DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-01070
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

07/25/2012

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused marijuana on infrequent occasions between 2000 and December 2009. While there is little risk of any future illegal drug use by Applicant, he violated his fiduciary obligation to the Government by using marijuana after being issued a secret clearance around November 2005. Also, he falsely denied any illegal drug involvement on security clearance applications completed in November 2005 and May 2010. His candor during an August 2010 interview does not fully mitigate the security concerns. Clearance denied.

Statement of the Case

On February 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct, as to why it was unable to continue a security clearance for him. DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on March 26, 2012, and he requested a hearing if necessary to determine whether it is clearly consistent with the national interest for him to retain his security clearance eligibility. The case was assigned to me on June 6, 2012. On June 7, 2012, I scheduled a hearing for June 26, 2012.

The hearing was convened as scheduled. Four Government exhibits (GEs 1-4) and six Applicant exhibits (AEs A-F) were admitted. Applicant, his spouse, and two of his co-workers testified, as reflected in a transcript (Tr.) received on July 5, 2012.

Findings of Fact

The SOR alleged under Guideline H that Applicant used marijuana with varying frequency from at least 2000 to December 2009 (SOR 1.a), including while holding a secret security clearance granted to him by the DOD in November 2005 (SOR 1.b). Under Guideline E, Applicant allegedly falsified his May 26, 2010 security clearance application by denying that he had illegally used any controlled substance, to include marijuana, in the last seven years (SOR 2.a) and by denying that he had ever illegally used a controlled substance while possessing a security clearance (SOR 2.b). Applicant also allegedly falsified his November 2, 2005 security clearance application by denying any illegal drug use in the seven years preceding his application (SOR 2.c).

Applicant admitted the allegations. He explained that he did not disclose his involvement with marijuana on his November 2005 security clearance application because he thought that the intent of the form was not to identify non-habitual marijuana smokers. Applicant admitted he was concerned an affirmative response to the drug inquiry would classify him as a person with a drug problem, and he would not have a chance to explain the circumstances. When he applied for an upgrade of his security clearance in 2010, Applicant believed changing his response to the drug inquiry would "cause unnecessary delays in the investigative process," and he knew that he would have the chance to disclose his drug use in an interview.

Applicant's admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 32-year-old mechanical engineer, who has been an associate staff member at a university-affiliated prototype-development laboratory since September 2009. Applicant previously worked for another defense contractor from July 2005 to August 2009, where he held a secret security clearance. Applicant seeks a top secret security clearance for his present position. (GE 1.)

Applicant pursued his undergraduate degree in mechanical engineering from September 1998 to December 2002. (GE 1; Tr. 83.) He smoked marijuana for the first time

around 2000 and used the drug about two times a year until 2002. (GE 3; Tr. 84.) Applicant held co-op employment while in college for a private engineering firm until January 2000, and then for a defense contractor (company X). He stayed on at company X from January 2003 to September 2003, after he earned his degree. (GEs 1, 2.)

In July 2003, Applicant relocated to pursue his master's degree in mechanical design. (Tr. 83.) He abstained from any illegal drug use in graduate school. (GE 3.) Around July 2005, he was awarded his master's degree, and he moved back to his previous locale for a full-time mechanical engineering position with company X. In October 2005, Applicant and his spouse were married after about five years together. (GEs 1, 2; Tr. 29.) They met in college around the fall of 1998 and began cohabiting in 2001. (Tr. 32-33.) In late August 2010, Applicant's spouse gave birth to twins. (GE 4; Tr. 29.)

On November 2, 2005, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for his first security clearance. He responded "No" to the illegal drug inquiries, including 24.a:

> a. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?"

(GE 2.) Applicant was granted his secret clearance shortly thereafter.[1] (Tr. 48.)

Sometime between 2005 and 2007, Applicant resumed using marijuana at social gatherings, including with family members, about twice a year when it was offered to him.[2] Applicant estimates that he smoked marijuana about eight times total in his life, four times with close family members. (Tr. 103.) He did not contribute any money for the drug or purchase it; nor did he ever sell or distribute marijuana. Applicant last smoked marijuana in December 2009. (GEs 3, 4.)

In September 2009, Applicant began working for his present employer. (GE 1.) Around January 2010, it was recommended to him that he apply for a clearance upgrade. On May 26, 2010, Applicant completed an e-QIP for a top secret clearance. Applicant responded "No" to the illegal drug inquiries, including 23.a:

[1]Applicant indicated on his May 2010 e-QIP that he was granted his secret clearance in about July 2005. (GE 1.) However, he did not complete his initial e-QIP until November 2005. The Government alleged in SOR 1.b that his clearance was issued in November 2005, and he admitted the allegation.

[2]Applicant told the investigator that he resumed using marijuana around 2007. (GE 3.) Yet, at his hearing, when asked about "some lull from 2002 to 2005" of no drug use, Applicant responded, "I mean I went from using it once a year to happening to not use it in those three years in between." Applicant then answered "yes" to whether he resumed using marijuana in 2005. (Tr. 85.) It is unclear if the Government misspoke concerning the years of Applicant's abstinence or whether the Government had other information that was not made part of the record for my review.

> a. In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs (including painkillers)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance.

Applicant also responded negatively to 23.b concerning whether he had ever illegally used a controlled substance while possessing a security clearance. (GE 1.) Applicant did not disclose his marijuana use because he because he felt that changing his response to the drug questions would "unnecessarily raise red flags." Also, he knew that he would be interviewed for his top secret clearance and would have a chance to explain his use of marijuana. (GE 3.)

On August 4, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant disclosed that he smoked marijuana about twice a year from 2000 until 2002. He abstained until 2007 and had since taken three puffs from a marijuana pipe passed around at social gatherings. Applicant denied ever purchasing, selling, distributing, manufacturing, or trafficking in illegal drugs. Applicant expressed his belief that he might be offered marijuana in the future, and he did not know for certain whether he would smoke the drug again. He advised that he would stop using marijuana if his security clearance depended on it. Applicant denied that he intentionally omitted information from, or falsified, his security clearance application. He told the investigator that he thought the drug question referred to the regular abuse of marijuana, and he used the drug so infrequently that he did not think he had to list it. (GE 3.)

In response to DOHA interrogatories concerning whether he had used any illegal drugs, Applicant indicated on December 16, 2011, that he used marijuana, in quantity of less than one joint, once a year, with a last use in November 2009. Applicant denied any intent to use any illegal drug in the future. He decided to stop using drugs in January 2010, when it was recommended that he apply for a top secret clearance. He realized illegal drug use was incompatible with his career goals and lifestyle, and his spouse had become pregnant with their now 16-month-old twins. Applicant disclosed that he was continuing to associate with illegal drug users in that some of his family members infrequently use marijuana at social functions. However, no one had used illicit drugs in his presence since November 2009. Applicant expressed a willingness to participate in drug testing if it would help his chances of retaining his security clearance. (GE 4.)

Applicant was also asked by DOHA to review for accuracy the investigator's summary of his August 2010 interview. Applicant indicated on December 16, 2011, that the summary was accurate, although he added the following:

> The question was asked if I would ever use marijuana in the future. I was not certain that I would never use marijuana again even in the distant future because I may use it in situations where it is legal and I am not holding a security clearance. I can say that I will never use illegal substances in the future and that I will never use marijuana while holding a security clearance. (GE 3.)

Applicant provided DOHA with a detailed account of his marijuana use, indicating that he "inhaled small amounts (2-3 puffs of marijuana from a small pipe or a joint on approximately eight occasions in [his] life, all of which occurred between 2000 and 2009, some of which occurred while holding a security clearance." He used marijuana when offered by a friend or a relative in "a safe, harmless environment-never before driving, never before work, only with people that [he] know[s] and trust[s]." Applicant indicated that his last use of marijuana occurred in December 2009,[3] when he was with a close relative. Applicant added that he "absolutely" would not use illegal drugs in the future and was willing to execute a document to that effect:

> I would not jeopardize my job or my commitment to national security over something as insignificant as smoking marijuana. Prior to this incident, I did not realize that even infrequent, moderate use of marijuana could possibly affect my ability to safeguard classified information. I also did not understand the distinction between state and federal laws pertaining to marijuana. I am now fully aware of the position that the federal government takes on marijuana usage.

Applicant admitted that he continued to associate with known marijuana users in that close family members still use marijuana. Yet, with his job at risk because of his marijuana use, he believed it "improbable" that friends or relatives would continue to use marijuana in his presence. He added that it would not be difficult for him to remove himself from situations where marijuana was being used. As for why he omitted his marijuana use from his security clearance applications, Applicant indicated that he did not consider himself a drug user as he interpreted the question. Due to its decriminalization by the state, he did not regard marijuana on the same level as other drugs listed, such as heroin, cocaine, or methamphetamine.[4] He also indicated that he feared a positive response to the drug

[3]Applicant provided discrepant information about the date of his last use of marijuana (November 2009 versus December 2009) in his responses to separate interrogatories dated December 16, 2011. It is unclear why he did so.

[4]Effective December 4, 2008, under § 94C:32L of the state's Controlled Substances Act the state decriminalized possession of one ounce or less of marijuana, making possession of one ounce or less a civil offense subject to a $100 fine and forfeiture of the drug. Applicant's marijuana use was illegal before that date. Department Counsel confronted Applicant about the state not having acted to decriminalize possession of one ounce or less of marijuana as of his 2005 e-QIP. Applicant responded as follows:

> That's true. I mean laws don't just appear, there's a lot of discussion about it a long time before then. It's always been a discussion about decriminalization of marijuana in [state omitted]. Lawmakers were talking about that then. I guess you can see where I'm coming from, that people are starting to recognize that it's not a federal offense and police weren't

question would classify him as a person with a drug problem and he would not have the opportunity to explain the circumstances. He elected not to change his answers to the drug inquiries when he applied for a clearance upgrade because it would "unnecessarily raise red flags," and he knew he would have a chance to explain his marijuana use during an interview. Applicant indicated he would not repeat the same mistake in the future. He understands that questions on government forms "should be answered truthfully as the question is literally stated." (GE 3.)

On March 26, 2012, in response to the SOR, Applicant executed a statement of intent not to use marijuana or any other controlled substance while holding a security clearance with the understanding that any use would result in immediate revocation of his security clearance. (AE E.) As for his failure to declare any drug use on his e-QIP forms, Applicant admitted "full responsibility" for "the flaws in the logic that led to the omission of what [he now understands] to be relevant information." He reiterated that when he applied for his clearance in 2005, he thought the form was not intended to identify "non-habitual marijuana smokers." He surmised that the government, in response to people like him "rationalizing the non-declaration of drug use," revised the drug inquiries to fully define drug use in 2008, and to separate the types of illegal substances in 2010 to "promote straightforward responses." (AEs A, D.) Applicant explained his negative responses to the drug inquiries on his May 2010 e-QIP, as follows:

> At that time, I felt that changing the answer would cause unnecessarily delays in the investigative process. I knew I would have a chance to declare and explain my use of marijuana during the in-person interview for TS clearance. I was forthcoming during the first interview and during the subsequent interview with investigators.[5] (AE A.)

At his hearing, Applicant testified that he believed in 2005 that the e-QIP drug inquiries did not apply to him ("I didn't see that I was--honestly, I was thinking that they were looking for people that regularly used marijuana, they were looking for potheads, so to speak, where I didn't consider myself a user of marijuana.") (Tr. 98.) He also indicated that before he completed his 2005 e-QIP, he talked to people whom he knew held clearances and was informally advised to not report his marijuana use ("It was more like just leave it off so that you don't have to deal with it."). He also claimed he did not realize the Federal government's stance on marijuana at the time. (Tr. 89) Concerning his omission of his marijuana use from his 2010 e-QIP, he wanted to be consistent with his previous application and held a naïve belief that the sole consequence would be that he would be told during his interview to abstain from marijuana. Applicant claimed that if he had not known about the in-person interview, he would have disclosed his marijuana use on his e-QIP because he wanted to be honest. (Tr. 89-92.) As to why he understood that the drug use question applied to him in 2010 but not in 2005, Applicant testified, "Well, I

> going around looking for people smoking marijuana and looking to arrest somebody for smoking a joint. (Tr. 90.)

[5] The evidentiary record includes the report of only one interview, which was conducted on August 4, 2010. (GE 3.)

mean as I pointed out, they do totally clarify use in the question the second time, but regardless of that, I think I was a more mature person. I think I understood that any use of any—even infrequent use of marijuana is something that should be put on the form." (Tr. 99.)

Applicant's spouse knows that Applicant used marijuana at casual encounters with friends about eight times total, including around four times that she herself recalls. (Tr. 29, 37.) She believes Applicant last used marijuana in November 2009, and that he has not been exposed to marijuana since they moved. (Tr. 29.) They have been at their present residence since November 2009. (GE 1; Tr. 82.) She is aware that some family members have smoked marijuana in the past, although she has not witnessed any drug use by them "within the past probably three years." Applicant's spouse believes Applicant would "most definitely" decline if offered marijuana in the future, and he would remove himself from the situation. (Tr. 34-35.)

As of late June 2012, Applicant does not intend to disassociate himself from the close family members with whom he smoked marijuana in the past. He believes that his friends and family members would not use marijuana in his presence because they are aware that his job is at risk due to his marijuana use. (Tr. 78-79.) Applicant has not told family members not to smoke marijuana around him ("it's just obvious"). (Tr. 104.) Applicant acknowledges that if marijuana wasn't an illegal substance, he would "probably" smoke it. At the same time, he understands that it is not his call to make whether the drug is illegal. He is of the opinion that it is illegal as a way of keeping people from advancing to more dangerous controlled substances. (Tr. 107.)

At his hearing, Applicant testified that he felt intimidated by the e-QIP drug inquiry. He reiterated that he did not consider himself to be a drug user, and that he knew he would be interviewed for his clearance upgrade to top secret. During his interview, he went through the questions on the e-QIP with the investigator, and he disclosed his drug use when they got to the relevant inquiry. (Tr. 80-81.)

There is no evidence that Applicant has committed any security violations. (Tr. 54.) On his hire into the laboratory, Applicant became the technical lead on a challenging rapid spaceflight program. (AE F; Tr. 46.) In May 2011, he transitioned to another program where he serves as a unit engineer. Applicant has had the same direct supervisor since he started at the lab. (Tr. 43.) This supervisor rated Applicant's work performance as excellent for 2011. (AE F.) Applicant has demonstrated outstanding creativity in the mechanical engineering area, which has proven to be of significant benefit to the programs Applicant has worked on within the supervisor's engineering group. (Tr. 45.) Applicant informed his supervisor that he had smoked marijuana in the past, and that he had not disclosed his drug use on his initial e-QIP because he considered it a minor infraction not worth noting on his initial application. (Tr. 51.) This supervisor does not recall any discussion with Applicant about an e-QIP completed after he became an employee of the laboratory. (Tr. 57.) This supervisor considers it to be in the national interest for Applicant to retain his security clearance, which is required for Applicant's continued employment at the laboratory. (Tr. 47, 49.) He does not doubt the sincerity of Applicant's intent to abstain from

future illegal drug involvement. (Tr. 55.) When asked whether his opinion of Applicant would change if he was to learn that Applicant did not disclose any illegal drug use on e-QIPs completed in 2005 and 2010, this supervisor did not believe Applicant intended to conceal any information ("I think he just honestly felt it [marijuana use] was not a big deal and just made a dumb mistake and did not answer the question correctly."). (Tr. 58.)

Applicant currently serves as the lead optical and sensors engineer on a program whose critical design work is scheduled to be completed by the end of 2012. A co-worker friend of Applicant's, who served as the group's assistant leader until late spring 2012, believes that revocation of Applicant's access would risk the success of the program ("a very big setback"), especially in the short term. Applicant has been one of its principal contributors. (AE B; Tr. 65-70.) He has never observed Applicant misuse classified or proprietary information. (Tr. 69.) Applicant informed him that he did not disclose his marijuana use on his security clearance application, but that he raised the issue of his drug use during his subject interview. This co-worker believes Applicant did not intend to conceal information. (Tr. 74.) He has socialized with Applicant and seen no evidence of any illegal drug use by him. (Tr. 75.) The program's military sponsor also considers Applicant's technical expertise, experience, and dedication as vital to the success of the program. (AE C.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Drug Involvement

The security concerns about drug involvement are set out in AG ¶ 24:

> Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

Under AG ¶ 24(a), drugs are defined as “mood and behavior altering substances,” and include:

> (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens),[6] and
>
> (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” Potentially disqualifying conditions AG ¶ 25(a), “any drug abuse,” and AG ¶ 25(g), “any illegal drug use after being granted a security clearance,” apply. Applicant abused marijuana about twice a year from 2000 to 2002 in college. He resumed smoking the drug sometime between 2005 and 2007, and then used on infrequent social occasions until December 2009, while he held a secret security clearance.

[6]Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c).

Mitigating condition AG ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," is established because his abuse was infrequent. Applicant smoked marijuana only when it was offered to him by friends or family members, and there is no evidence that he has used any marijuana in the past 2.5 years. However, the passage of time does not necessarily guarantee against relapse, particularly where Applicant has abused marijuana on four occasions with a close family member.

Applicant told DOHA in December 2011 that he decided to stop using marijuana in January 2010 when it was recommended that he apply for a secret clearance. He cited his spouse's pregnancy and his career goals as the primary motivators. Yet, he admitted to an OPM investigator in August 2010 that he might be offered marijuana in the future, and he did not know whether he would smoke the drug again. A failure to clearly commit to discontinuing illegal drug use raises significant security concerns under AG ¶ 25(h), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use." When it became apparent to Applicant that his job was potentially in jeopardy because of his past use of marijuana, and that the DOD took the infrequent abuse of marijuana very seriously, Applicant resolved that he would not use any illegal drug as long as he held a security clearance. On March 26, 2012, he executed a statement of intent to abstain with automatic revocation of his security clearance for any future drug abuse.

Under AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," can be shown by "(1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; or (4) a signed statement of intent with automatic revocation of clearance for any violation." AG ¶ 26(b)(4) is satisfied, and his present 2.5 years of abstinence is sufficient to apply AG ¶ 26(b)(3), given his limited involvement with marijuana. However, because Applicant has close family members who continue to smoke marijuana, and he does not intend to alienate himself from them, AG ¶ 26(b)(1) is not established. AG ¶ 26(b)(2) applies in that Applicant has not been around anyone using illegal drugs since December 2009. While Applicant has not told his family members not to smoke around him, they are apparently aware of the risk to Applicant's employment posed by any illegal drug involvement. In the event that Applicant should find himself in a situation where others are using illegal drugs, he and his spouse are confident that he will not use any illegal drugs. Marijuana was never a major part of his recreational activity, he has young twins for whom he wants to set a good example, and his career is important enough to him to guarantee against a relapse.

While a favorable finding is warranted as to SOR 1.a, Applicant's abuse of marijuana while he held a security clearance is an aggravating condition that raises serious doubts about his continued security suitability. Applicant's claim that he did not understand the federal government's position on the use of marijuana is difficult to accept, given he was informed by others before he completed his first e-QIP that he should not disclose his drug use so he would not have to deal with it. Applicant would have had reason to question

any misconception that infrequent drug use would be overlooked or of little concern. His use of marijuana while holding a security clearance is not fully mitigated.

Personal Conduct

The security concerns about personal conduct are set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant did not disclose his involvement with marijuana on his November 2005 and May 2010 e-QIPs. Applicant denies any intentional falsification of his initial application. Instead, he claims he mistakenly interpreted the drug use inquiry to pertain only to "potheads" or regular users of marijuana, and not to the very infrequent user. At the same time, he admitted that he sought informal advice from others about whether he should report his drug use. Applicant must have at least suspected that the question applied to him, or he would not have inquired about his obligation to report it. Furthermore, the informal advice was not to list it, not because he wasn't required to report it, but rather so he would not have to deal with it. The evidence establishes that Applicant chose not to admit to any use of marijuana because he did not want to be perceived as a drug user and have his clearance denied on that basis.

Applicant acknowledges that he knowingly omitted his marijuana use from his May 2010 e-QIP, and that he understood that even the infrequent use of marijuana should have been listed. Yet, he knew he was going to be interviewed for an upgrade of his security clearance to top secret, and he disclosed his marijuana involvement at that time. Applicant's candor about his marijuana use during his interview does not relieve him of his obligation to report his abuse on his e-QIP. He used marijuana within six months of this security clearance application, and yet he responded "No" to whether he illegally used any controlled substance in the last seven years and also to whether he ever used any illegal drug while possessing a security clearance. Applicant's false responses to the drug inquiries on his November 2005 and May 2010 e-QIP forms establish 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.

None of the potentially mitigating conditions under AG ¶ 17 apply. Applicant provided the information about his marijuana involvement when reviewing the e-QIP drug questions with the OPM investigator. There is no evidence that the investigator confronted

him about his marijuana use, but Applicant's rectification comes too late to satisfy mitigating condition AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Applicant was granted a secret clearance based on false information in 2005, and there is no evidence that he made any effort to correct the record in the almost five years between his first e-QIP and his August 2010 interview.

Applicant's informal inquiries about whether he should report his marijuana use on his 2005 e-QIP do not qualify for mitigation under AG ¶ 17(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.

AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is not pertinent to falsification of a security clearance application signed under advisement that a knowing and willful false statement can be punished by fine or imprisonment or both under 18 U.S.C. § 1001. Deliberate false statements made on a security clearance application are serious, and when the falsity is repeated on a second e-QIP, it is very difficult to apply AG ¶ 17(c).

With due consideration to Applicant being the source of information about his illegal drug use, and his desire to correct the record, his repeated falsification is only partially mitigated under AG ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Applicant indicates that he accepts full responsibility for his "mistake." He acknowledges it was wrong not to disclose his drug use on his e-QIP. Yet, one has to question the extent of his reform when he cites the state's decriminalization of marijuana possession and the revision of the drug inquiries on the e-QIP to explain or justify his failure to respond accurately to questions that were straightforward and not reasonably subject to misinterpretation. Section 24.a on his 2005 e-QIP asked, in part, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . . ." Section 23.a on his 2010 e-QIP asked, in part, "In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.) . . . ." Question 23.b asked, in part, whether he ever illegally used a controlled substance while possessing a security clearance. The personal conduct concerns are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[7] In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's poor judgment in abusing marijuana. Applicant's youth cannot fully extenuate abuse of marijuana especially after he was granted his secret clearance. Applicant concealed his abuse of marijuana from the government when he completed his security clearance applications. He now claims that had he not known about the interview, he would have disclosed his marijuana use on his May 2010 form because he wanted to be truthful going into a top secret position. Yet months passed before his interview, and there is no evidence that he made any effort to be forthcoming in the interim. Applicant has made valuable contributions in the area of mechanical design to his present employer and the DOD. However, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). Based on the facts before me and the adjudicative guidelines that I am bound to consider, for the aforesaid reasons, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance at this time.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

[7]The factors under AG ¶ 2(a) are as follows:

(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.

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski
Administrative Judge