DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-05270
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Genevieve K. Henrique, Esq.

08/31/2012

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant turned to marijuana as a pain reliever after the state decriminalized possession of one ounce or less, and he smoked the drug from June 2010 to late December 2011 or early January 2012. Applicant is not statutorily barred from having his security clearance renewed because he is not using the drug currently and intends no future use. Yet, his drug involvement continues to raise concerns about his willingness to comply with laws and regulations. Applicant filed late federal and state income tax returns for tax year 2009, but the financial concerns are mitigated because the late filing was isolated and due to factors outside of his control. Clearance denied.

Statement of the Case

On November 9, 2011,[1] 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 F, Financial Considerations, and explaining

[1]The SOR was undated but forwarded to Applicant by letter dated November 9, 2011.

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 submitted a pro se response to the SOR allegations on December 9, 2011, in which he requested an administrative determination based on the written record. He subsequently asked for a hearing, and on June 5, 2012, counsel for Applicant entered her appearance. The case was assigned to me on July 13, 2012. On July 20, 2012, I scheduled a hearing for August 15, 2012.

The hearing was convened as scheduled. Two Government exhibits (GEs 1-2) and seven Applicant exhibits (AEs A-G) were admitted without objection. Applicant testified, as reflected in a transcript (Tr.) received on August 23, 2012.

Findings of Fact

The SOR alleged under Guideline H that Applicant used marijuana from June 2010 to at least September 2011 (SOR 1.a); that during a December 2010 interview, and in response to a September 2011 interrogatory, he expressed an intent to continue to use marijuana in the future (SOR 1.b); and that because of his expressed intent to continue using marijuana, he was statutorily disqualified from having his security clearance granted or renewed by the Department of Defense (DOD) (SOR 1.c). Under Guideline F, Applicant allegedly failed to timely file his state (SOR 2.a) and federal (SOR 2.b) income tax returns in 2009 and 2010.[2]

In his December 2011 answer, Applicant admitted using marijuana occasionally "during the period June 2010 to the present," in the privacy of his home to alleviate pain. He indicated that possession and use of small quantities of the drug was not illegal in his state, but if it was the only concern preventing renewal of his security clearance, he would discontinue all use of marijuana "at least until such time as it is medically prescribed by a doctor or decriminalized under Federal law." Applicant acknowledged that during his subject interview, he had expressed his intent to continue using marijuana. He did not believe that he was breaking any laws, but since his marijuana use had become of concern, he would discontinue his involvement. Concerning his tax returns, Applicant admitted that he had filed his 2009 state and federal returns about three months after the filing extension due to business and personal factors. Applicant denied that his 2010 federal and state returns were late.

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

[2] DOHA alleged that Applicant failed to file timely income taxes "in 2009 and 2010." Both parties understood the allegation to refer to the tax returns for 2009 and 2010, which were due in 2010 and 2011.

Applicant is a 61-year-old principal owner and primary officer (chief executive officer, president, and chairman of the board) of a small S-corporation that contracts with the DOD to perform training, consulting, and appraisal services concerning the process capability of organizations. (GE 1; Tr. 21.) Applicant also serves as the company's facility security officer (FSO). (Tr. 25, 43.) He has a bachelor's degree awarded in May 1973 (GE 1) and has completed some graduate coursework in computer science. (Tr. 57.)

Applicant was initially granted a DOD secret clearance in July 1976. His clearance lapsed between 1987 and 1989, when he worked for a company that did not have a facility clearance. In 1989, his clearance was reactivated when he became employed by a federal research center (software engineering institute) at a private university in the United States. When the contract came up for renewal in April 1994, the software engineering institute was required to do a spin off, and Applicant's S-corporation was created. The company presently has five full-time employees: Applicant and two others who perform the training and analysis work; a software developer; and an administrative assistant. Applicant has held his present secret clearance since November 1995. (GE 1; Tr. 23-25.)

In May 1995, Applicant opened a majority-owned subsidiary of his U.S. S-corporation in South America. He has since traveled extensively for business and to attend professional conferences. Between January 2003 and May 2010, Applicant spent 294 days abroad. (GEs 1, 2.)

In May 2010, Applicant was cited for negligent operation of a motor vehicle following a single vehicle accident. (GE 1.) Applicant apparently dropped his cigarette in his lap and struck a telephone pole. (Tr. 59.) In July 2010, his case was continued without a finding for one year. He was placed on unsupervised probation and ordered to pay restitution for damages to property. (GEs 1, 2.)

In the accident, Applicant fractured his neck and aggravated a previous neck injury from a 2008 accident. (Tr. 59.) Under the care initially of emergency room physicians and in August 2010 of a local emergency neurosurgeon, Applicant was prescribed no medication other than a strong dosage of ibuprofen. On general knowledge from public sources (e.g., television news) that his state had decriminalized the use of marijuana with citations not issued for violations in most jurisdictions, and believing that cannabis could be an effective pain reliever and sedative, Applicant began using marijuana in June 2010, once or twice weekly in his home, to alleviate his neck pain and help him sleep. (Tr. 29-30.) Applicant did not mention to his treating physicians that he was using marijuana at night because it was not information that he wanted on his medical record. (Tr. 62-63.)

In September 2010, Applicant was prescribed Metaxalone for pain by his primary care physician. (Tr. 60-62.) Prescription medication helped, but it proved not to be as effective as marijuana in alleviating his pain. (Tr. 60.) Applicant continued to smoke about half a cigarette of marijuana a couple times a week when he was not on travel. (Tr. 60, 66.) Applicant obtained his marijuana from a friend, who was involved in the local music scene. Applicant thought this friend might know where to get him some marijuana, so he approached him. On three separate occasions between June 2010 and October 2011, this

friend provided Applicant with ½ to one ounce of marijuana free of charge. (Tr. 63-64, 86-89.)

Applicant's company had a standard drug-free workplace policy. Applicant did not consider that the policy applied because he didn't use marijuana during work or at the office. (Tr. 78.) In his position as FSO, Applicant had been advised of the DOD policy against drug use. Applicant's understanding was that illegal drugs were not to be used, even off-duty, "because of putting people at risk either because somebody was on drugs while they were doing something like their job, or important, or whatever, and because it put them at risk of being approached by foreign intelligence sources. (Tr. 81-82.) After his state decriminalized minor possession, Applicant believed that the use of small quantities of cannabis was no longer an issue for the DOD.[3] (GEs 1, 2; Tr. 31-32, 67, 80. 83.)

On November 4, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his secret clearance needed primarily for access to cleared facilities. (Tr. 22.) Applicant responded affirmatively to section 23.a, concerning whether he had illegally used any controlled substance, including marijuana, in the last seven years, and to section 23.c, concerning any illegal possession of any controlled substance in the last seven years. He indicated that he used and possessed marijuana from June 2010 to present, as follows:

> Occaisonal [sic] night/bedtime smoking to alleviate residual neck pain (from auto accidents) and facilitate sleep. Once or twice a week when home and not traveling for business. Seems effective and is preferable from my perspective to perscription [sic] narcotics/"pain pills" suggested by my medical professionals.
>
> Possesion [sic] of less than 1 oz of marijuana was decriminalized in [state name omitted] in 2008. Most local communities have chosen to not pursue or enforce the current civil violation.

Although Applicant held a security clearance at the time, he responded "No" to section 23.b, inquiring into whether he had ever illegally used a controlled substance while possessing a security clearance. (GE 1.) His explanation for the seeming inconsistency is that he focused on the word marijuana, which was expressly listed, rather than on the word "illegally," when he answered questions 23.a and 23.c. Since he did not believe marijuana use was illegal where he was using it, and marijuana was not expressly listed in section 23.b, he denied any illegal drug use while holding a security clearance. (Tr. 84-85.)

[3]Under § 94C:32L of the state's Controlled Substances Act, effective January 2, 2009, 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. While possession of one ounce or less is no longer a criminal offense under state law, it is still a violation of state law. Moreover, it remains a crime under federal law. Applicant testified that he did not understand the precedent between which laws, federal or state, were applicable. (Tr. 70.) When asked whether he thought decriminalizing the behavior made it legal, Applicant responded, "I thought it was not a felony." (Tr. 80.) Applicant claims it did not occur to him that his marijuana use would be contrary to the requirements for retaining his security clearance. (Tr. 71.)

Applicant disclosed his foreign financial interests, contacts, and travel in detail on his e-QIP. He responded "Yes" to one of the financial record inquiries, indicating that his federal and state tax returns for 2009 were overdue, but they would be completed and filed within the next several weeks:

> I have occaisonally [sic] missed the extended filing deadline for Federal and State income taxes. This is currently true for my 2009 returns. When I have been late, I have paid any fines or penalties or additional taxes due. Typically, I have overpaid through withholding or estimated tax payments and have been entitled to a refund when the Tax Returns do get filed. I should be completing my 2009 returns in the next several weeks. (GE 1.)

His company was recovering from the economic downturn, and he needed the returns for the S-corporation completed before he could file his personal returns. Also, his father's health was failing, and Applicant was spending time at the hospital. (Tr. 44-46.)

On December 30, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He told the investigator that he was using marijuana once or twice a month. He admitted possessing less than an ounce of the drug, which he indicated was readily available to him. Applicant expressed his intent to continue to use marijuana once or twice a month. The investigator also reported that Applicant was late on his tax returns for 2009 and 2010 because of his travel schedule and no time to complete them, but he intended to complete the delinquent returns in January 2011. (GE 2.) Applicant's tax returns for 2010 were not yet due. He had no explanation for the alleged failure to file his 2010 return on time other than he should have caught it on review of the investigator's report. (Tr. 91.)

Applicant belatedly submitted his federal and state income tax returns for tax year 2009 on February 2, 2011. (GE 2; Tr. 46.) On March 4, 2011, he was issued a federal refund of $19,561 for tax year 2009. (AE B.) In response to DOHA interrogatories, Applicant admitted on September 29, 2011, that his federal and state tax returns for 2010 had not been filed, although he indicated that they were not due until October 15, 2011. Concerning his drug use, Applicant acknowledged that he was still using marijuana "weekly to twice monthly, ½ to 1 cigarette in the privacy of [his] home." He responded "Yes" to whether he intended to illegally use controlled substances in the future, adding that marijuana possession under one ounce had been decriminalized in his state. Applicant admitted that he had in his possession about ½ ounce of marijuana to relax and alleviate neck pain. (GE 2.)

Applicant filed his federal and state income tax returns for 2010 by the October 15, 2011, extension deadline. On November 4, 2011, he was issued a federal tax refund of $6,674. (AE C.) At his hearing, he explained that there were a couple of years when his business operations, such as the acquisition of the foreign subsidiary, may have delayed his tax filing, but he wasn't sure whether late returns were filed other than for 2009. (Tr. 91.)

On November 28, 2011, Applicant received the SOR informing him that DOHA could not renew his security clearance because of his marijuana use and expressed intent to continue his marijuana use. Applicant "went back and re-read things more carefully and considered whether they [the DOD] were coming from, in terms of all the potential bad things associated with drug use." (Tr. 73.) He resolved to stop using marijuana if it was the sole reason that DOHA would not approve renewal of his clearance eligibility. (Answer; Tr. 35.) After his last use of marijuana, which was in either late December 2011 or early January 2012 (Tr. 75), Applicant had "maybe a little less than a quarter of an ounce" of marijuana left over. He flushed his remaining supply of the drug. He believes that his rolling papers are probably in a drawer somewhere in his home. (Tr. 76.)

On August 15, 2012, Applicant executed a statement of intent to abstain completely from all illegal drug use and possession, with the understanding that any violation would result in automatic revocation of his security clearance eligibility. (AE A.) Applicant understands that marijuana is still considered a dangerous drug under the federal statutes, and he does not want to jeopardize his company. (Tr. 42-43.) It has been "probably months" since he has seen the friend from whom he obtained his marijuana. (Tr. 63.)

Applicant now takes Metaxalone as prescribed for his pain, usually in the minimum dosage prescribed. (Tr. 39.) As of August 2012, his domestic travel was down from three to two weeks per month. (Tr. 40.)

Applicant has a reputation for good character and honesty in his personal and business dealings. Two retired colonels, who have known Applicant since 1990 (AE G) and 1995 (AE F), recommend continuation of Applicant's security clearance eligibility without hesitation. Applicant has not given them reason to question his dedication, loyalty, or trustworthiness. It is unclear whether they are aware that Applicant used marijuana while holding a DOD security clearance.

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),[4] and
>
> (2) inhalants and other similar substances.

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

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;" AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and AG ¶ 25(g), "any illegal drug use after being granted a security clearance," apply. Applicant used marijuana once or twice weekly about one or two weeks a month from June 2010 until December 2011 or January 2012, while holding a DOD secret security clearance.

During his subject interview of December 2010, and in response to DOHA interrogatories in late September 2011, Applicant expressed his intent to continue smoking marijuana to alleviate pain. Under AG ¶ 25(h), the "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use," is clearly incompatible with DOD policy against the unlawful use of controlled substances as defined in section 102 of Controlled Substances Act (21 U.S.C. § 802). Marijuana is a Schedule I controlled substance under the Act (21 U.S.C. § 812). Schedule I controlled substances are those drugs or substances which have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for using the drug under medical supervision. His state's decriminalization of possession of one ounce or less of marijuana did not alter the federal law or DOD policy against abuse of controlled substances.

The statutory prohibition of 50 U.S.C. § 435c(b) against granting or renewing a security clearance to an unlawful user of a controlled substance or an addict is applicable only if the person is currently an unlawful user or addict. (*See* ISCR Case No. 03-25009, addressing predecessor statute 10 U.S.C. § 986(c)(2) (App. Bd. Jun. 28, 2005)). Applicant has abstained from marijuana since late December 2011 or early January 2012, when he resolved to cease his involvement, so 50 U.S.C. § 435c(b) is not implicated. However, Applicant's previous intent to continue his marijuana use is still relevant in assessing his motivation and the risk of recurrence of illegal drug use.

Concerning the potentially mitigating conditions, 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 not established. Applicant abused marijuana once or twice a week when he was not on travel. Even if he was away on business two or three weeks a month, his abuse one week or so every month for 19 months cannot fairly be characterized as "so infrequent" to reasonably apply AG ¶ 26(a).

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 by Applicant's August 15, 2012 statement of intent "to abstain from any and all illegal use and possession of controlled substances, including, but not limited to, marijuana," with the understanding that any future illegal use would result in

automatic revocation of his security clearance eligibility. Applicant denies any ongoing association with drug users. He testified that "probably months" have passed since his last contact with the friend who supplied his marijuana. While Applicant may have disassociated himself from persons involved with illegal drugs, it does not completely alleviate the drug involvement concerns because Applicant sought out the marijuana. His use of marijuana was not in casual social situations where he was passed a cigarette. Similarly, AG ¶ 26(b)(2) is not particularly persuasive in mitigation because Applicant smoked marijuana alone in his own home. Applicant's present abstinence of about eight months is viewed favorably, but it would be premature to conclude it qualifies as an "appropriate period of abstinence" in light of his continued abuse of marijuana after he applied to renew his security clearance, was interviewed by an OPM investigator, and responded to DOHA interrogatories inquiring into any ongoing marijuana abuse and future intent.

Applicant's repeated expressions of intent to continue to use marijuana are rationally explained only by a flaunting of DOD policy or by an assumption that smoking small amounts of marijuana would be overlooked, if not even condoned, because of the change in state law. He knew that even off-duty use of marijuana could present a risk of blackmail or coercion. He rationalized that because his marijuana abuse occurred in his own home and subjected him to no more than a civil fine that was not likely to be imposed, it was not a problem. As CEO and FSO of his own defense contracting firm, Applicant had an obligation to ensure that he and his company complied with DOD requirements. At a minimum, he should have made appropriate inquiries about whether the change in state law regarding marijuana possession affected DOD policy or federal law. Whether he did not inquire out of a naiveté inconsistent with his professional position, education level, and clearance history, or because he suspected a decision against his personal interest, Applicant's abuse of marijuana while he held a security clearance is an aggravating condition that raises serious doubts about his judgment and his willingness or ability to comply with laws, rules, and regulations. While his candor about his marijuana abuse and future intent is viewed favorably, it does not fully mitigate the drug involvement concerns.

Financial Considerations

The security concerns for Financial Considerations are set out in AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant filed his federal and state income tax returns for tax year 2009 in February 2011, almost four months past their extended due date. AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," is implicated because of the late filing. The evidence does not establish that Applicant's tax

returns for tax year 2010 were late, however. Applicant testified that he filed his federal and state personal income tax returns on time, by their extended due date of October 15, 2011. While there is no documentation showing the filing date, his federal refund check for $6,674 was issued on November 4, 2011, which would be consistent with an October 2011 filing.

Applicant speculated on his e-QIP that he had occasionally missed the extended filing deadline for his federal and state income tax returns. At his hearing, he explained that there were a couple of years when his business operations, such as the acquisition of the foreign subsidiary around 1995, may have delayed his tax filing, but he wasn't sure whether late returns were filed. (Tr. 91.) Even assuming he filed untimely federal and state personal income tax returns for 1995 in addition to his returns for 2009, his late filing was due to business considerations and not characteristic of his handling of his personal tax matters generally. Two mitigating conditions are established: AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;" and AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Concerning his 2009 returns, economic issues led to a delay in his S-corporation filing its business returns, and the business taxes had to be completed before he could submit his personal returns. He received a federal income tax refund of $19,561 for tax year 2009, so clearly the late filing was not due to underpayment of taxes or inability to pay taxes owed.

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).[5] In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's very poor judgment in abusing marijuana. The decriminalization of possession of one ounce or less of marijuana under state law does not extenuate or mitigate Applicant's decision to start smoking marijuana in June 2010, when he was 59 years old, in the position of CEO and FSO of a small S-corporation under contract with the DOD, and in possession of a secret clearance. Applicant knew that he could have been fined if caught possessing one ounce or less of marijuana. Self-justification of his

[5]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.

marijuana use on the basis that it was "not a felony" is incompatible with the good judgment that must be demanded of those persons with access to classified information. Applicant's candor about his marijuana use with the DOD, and his reputation for good character, weigh in his favor, but they do not mitigate his recent marijuana use in violation of DOD policy. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

_____
Elizabeth M. Matchinski
Administrative Judge