



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



In the matter of: )  
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----- ) ISCR Case No. 11-00017  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Jeremiah Sullivan, Esquire

January 25, 2012

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s sporadic marijuana use between about 1986 and July 2010 showed poor judgment and raised security concerns. Drug involvement concerns are not mitigated; however, personal conduct concerns relating to a misdemeanor-level arrest in the early 1990s are mitigated. More time is needed without drug abuse to fully alleviate security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 27, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). (GE 1) The Defense Office of Hearings and Appeals (DOHA) subsequently issued an undated statement of reasons (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) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines H (drug involvement) and E (personal conduct). (Hearing Exhibit (HE) 2) 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 continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be continued or revoked. (HE 2)

On June 9, 2011, Applicant responded to the SOR. (HE 3) On July 22, 2011, Department Counsel indicated he was ready to proceed on Applicant's case. On November 1, 2011, DOHA assigned Applicant's case to me. On November 18, 2011, DOHA issued a hearing notice, setting the hearing for December 8, 2011. (HE 1) Applicant's hearing was held as scheduled using video teleconference. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Tr. 21-22), and Applicant offered nine exhibits. (Tr. 16-20, 23; AE A-J) There were no objections, and I admitted GE 1-3 and AE A-J. (Tr. 22-24) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On December 16, 2011, I received the transcript.

### **Motion to Amend the SOR**

SOR ¶ 1.d alleges that Applicant "used prescription drugs for approximately 20 years recreationally." At the hearing, Applicant disclosed that he used Ritalin once or twice about 20 years ago. Department Counsel moved to amend the SOR to state that Applicant "used prescription drugs approximately 20 years ago recreationally one or two times." (Tr. 65) There was no objection, and I granted Department Counsel's motion. (Tr. 66)

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the following SOR allegations: (1) he "used marijuana recreationally from about 1986 to July 2010" (SOR ¶ 1.a); (2) he "smoked marijuana on and off for approximately 20 years" (SOR ¶ 1.b); (3) he received a ticket for marijuana possession (1.3 grams) in 1989 (SOR ¶ 1.c); he used Ritalin one or two times about 20 years ago (SOR ¶ 1.d—as amended); and in 1992 or 1993, the police arrested him for an expired car registration, not attending an adult drug diversion class, public nudity, and a parking violation (SOR ¶ 2.a). He denied that he continued to associate with drug users. (SOR ¶ 1.e) In his SOR response, he also provided some explanation and extenuating facts. He disagreed that his conduct raised reliability or trustworthiness concerns. (HE 3) His admissions are accepted as factual findings.

Applicant is a 43-year-old employee of a defense contractor. (Tr. 5, 23) He performs highly specialized research for a military service. (Tr. 29, 48) He has worked for a contractor for five years, and recently the contractor decided Applicant should have a clearance so he could work on classified projects. (Tr. 33-34) In 1995, he received a bachelor of arts degree summa cum laude from a well-known university. (Tr. 49; AE B, C) He received his masters degree in 2001 and his Ph.D. degree in 2005 from a

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

university that is well-known as a leader in Applicant's area of expertise. (Tr. 49; GE 1; AE B, C) He has never served in the military, and he has never married. (GE 1)

Some of the work done in Applicant's work location is sensitive, but unclassified. Identification cards are required at all times. (Tr. 44) If Applicant receives a security clearance, it will enhance his ability to contribute to research on behalf of the contractor and the U.S. Government. (Tr. 50-51)

## **Drug involvement<sup>2</sup>**

In 1988 or 1989, Applicant used Ritalin once or twice. (Tr. 55, 64-65) His Ritalin use was recreational and not to help him with his studies. (Tr. 65) In 1989, he received a citation for marijuana possession. (Tr. 58) He denied that he possessed the marijuana seized by the police. (Tr. 58) Nevertheless, he accepted responsibility for the marijuana possession and paid a fine. (HE 3) He believed he should not have to attend a drug diversion class because his marijuana possession conviction was unfair. (Tr. 59) In the early 1990s, over about a two-year period, he received tickets for expired car registration, not attending adult drug diversion class, public nudity (urinating in a public area), and a parking violation. (Tr. 71; SOR ¶ 2.a) He was arrested because of the outstanding warrants, and he served 14 days in jail. (GE 3)

Applicant began smoking marijuana in 1987, when he was junior or senior in high school. (Tr. 51, 61) He frequently used marijuana until age 18 or 19, and then he curtailed his marijuana use for about eight years because his girlfriend was opposed to marijuana use. (Tr. 52) Then, he resumed his marijuana use, at first with low frequency, and later about once or twice a month. (Tr. 52) In 2005, he stopped using marijuana for several months, and from about 2006 to July 2010, he sporadically used marijuana. (Tr. 52) Sometimes he smoked marijuana once or twice a week, and sometimes he abstained from marijuana use for several months. (Tr. 52) Around July 2010, he stopped using marijuana because he realized that drug use hurt his chances of getting a security clearance. (Tr. 52, 63) He never used marijuana at work, and his marijuana use did not adversely affect his academic or research work. (Tr. 54)

Applicant equated his history of marijuana use to riding a bicycle on the wrong side of the road or jay-walking. (Tr. 62) When he possessed and used marijuana, it did not feel like he was committing a crime because his marijuana use never affected his work. (Tr. 62-63) He did not store marijuana at his residence, and his marijuana use was limited to using a marijuana joint as it was passed around, as opposed to possession of a marijuana "stash" and purchasing and providing marijuana to others. (Tr. 64; GE 2)

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<sup>2</sup> Applicant initially disclosed his marijuana use on his July 27, 2010 security clearance application. (GE 1 at 46) Applicant's history of marijuana use, as described in his September 28, 2010 Office of Personnel Management (OPM) personal subject interview (PSI), is generally consistent with his hearing statement, except he said that he stopped using marijuana in early July or late August. (GE 2 at 4) For purposes of this decision, I find his most recent marijuana use was in July 2010, shortly before he signed his July 27, 2010 security clearance application.

Applicant stopped associating with drug users around July 2010. (Tr. 67) He enjoys camping and hiking. In the future, if someone comes to his camp site and uses marijuana, he would ask them to leave, or he would leave the camp site himself. (Tr. 75) He committed to not using illegal drugs in the future. (Tr. 53) He is willing to participate in a drug-testing program. (Tr. 74) 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. (Tr. 72; AE A) He is not addicted to marijuana. (Tr. 53) He has never received a urinalysis-drug test. (Tr. 71) After July 2010, he changed. (Tr. 57-59) He is now more mature and responsible. (Tr. 57-59)

## **Character Evidence**

A senior scientist, who has worked for the Government for more than forty years and has held a security clearance for 20 years, has worked closely with Applicant for five years. (Tr. 27-29, 34) He believes Applicant is trustworthy, reliable, and responsible. (Tr. 30-31) Applicant shows initiative and supports mission accomplishment. (Tr. 35) He is an excellent researcher and one of the organization's best research scientists. (Tr. 30, 35) He supports approval of a security clearance for Applicant. (Tr. 27-35)

Another senior scientist, who has a security clearance and has had daily contact with Applicant since 2006, supports approval of a security clearance for Applicant. (Tr. 40-47) She knew him socially; however, she was unaware of Applicant's continuing marijuana use until 2010. (Tr. 43) She believed that he had stopped his marijuana use. (Tr. 44) She described Applicant as reliable, dependable, honest, and responsible. (Tr. 40-43, 47)

One Ph.D. psychologist has known Applicant for nine years (AE F), another Ph.D. psychologist has known him for two years (AE G), and a Ph.D. biologist has known him for five years. (AE I) They believe he is trustworthy, intelligent, conscientious, sincere, responsible, and reliable. (AE F, G) They recommend him for a security clearance. (AE F, G) A mental health specialist, who has known Applicant since 1987, recommends him for a security clearance. (AE H) She lauds his leadership, honesty, intelligence, trustworthiness, and responsibility. (AE H)

Applicant's curriculum vitae and publications show that he is a dedicated researcher with strong academic credentials. (AE B, C, D, E) He has excellent potential for future contributions to the Department of Defense. (AE B)

## **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) 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.

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>3</sup> and "illegal drug possession." These two disqualifying conditions apply because Applicant used and possessed marijuana beginning in 1986 until July 2010.<sup>4</sup> He admitted his marijuana use on his SF-86, 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;

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<sup>3</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."

<sup>4</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).

- (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, 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>5</sup>

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<sup>5</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

SOR ¶¶ 1.a and 1.b both allege that Applicant used marijuana from about 1986 to about July 2010 and are essentially duplications of each other. SOR ¶ 1.b is mitigated as a duplication of SOR ¶ 1.a.

Although there were some lengthy periods where he abstained from marijuana use, Applicant's marijuana use lasted for approximately 24 years from 1986 to July 2010. 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 his career goals have changed sufficiently to create some certitude that he will continue to abstain from drug possession and use. AG ¶ 26(a) partially applies to his marijuana-related conduct.<sup>6</sup>

Applicant's ticket for possession of marijuana in 1989 is mitigated due to the offense not being recent. (SOR ¶ 1.c) Applicant's abuse of Ritalin about 20 years ago is mitigated (SOR ¶ 1.d). He only used Ritalin once or twice, and he has refrained from subsequent abuse of this drug. He does not currently associate with drug users, and the allegation in SOR ¶ 1.e is refuted.

Applicant demonstrated his intent not to abuse illegal drugs in the future. He has not used marijuana since July 2010, which is about 18 months. He signed a declaration in which he promised not to use marijuana or any other controlled substance, and agreed that any future use of a controlled substance will result in automatic revocation of his security clearance. He has broken his patterns of drug abuse, and he has changed his life with respect to illegal drug use. 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 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 ended his drug abuse in July 2010, about 18 months ago, after 24 years of sporadic marijuana use. The motivations to stop using illegal drugs are evident. Although he previously treated his marijuana use as a very minor offense, like jaywalking, he now understands the adverse consequences from marijuana use.<sup>7</sup> Notwithstanding his acceptance of the importance of abstaining from illegal drug use, he

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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>6</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>7</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.



has not shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information. More time without marijuana use is needed to fully assure he will not revert to marijuana use, as he has in the past after other periods of abstinence.

## **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 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 Guideline H. However, AG ¶ 16(e)(1) applies because his arrest in the early 1990s for expired car registration, not attending adult diversion class, public nudity, and a parking violation 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 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 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), 17(b), and 17(e) apply. Applicant has been candid about his conduct, the arrest was not recent, and it is very unlikely to recur. 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 or other offenses to coerce him into compromising classified information.

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 guideline. I find for Applicant under Guideline E because those judgment issues are a duplication of the judgment concerns previously discussed under Guideline H.

### **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.

There is some evidence supporting approval of Applicant's clearance. Applicant was a junior in high school when he was introduced to using marijuana. He served his country as a researcher and has made significant contributions to national defense while working for his employer. He provided multiple character references from Ph.D. credentialed scientists and others, who enthusiastically support approval of his security clearance. He has volunteered to continue to help as a scientist and researcher. He stopped using marijuana in July 2010. I am confident that he has the ability to abstain from future marijuana use. He has consistently described his history of marijuana use in his SF-86, OPM PSI, response to DOHA interrogatories, SOR response, and at his hearing. 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 are important evidence of his responsibility, rehabilitation and mitigation.

Notwithstanding Applicant's positive attributes, the evidence against approval of his clearance is more substantial at this time. Applicant has sporadically used marijuana for about 24 years, from 1986 until July 2010. He continued to use marijuana while holding an identification card, which he used to access the sensitive military area where he worked. He is sufficiently mature to be fully responsible for his conduct. His many years of marijuana use shows lack of judgment and "raise[s] questions about [Applicant's] reliability, trustworthiness and ability to protect classified information." See AG ¶ 15. On several occasions in the past, he stopped using marijuana for a significant period of time and then resumed marijuana use. His marijuana involvement under such circumstances raises a serious continuing concern about his judgment, and a security clearance is not warranted 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 concerns are not fully mitigated at this time; however, personal conduct concerns are mitigated. I am convinced that Applicant is exceptionally intelligent. If he continues to abstain from marijuana use, and avoids future offenses, he will eventually have potential for access to classified information. 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b to 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with 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