25.a applies.

In 2007, Applicant moved to his current location. He no longer associates with those who use illegal drugs. He has changed his attitude concerning marijuana usage and avoids the environment where drugs are used. Five years since his last use is an appropriate period of abstinence. He does not intend to use illegal drugs in the future. Even though he has not signed an affidavit stating he would submit to drug testing and any drug use would result in the loss of his clearance, I find AG ¶ 25.b applies.

Because of his abstention from drug use for five years, his recognition of the adverse impact drug abuse on his life, his marriage, the recent birth of his daughter, and the profound effect this procedure has had on him, there is reasonable certitude that he will continue to abstain from illegal drug use.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. AG ¶ 15 states a concern where there is 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."

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" and AG ¶16.b "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," may raise a security concern in this case.

Applicant's false answer on his e-QIP concerning his arrests and his history of marijuana use tends to show questionable judgment, unreliability, and a lack of trustworthiness. I find AG ¶16.a and ¶16.b apply.

Applicant completed his e-QIP on May 18, 2010 and failed to indicate he had been terminated in September 2003 from his job at the soft drink plant after he and a number of employees were arrested for theft of products. Question 13.c of the e-QIP limits the scope of inquiry to the previous seven years. His termination occurred six years and eight months before he completed the form. When he completed the form, he was not thinking about what had occurred. He asserts he did not knowingly falsify his answer to this question. His answer was inaccurate, but every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP he failed to remember his termination, which was four months short of the seven-year scope of the question. Having observed

Applicant's demeanor and listened to his testimony, I find his answer concerning failing to list his termination was not a deliberate omission, concealment, or falsification. I find for him as to SOR ¶ 3.a.

When Applicant was asked about previous arrests he indicated he had been arrested, had been charged with a felony offense, and had been charged with offenses related to drugs. However, he listed only a September 2003 arrest which related to his theft arrest at the soft drink plant. He listed none of his drug related arrests. He failed to list even his most recent arrest for possession of marijuana, an arrest which occurred less than a year prior to him completing his e-QIP. He asserted he had so many arrests, and so much happening when he was completing the form, he did not want to provide any false information on the form so he did not list his other arrests.

Applicant asserts he did not intentionally provide false information about his arrests. His assertion that he was not being deceptive is unpersuasive. He may not have known the facts concerning each of his arrests, but he certainly should have remembered the facts related to his most recent arrest in June 2009. At the time he completed his e-QIP he was still under court ordered community supervision for that arrest. That supervision did not terminate until 2011. Not knowing the specific details of all of his arrests he could still have put the Government on notice that he had been arrested numerous times.

None of the mitigating conditions apply to this falsification. There was no prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts (AG ¶ 17.a); the omission or concealment was not caused by improper or inadequate advice of authorized personnel (AG ¶ 17.b); the offenses were not minor, infrequent, or happened under such unique circumstances that it is unlikely to recur and they do cast doubt on Applicant's reliability, trustworthiness, or good judgment (AG ¶ 17.c); and the mitigating factors listed in AG ¶ 17.d, AG ¶ 17.e, or AG ¶ 17.f do not apply. Applicant no longer associates with persons involved in criminal activity (AG ¶ 17.g), but this factor is insufficient to mitigate his intentional falsification concerning his failure to list his arrests.

From 1994, when Applicant was age 14, through 2007, when he was 29 years old, he smoked marijuana on and off, sometimes three or four times a week. On his May 2010 e-QIP he failed to indicate he had illegally used marijuana in response to Question 23.a. He failed to indicate he had used marijuana while holding a security clearance in the Army when asked in Question 23.b. He did indicate he had possessed illegal drugs in response to Question 23.c, but listed only his most recent marijuana possession and indicated that the case was being dismissed.

Applicant has offered no credible explanation for his failure to disclose his illegal drug usage on his e-QIP. Even if he did not know the facts concerning all of his arrests he certainly knew he had used marijuana with some frequency during the previous seven years. His last marijuana use occurred in 2007, occurred less than three years before he completed the form, and his last marijuana possession was less than a year

before he completed the form. I find Applicant deliberately falsified his answer to the questions in Section 23 of the security clearance application.

Applicant has not met his burden of proving that he made a prompt, good-faith effort to correct the omissions in his e-QIP. I considered carefully the potentially mitigating conditions related to his failure to disclose his marijuana usage and conclude they do not apply.

The Government established a case for disqualification under Guideline E, personal conduct, which Applicant failed to mitigate. Applicants are expected to give full and frank answers during the clearance process. Applicant's failure to disclose any information about his marijuana usage and only the theft from work and one marijuana possession arrest constitutes a deliberate falsification or evasiveness inconsistent with the candor required of applicants.

Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Guideline E is resolved against Applicant.

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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In 2007, Applicant last used marijuana before he moved to a new state. However, he possessed it more than two years after he moved to his new location resulting in his 2009 arrest. He has changed his life style, married, has a new baby girl, and realizes the mistakes he has made. The passage of time and the change of life style are sufficient to mitigate the criminal conduct and drug involvement security concerns. However, these factors do not mitigate his personal conduct when he provided false answers on his e-QIP as to his marijuana usage and arrests.

Questions and doubts about Applicant's eligibility and suitability for a security clearance remain. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his personal conduct resulting from his answers he provided on his May 2010 e-QIP.

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, Criminal Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant
Paragraph 2, Drug Involvement:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant
Paragraph 3, Personal Conduct:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b and 3.c:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge