



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 10-09937
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

Tuider, Robert J., Administrative Judge:

Applicant possessed and used marijuana in late 2007 or early 2008, while holding a security clearance, and then he falsely denied this conduct on his December 9, 2009 Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF-86). On May 21, 2010, upon return from deployment, he disclosed this conduct to an Office of Personnel Management (OPM) investigator. Drug involvement concerns are mitigated by the passage of time, and personal conduct concerns are mitigated because Applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts and under the whole-person concept. Eligibility for access to classified information is granted.

Statement of the Case

On December 9, 2009, Applicant submitted an SF-86 (GE 1). On January 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines H (drug involvement) and E (personal conduct). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant, deny, continue, or revoke a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be denied, granted, continued, or revoked.

On March 12, 2012, Applicant responded to the SOR. On April 20, 2012, Department Counsel was ready to proceed on Applicant's case. On April 25, 2012, DOHA assigned Applicant's case to me. On April 27, 2012, DOHA issued a hearing notice, setting the hearing for May 10, 2012. (Tr. 9-12) Applicant waived his right to 15 days notice of the date, time, and location of the hearing. (Tr. 9-12) Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered four exhibits, and Applicant did not offer any exhibits. (Tr. 18-20; GE 1-4) There were no objections, and I admitted GE 1-4. (Tr. 20) On May 21, 2012, I received the transcript of the hearing. I held the record open until May 25, 2012, to provide Applicant an opportunity to provide additional documentation. (Tr. 68-75) Applicant provided five post-hearing documents, which were admitted without objection. (AE A-E)

Findings of Fact¹

Applicant's SOR response admitted the following SOR allegations: (1) he used marijuana in 2007 while holding a security clearance (SOR ¶¶ 1.a and 1.b); and (2) he admitted that he failed to disclose his marijuana use on his December 10, 2009 SF-86 (SOR ¶ 2.b). (HE 3) He denied that he used marijuana before he completed his June 6, 2007 SF-86 (SOR ¶ 2.a). (HE 3) He also provided some extenuating and mitigating information. (HE 3) His admissions are accepted as factual findings.

Applicant is 47 years old and has worked for his current defense-contractor employer since February 2009. (Tr. 21, 24) He is an engineer and operations manager on a combined Air Force and Navy project. (Tr. 22-23) He has held a security clearance since 1987, and there is no evidence of any violations of security rules. (Tr. 21-22) He served on active duty in the Navy from 1985 to 1992. (Tr. 25) He had multiple deployments and most of his Navy service was at sea. (Tr. 26) His rate was electronics technician. (Tr. 25) He was honorably separated from the Navy at the grade of E-5 with a 20-percent medical disability. (Tr. 25) As a contractor, he was deployed for 14 months in a hostile weather environment from 2001 to 2002. (Tr. 32) He is frequently deployed for lengthy periods of time as part of his current employment. (Tr. 21-35)

Applicant was married in 1991 and divorced in 1996, and he married his spouse in 2005. (Tr. 26, 31) He does not have any children. (Tr. 27, 66) He earned a graduate equivalency diploma (GED) in 1981. (Tr. 27) He earned 25 college credits towards a degree in anthropology. (Tr. 28)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Drug Involvement and Personal Conduct

From February 2007 to 2008, a defense contractor employed Applicant and he held a security clearance. In late 2007 or in 2008,² a neighbor provided Applicant a marijuana cigarette, and Applicant took two drags or hits from it. (Tr. 45, 48) He tried marijuana out of curiosity. (Tr. 45) He did not intend to use marijuana in the future. (Tr. 45) He has not subsequently used marijuana. (Tr. 48) He admitted this marijuana possession and use to an Office of Personnel Management (OPM) investigator on May 21, 2010. (Tr. 45; GE 3)

On May 18, 2012, Applicant signed a statement of intent that he would never use illegal drugs. (AE D) If he uses illegal drugs, he acknowledged that his security clearance could be automatically revoked. (AE D)

Applicant's supervisor told Applicant that he would receive an OPM interview because his clearance was being upgraded to top secret. (Tr. 54-55) Applicant's security manager may also have told Applicant about the OPM interview that occurs with an upgrade to a top secret clearance. (Tr. 55)

Section 23 of Applicant's December 9, 2009 SF-86 asked in the last seven years whether he had illegally used marijuana (23.a) and illegally possessed marijuana (23.c), and whether he had ever illegally used a controlled substance while holding a security clearance (23.b). (GE 1) Applicant answered "No" to these three questions and did not disclose his marijuana use in late 2007 or early 2008.

Applicant did not disclose the marijuana possession and use on his 2009 SF-86 because he thought that his security clearance would be summarily denied, and he would not have an opportunity to explain his marijuana use. (Tr. 56-57) He wanted to explain to the investigator that he was loyal, conscientious, and responsible and a good candidate for a security clearance. (Tr. 57) He conceded that he showed poor judgment in providing false information on his 2009 SF-86. (Tr. 60) He felt remorse for his poor decision. (Tr. 60) His OPM interview was delayed until Appellant returned from deployment at sea. (Tr. 64) The first time he disclosed the falsification of his 2009 SF-86 was in May 21, 2010 at his OPM interview. (Tr. 61) When the investigator asked Applicant about whether he provided accurate information on his SF-86, Applicant responded, "No" and disclosed his marijuana use. (Tr. 63) He fully described his marijuana use to the OPM investigator, and on December 2, 2011, he affirmed the accuracy of the summary of the May 21, 2010 OPM interview in response to DOHA interrogatories. (GE 3)

²Department Counsel cross-examined Applicant from two witness summaries of OPM interviews. Applicant disagreed with two source's descriptions about who was the source of the marijuana Applicant used, and that his marijuana use occurred in late 2006 or early 2007 at Applicant's residence. (Tr. 46-51, 66; GE 5) The two witness summaries were not offered as an exhibit into evidence. (Tr. 76; GE 5) Applicant was certain that his one-time marijuana use occurred after he completed his June 6, 2007 SF-86. (Tr. 29-30)

Character Evidence

Applicant's spouse described him as a wonderful husband, who is a hardworking, honest, and dedicated employee. (AE E) He produces an outstanding work product and has an impeccable reputation in his company. (AE E)

Applicant's colleagues and supervisors described him as a professional, diligent, trustworthy, dependable, and exemplary employee, who has provided "uncompromised dedication" to the company and the nation.³ He has a positive demeanor and a reputation as a problem solver. They support reinstatement of his access to classified information.

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

³The sources for the facts in this paragraph are AE A-C and an attachment to his SOR response.

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 (4th 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) and E (personal conduct) with respect to the allegations set forth in the SOR.

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.

Three drug involvement disqualifying conditions in AG ¶¶ 25(a), 25(c), and 25(g) could raise a security concern and may be disqualifying in this case: “any drug abuse,”⁴ “illegal drug possession,” and “any illegal drug use after being granted a security clearance.”

⁴AG ¶ 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.”

These three disqualifying conditions apply because Applicant used and possessed marijuana in late 2007 or early 2008.⁵ He admitted his marijuana use to an OPM investigator, in his response to DOHA interrogatories, in his SOR response, and at his hearing. He possessed marijuana before he used it.

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 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,

⁵AG ¶ 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. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

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."⁶

Applicant acknowledged that his one-time, experimental marijuana possession and use in late 2007 or early 2008, while holding a security clearance, showed very poor judgment. He recognized the adverse impact on his life of drug abuse in connection with access to classified information. He also understands that possession of marijuana violates federal law. I accept Applicant's statement as credible that he only used marijuana on one occasion in late 2007 or early 2008, and he intends to abstain from future drug possession and use. AG ¶ 26(a) applies to his marijuana-related conduct because it is not recent, is infrequent, and is unlikely to recur.⁷

Applicant demonstrated his intent not to abuse illegal drugs in the future. He has not used marijuana since late 2007 or early 2008, which is more than four years. He signed a declaration in which he promised not to use marijuana or any other controlled substance, and any future use of a controlled substance will result in automatic revocation of his security clearance. AG ¶ 26(b) applies.

⁶ISCR 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.

⁷In 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.

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 provide proof of satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In conclusion, Applicant possessed and used marijuana on one occasion more than four years ago. The motivations to stop using illegal drugs are evident. He understands the adverse consequences from marijuana use.⁸ He has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information.

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 and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;⁹ and

⁸Approval 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.

⁹The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or

(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.

I find Applicant's statement that he possessed and used marijuana after June 6, 2007 to be credible. He refuted the allegation that he possessed and used marijuana prior to June 6, 2007, and that he falsified his June 6, 2007 SF-86 by falsely denying marijuana possession and use in the previous seven years or ever while holding a security clearance. (SOR ¶ 2.a) See also AG ¶ 17(f) (stating a personal conduct allegation may be mitigated if it is unsubstantiated).

Applicant answered "No" to section 23 of Applicant's December 9, 2009 SF-86, which asked in the last seven years whether he had illegally used marijuana (23.a), illegally possessed marijuana (23.c), and whether he had ever illegally used a controlled substance while holding a security clearance (23.b). He admitted that he intentionally failed to disclose his marijuana possession and use in late 2007 or early 2008 and while holding a security clearance on his December 10, 2009 SF-86. (SOR ¶ 2.b) AG ¶¶ 16(a) and 16(b) are established in regard to SOR ¶ 2.b. Applicant did not disclose his marijuana possession and use on his SF-86 because he was worried that his security clearance would be summarily denied. He was also embarrassed and ashamed that he possessed and used marijuana and AG ¶ 16(e) applies.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(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

circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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) applies to the allegation in SOR ¶ 2.b. Applicant deliberately and improperly failed to disclose his marijuana possession and use while holding a security clearance on his December 10, 2009 SF-86 because he was worried that his security clearance would be summarily denied and he wanted an opportunity to explain his drug involvement in person to an OPM investigator. He was aware when he completed his December 10, 2009 SF-86 that he would have an opportunity to attempt to mitigate his drug involvement to an OPM investigator at the expected follow-up investigative interview.

An intentional omission allegation is not mitigated when an applicant admits the omission after an investigator tells him or her that the government has already learned facts establishing the omission.¹⁰ If an applicant provides false information in multiple interviews, voluntary, accurate disclosure during the third interview does not mitigate the falsification concern.¹¹ In ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) the Appeal Board considered an applicant's claim that he promptly disclosed his firing from employment to an investigator after falsely denying the termination from employment on his security clearance application stating:

. . . Applicant did not disclose his termination from the hotel until he was at his security clearance interview. The . . . investigating agent asked about the hotel in the context of previous employments and Applicant indicated

¹⁰ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

¹¹ISCR Case No. 03-00577 at 5 (App. Bd. Dec. 11, 2006) (sustaining denial of security clearance).

he worked there. The investigator then asked if anyone at the hotel would have anything negative to say about Applicant, at which time Applicant supplied the investigator with a name and the hotel management. Subsequently, Applicant informed the investigator that he had been fired from the hotel.

The Appeal Board in ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) affirmed the administrative judge's decision not to credit applicant with making a "prompt, good faith [effort] to correct the falsification before being confronted with the facts." *Id.* at 4-5. Stated differently, once it becomes apparent to an applicant that an investigator is likely to discover derogatory information, it is too late to receive mitigating credit under AG ¶ 17(a).

In the instant case, Applicant disclosed the omission concerning his marijuana possession and use before being confronted with any information that made it appear likely the investigator would discover that marijuana possession and use. He fully cooperated with the investigator's follow-up interrogation.

AG ¶ 17(e) fully mitigates AG ¶ 16(e). In December 2009, Applicant attempted to conceal his marijuana possession and use, raising a security concern. In May 2010, he disclosed his drug involvement to an OPM investigator, mitigating this specific security concern.

In sum, Applicant's falsification of his security clearance application in December 2009 by intentionally failing to disclose his marijuana possession and use in late 2007 or early 2008, while holding a security clearance, was improper and raised a security concern. He did not disclose this information because he was worried that his security clearance would be summarily denied. His OPM interview was delayed until Applicant returned from deployment at sea. He disclosed the falsification of his December 10, 2009 SF-86 on May 21, 2010 at his OPM interview. In good faith, he corrected the omission, concealment, or falsification before being confronted with the facts. Guideline E concerns are mitigated; however, assuming AG ¶¶ 17(a) and 17(e) are not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.¹²

¹²In ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010), the applicant intentionally denied that he had private employment on his security clearance application (SCA) to conceal that employment from his employer. Fifty-one days later, ISCR Case No. 09-05655 at 5 (A.J. May 12, 2010), at his OPM interview, he "(1) corrected the omission in his SCA without first having been confronted with the facts; and (2) cooperated with the follow-up questioning by the investigator." ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010). The underlying security concern about that applicant's private employment was resolved when he resigned from that company. He also received some positive character references. The Appeal Board affirmed the mitigation of the intentional and recent falsification of his SCA under the whole-person concept without ruling on the applicability of AG ¶ 17(a).

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 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.

The whole-person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of his security clearance. Applicant's failed to disclose his single instance of marijuana possession and use in late 2007 or early 2008, while holding a security clearance on his December 2009 SF-86. The falsification of his SF-86, and his marijuana possession and use while holding a security clearance were imprudent, irresponsible, and improper. His failure to disclose his drug involvement was to avoid summary denial of his security clearance. This is not a valid reason for failing to fully and honestly disclose derogatory information on his security clearance application.

The rationale for reinstating Applicant's clearance is more substantial. He was forthright and candid in his OPM interview, his response to DOHA interrogatories, his SOR response, and at his hearing about his failure to disclose his single instance of marijuana possession and use in late 2007 or early 2008, while holding a security clearance, as well as his rationale for failing to provide this information.¹³ Applicant is 47 years old, and he has the maturity and trustworthiness to conscientiously comply with security requirements. He achieved some important employment goals, demonstrating his self-discipline, responsibility and dedication. He served successfully on active duty in the Navy from 1985 to 1992, rising to the grade of E-5. He was honorably separated from the Navy with a 20-percent medical disability. He has been employed by a defense contractor since February 2009, and his colleagues and superiors laud his diligence,

¹³ISCR Case No. 05-03554 at 4-6 (App. Bd. Aug. 23, 2007) (discussing factors an administrative judge should consider when making credibility determinations including consistency of statements).

dedication and trustworthiness. He is an engineer and operations manager on a combined Air Force and Navy project. He has held a security clearance since 1987, and there is no evidence of any security violations.¹⁴ He served multiple deployments and most of his service was at sea or deployed. Applicant is an intelligent person, and he understands why his failure to disclose marijuana possession and use on his security clearance application was improper. He acknowledged that he showed poor judgment and regrets his conduct. He demonstrated his loyalty, patriotism, and trustworthiness through his active duty service to the Navy and to the Department of Defense as a contractor. He is an asset to his employer.

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 personal concerns are mitigated. For the reasons stated, I conclude he is 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:	For Applicant
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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

Robert J. Tuiider
Administrative Judge

¹⁴The Government has no burden to prove a security violation.