DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-13885
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant smoked marijuana on multiple occasions while he held a Department of Defense (DOD) security clearance. He ceased his illegal drug abuse following an April 2011 driving under the influence (DUI) offense, but drug involvement and personal conduct concerns persist. Clearance denied.

Statement of the Case

On October 5, 2012, the DOD issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct), and explained why it was unable to find that it is clearly consistent with the national interest to continue his security clearance. The DOD took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR allegations on October 23, 2012. He requested a decision on the written record without a hearing. On November 24, 2012, the Government asked for a hearing pursuant to ¶ E3.1.7 of the Directive. On January 7, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. I scheduled a hearing for January 24, 2013.

At the hearing, three Government exhibits (GEs 1-3) and one Applicant exhibit (AE A) were admitted without objection. The Government called Applicant to testify, as reflected in a transcript (Tr.) received on February 1, 2013. On the Government's motion and without objection from Applicant, at the close of the evidence, SOR 3.b was amended to allege that Applicant falsified an Electronic Questionnaire for Investigations Processing (e-QIP) dated September 9, 2010 (instead of March 16, 2010).

Findings of Fact

The SOR alleged under Guideline G that Applicant pleaded guilty in August 2011 to a May 2011 DUI charge (SOR 1.a) and that he was convicted of a June 1979 driving while intoxicated (DWI) offense. Under Guideline H, Applicant allegedly used marijuana on multiple occasions between about August 2010 and at least May 2011 (SOR 2.a), purchased marijuana on multiple occasions (SOR 2.b), and used illegal drugs on multiple occasions while possessing a security clearance granted to him around August 2000 (SOR 2.c). Applicant's 1979 DWI and his uses and purchases of marijuana were cross-alleged under Guideline E (SOR 3.c). In the SOR as amended, Applicant also allegedly falsified his September 9, 2010 security clearance application[1] by denying any illicit drug abuse in the last seven years (SOR 3.a) and any use ever of an illegal drug while possessing a security clearance (SOR 3.b).

When he answered the SOR, Applicant admitted the drunk-driving incidents. He also admitted that he used and purchased marijuana while he held a security clearance, although he indicated that the start date of August 2010 may be inaccurate. He denied that he intentionally falsified his September 2010 e-QIP when he responded "No" to the drug inquiries. Applicant's admissions to the two drunk-driving offenses, and to using and purchasing marijuana on multiple occasions while he held a DOD security clearance, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 62-year-old assembly machinist, who started with his defense contractor employer around 1969 as an outside machinist. He left his employment in 1974 to work for a beverage company. In July 1974, he married, and he and his spouse moved

[1] The National Agency Questionnaire (SOR 3.a) is incorporated within the e-QIP (SOR 3.b, as amended), and is not a separate security clearance application.

out of state. On their return to the area, Applicant resumed his employment with the defense contractor in March 1976. (GE 1; Tr. 22-23.)

Around June 1979, Applicant consumed approximately five to six mixed drinks while socializing at a bar with friends. En route to pick up his spouse from work, Applicant crashed his vehicle into a guard rail and telephone pole. He was charged with DWI in the hospital. A few months later, he pleaded guilty to the charge. (GE 2; AE A; Tr. 24.) Applicant was sentenced to a fine and suspension of his driver's license for a period now not recalled. Applicant, who began drinking at age 18, continued to drink in his usual pattern of two beers at home, once or twice weekly, to relax. About four times a year, he drank five to six beers or rum and cokes when out at a bar. (GE 2.)

Applicant and his spouse had a son in June 1986 and a daughter in May 1988. (GE 1.) He abstained from alcohol for the next 20 years while his children were growing up, to set a good example for them. (GE 2.)

After almost 34 years of marriage, Applicant and his spouse divorced around June 2009 due to her infidelity. (GE 2; AE A; Tr. 29.) Applicant was awarded the home in the divorce, and his children stayed with him. (GE 1; Tr. 55.) The stress of household bills, including attorney fees from the divorce, led Applicant to resume drinking within a few months following his divorce. (Tr. 36-37.) He drank alcohol on the weekends, although not every weekend, usually in quantity of three or four beers. (Tr. 49-50.)

On September 9, 2010, Applicant completed and certified an e-QIP to renew the secret-level security clearance that he had held since August 2000. In response to whether he had ever been charged with any offense related to alcohol or drugs, Applicant listed his June 1979 DWI. He disclosed no other issues of potential security concern. (GE 1.)

While at a bar one Friday night around late 2010, Applicant accepted an offer of marijuana from a stranger. He purchased two "joints" for $15, and smoked one of them in the bar's parking lot. Applicant knew using marijuana was illegal, and that it was prohibited by the DOD, but he gave no thought to his security clearance at the time. He had consumed several drinks before he smoked the marijuana, although he knew what he was doing.[2] (Tr. 31-33, 53.) Applicant took the other joint home and smoked it within a month. Twice more over the next few months, Applicant bought marijuana, two joints each time, from the same person at the bar. He smoked marijuana once more at the bar, but otherwise used it at home to relax. He estimates that he smoked marijuana on more than six but fewer than 20 times in total. (Tr. 33-35, 39.) Applicant did not think that he was hurting anyone by using marijuana. (Tr. 54.) On occasion, he shared his marijuana with a lifelong female friend. Applicant now claims not to remember when he first smoked

[2] When asked by Department Counsel whether he was intoxicated when he was first offered marijuana, Applicant responded, "Yes." (Tr. 31.) When I inquired about his reason for using marijuana, Applicant testified, "The best thing I can say is because I was under the influence already." (Tr. 48.) He later testified that he was not sure if he drank two or three beers, but he knew what he was doing when he chose to smoke marijuana. (Tr. 53.)

marijuana other than it was after he completed his e-QIP. (Tr. 42.) Nor does he recall when he last smoked marijuana ("It's been a long time now; it's been quite some time."). (Tr. 34.)

On April 23, 2011, Applicant was arrested for operating a motor vehicle under the influence of alcohol or drugs (DUI) en route home from the bar, where he had consumed approximately five to six rum and coke mixed drinks over a couple of hours. (Tr. 51.) In August 2011, he pleaded guilty and was sentenced to six months in jail (execution suspended after two days), a $500 fine, $68 in fees, $15 in costs, and one year of probation. (GEs 2, 3; AE A.) His driver's license was also suspended for nine months. To regain his operating privileges, Applicant was required to attend two Alcoholics Anonymous (AA) meetings a week for eight weeks and complete an eight-week alcohol education class. (GE 2; AE A.) Applicant reported his April 2011 DUI to his security office shortly after his arrest. (AE A.)

On August 23, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). While reviewing his e-QIP with the investigator, Applicant discussed his listed DWI in 1979 and volunteered that he had been recently arrested for DUI around April or May 2011. While he made a poor decision to drive after drinking, he asserted it was isolated behavior and not likely to be repeated. About his recent drinking pattern, Applicant admitted that he drank five to six beers or rum and cokes at a bar four times a year. Otherwise, he consumed about two beers once or twice weekly at home to relax. He claimed it took eight or more beers or mixed drinks for him to become intoxicated. Applicant indicated that he had abstained from alcohol since June 2011. He began attending AA and the alcohol education class to regain his driving privileges and he felt like a hypocrite drinking while going to AA meetings. Applicant indicated he did not know how long he would continue to abstain from alcohol. When asked about any illegal drug use, Applicant responded that he had used marijuana while possessing a security clearance, about six to eight times in the past year (exact dates not recalled). He used marijuana last around April or May 2011. Applicant admitted that he had purchased the marijuana, which he used at home alone or with a female friend, from an acquaintance at a local bar. Concerning the omission of any illegal drug involvement from his e-QIP, Applicant explained that his use began after he completed his paperwork. Applicant denied any intent to use marijuana in the future or any knowing association with persons involved with illegal drugs. He denied his marijuana involvement could be used to blackmail or coerce him because his friends know about it. (GE 2; AE A.)

At Applicant's hearing in January 2013, Department Counsel asked several questions of Applicant in an attempt to refresh his recollection about when he started using marijuana. Applicant expressed his belief that he smoked marijuana over the course of "a few months." He denied using marijuana before he completed his September 2010 e-QIP or after his April 2011 DUI. He did not intend to use marijuana in the future. (Tr. 41-42, 44.)

Applicant has told some close friends at work that he used marijuana, and he also "mentioned" his marijuana use to his son. Other family members are unaware of his drug abuse. (Tr. 38.) He has not told his supervisor or his security officer at work about his

marijuana involvement. (Tr. 37-38.) Applicant is concerned that his involvement with marijuana could cost him his employment. (Tr. 38.)

Applicant completed the requirements of his probation for the April 2011 DUI. (Tr. 27.) Applicant was last intoxicated on the occasion of his arrest for DUI. His consumption has not exceeded three or four beers or a couple of glasses of wine since his DUI. (Tr. 49.) The offense cost him money in fines and attorney fees, and lost time at work because of court appearances. Two days in jail was also "not fun." (Tr. 26-27.) Most recently, Applicant consumed alcohol over this past New Year's, when he drank two glasses of wine. (Tr. 27.) He has never been diagnosed with having an alcohol problem, but believes it is better for him not to drink alcohol. (Tr. 27-28, 43.) He intends to limit any future consumption to holidays, such as July 4th, Thanksgiving, or New Year's Eve. (Tr. 43.) From his alcohol education class, he learned that he can safely consume no more than one beer an hour. He no longer goes to the bar because it is easier for him to consume more alcohol there than he would otherwise drink. He is not driving after drinking alcohol. (Tr. 56.) After consuming the wine over New Year's, he stayed at a friend's house overnight. (Tr. 57.)

Applicant has had his present girlfriend for one year. He met her through an online dating service. To Applicant's knowledge, she does not use marijuana. Applicant testified that she learned "just through talking" that he had smoked marijuana, although he does not remember how the subject arose. (Tr. 44-46.) Applicant denies he currently associates with any known drug users. He has not seen his supplier since his DUI in 2011. The female friend with whom he smoked marijuana invited him to her house for Christmas Eve in December 2012. Applicant declined the invitation, but he still considers her a "good friend." He doesn't see her very often, "probably not as much as [he] should." (Tr. 34.)

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 about 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

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Applicant abused alcohol to the point of negative impact on his judgment, as evidenced by his drunk-driving offenses committed in June 1979 and April 2011. Disqualifying condition AG ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," applies. AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," is also established in that Applicant drank five to six mixed drinks over a couple hours at the bar before his drunk-driving offenses.[3]

Although Applicant's April 2011 DUI is relatively recent, his binge drinking was infrequent. Almost 32 years passed between his two drunk-driving offenses, and he drank more on those occasions than he would normally. AG ¶ 23(a), "so much time has passed,

[3]Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. This definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), http://www.pubs.niaaa.nih.gov/publications/Newsletter/ winter2004/NewsletterNumber3.pdf.

or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," applies. The case for AG ¶ 23(b), "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," is satisfied. Applicant readily admitted his intoxication on the occasions of his arrest for drunk driving. He accepted responsibility in court and completed his sentences. To minimize the risk of any future alcohol abuse, he no longer goes to the bar because he recognizes the tendency for him to drink more in that setting than he would otherwise. There is no evidence that he has consumed alcohol to excess since his April 2011 DUI, and he does not intend to abuse alcohol in the future. The alcohol consumption concerns are sufficiently mitigated.

Guideline H, Drug Involvement

The security concern for drug involvement is 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.

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. On three separate occasions between the fall of 2010 and April 2011, Applicant purchased two joints of marijuana from an acquaintance at a bar. He smoked the marijuana twice at the bar and otherwise at home, sharing a joint on occasion with a lifelong friend. He estimates that he enjoyed the drug's relaxing effects on more than six but fewer than 20 occasions.

[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).

Applicant bears a heavy burden to overcome the security concerns raised by his illegal drug involvement while he held a security clearance. Marijuana is a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. § 812). Under federal law, 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. 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 not satisfied. Applicant's drug use went beyond experimentation. While he may have been approached by his drug supplier the first time, Applicant sought out the drug on two other occasions. Applicant's abuse of marijuana, while he held a secret clearance, raises serious doubts about his current reliability, trustworthiness, and judgment.

Applicant denies any intent to abuse drugs, including marijuana, in the future. 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." Applicant denies any current association with known drug users. He apparently has not seen his drug supplier since April 2011. Even so, Applicant did not know his supplier when he accepted the initial offer to purchase marijuana. So, while avoiding this individual is some evidence in reform, it does not guarantee against recurrence of future drug involvement. Then, too, Applicant still considers the female friend, with whom he smoked marijuana on occasion between 2010 and 2011, a "good friend," so AG ¶ 26(b)(1) is difficult to satisfy. AG ¶ 26(b)(2) is implicated in that Applicant no longer frequents the bar where he bought his marijuana and used it twice. However, the guideline does not address the security concerns raised by Applicant's use of marijuana in the privacy of his own residence. The evidence shows that Applicant sought out marijuana and brought it home, to use while socializing with his female friend or to relax when alone.

Applicant has not executed a statement of intent to abstain from illegal drugs with automatic revocation of his clearance for any violation. However, during his interview and at his hearing, he expressed his intent not to use any marijuana in the future. Applicant volunteered to the OPM investigator that he had used marijuana, and that disclosure is viewed favorably in determining the credibility of his future intent. At the same time, some concerns exist about whether Applicant has been fully forthcoming about the details of his drug use. Applicant told the OPM investigator in August 2011 that he smoked marijuana approximately six to eight times in the past year, using it last around April or May 2011. Despite several probing questions by Department Counsel at the hearing, Applicant claimed not to recall the dates of his marijuana use other than he started smoking marijuana after he completed his September 2010 e-QIP, and he stopped around his April 2011 DUI. Applicant was somewhat vague about the extent of his marijuana use.[5] He testified that it occurred within a span of a couple of months. (Tr. 34-35.)

[5] As shown in the following exchange between Department Counsel and Applicant, Applicant offered little detail about his marijuana abuse (Tr. 34-35.):

While he acknowledged that he may have smoked marijuana more than six times because he did not smoke full joints, he suggested that six was "a pretty close figure," because his female friend was with him "several times." (Tr. 47.) He still considers her a close friend. Also, Applicant continues to conceal his marijuana use from his employer. His claimed abstention of 20 months is uncorroborated. Applicant enjoyed the drug's relaxing effects. While he submits that his life is less stressful now, more in reform is required for me to conclude that his drug use is safely in the past.

Guideline E, Personal Conduct

The security concern for personal conduct is 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.

The DOD alleges, and Applicant denies, that he falsified his September 2010 e-QIP by responding "No" to any illegal drug use within the preceding seven years and any illegal drug use ever while holding a security clearance. While Applicant admitted to an OPM investigator in August 2011 that he had used marijuana approximately six times in the past

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Q. And do you recall the last time you used marijuana?
A. The last time?
Q. Yes, sir.
A. It's been a long time now; it's been quite some time. I don't remember exactly, no.
Q. Well you purchased it three times, do you recall how many times you smoked marijuana total?
A. A few times.
Q. Okay.
A. Well—
Q. Did you—I'm sorry. Did you buy two joints each of the three times?
A. I did.
Q. And did you finish the joint each of the six times or did you—
A. No.
Q. Okay. Did you save it and then use the same joint more than once?
A. Yes.
Q. So it was at least six times you used marijuana over that stretch, is that right?
A. I would say yes, that's correct.
Q. Would you say it was less than 20?
A. Less than 20 times?
Q. Yes, sir.
A. Yes.
Q. Okay, all right, and how long—would you say this was over one year? Would you say it was over six months? How long was this period of time?
A. A few months.

year, Applicant also explained at the time that he had not listed his marijuana involvement on his e-QIP because his abuse began after he completed his case papers. Clearly, the past year was meant as a general time frame and not intended as an admission to beginning marijuana use in August 2010. When Applicant answered the SOR, he questioned the accuracy of the August 2010 date, and at his hearing, he denied any use of marijuana before he completed his e-QIP. The evidence does not prove that Applicant ever used any marijuana before he completed his e-QIP, so the concerns underlying AG ¶ 16(a) are not established.[6]

The DOD also alleged as raising personal conduct concerns Applicant's June 1979 DWI and his use and purchases of marijuana.[7] Applicant's DWI and his marijuana involvement are amply covered under Guideline G and Guideline H, respectively. At the same time, the DOHA Appeal Board has held that security-related conduct can be alleged under more than one guideline, and, in an appropriate case, be given independent weight under each. *See* ISCR 11-06672 (App. Bd. Jul. 2, 2012). AG ¶ 16(c) provides as follows:

> (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.

Applicant exercised extremely poor judgment when he drove a vehicle while intoxicated by alcohol. Furthermore, Applicant knew when he smoked marijuana that his conduct was illegal, and his disregard of the law implicates AG ¶ 16(c). The DOD did not allege under Guideline E Applicant's violation of DOD policy by using marijuana while he held a security clearance. Nonetheless, I cannot ignore that he held a security clearance when he smoked marijuana or that he knew the DOD prohibited such conduct. It is no excuse that Applicant thought he was doing no harm. Furthermore, AG ¶ 16(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," is implicated because Applicant has not informed his employer, including his facility security officer, about his marijuana use. Family members other than his son are also unaware.

Mitigating condition 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,

[6] 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," is not established.

[7] There was no explanation as to why this conduct was alleged under Guideline E and not the more recent drunk-driving offense in 2011 or his use of marijuana while he held a security clearance.

trustworthiness, or good judgment," applies to the drunk driving, which was infrequent and is not likely to reoccur. Applicant's poor judgment in using and purchasing marijuana was too repeated and recent to satisfy AG ¶ 17(c).

Applicant told the Government about his illegal drug involvement. At the same time, it is difficult to believe that he cannot recall whether he smoked marijuana six times or up to 20 times, or even the season(s) involved in his drug use. While he has taken a positive step by avoiding the bar where he bought marijuana in the past, Applicant showed little appreciation for the importance of his obligation to comply with the law and also DOD requirements. While Applicant apparently informed his employer about his April 2011 DUI, he has not been forthcoming about his drug involvement. It is difficult to fully mitigate the judgment concerns 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," or the vulnerability concerns under AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

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).[8] Applicant gave no thought to the fiduciary obligations associated with his clearance eligibility when he smoked marijuana. He offered no explanation for his illicit substance abuse, other than he was under stress and enjoyed marijuana's effects at the time. Even if Applicant never uses an illegal drug again, his repeated marijuana use while holding a security clearance, knowing it was illegal and prohibited by the DOD, raises considerable doubts about his personal judgment, reflects blatant disregard for the law, and violates the trust imbued in him while holding a security clearance. Applicant's report of his April 2011 DUI to his employer is viewed favorably, as is his disclosure of his marijuana use to the OPM investigator. But such candor is expected of those persons holding security clearance and they do not excuse or minimize the doubts about his marijuana involvement when he was 61 years old and a longtime clearance holder. Based on the evidence before me, I cannot conclude that it is clearly consistent with the national interest to continue his security clearance eligibility at this time.

[8]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.

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 G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge