



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-01119
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/30/2013

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 23, 2011. On April 26, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. DOD acted 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) implemented by DOD on September 1, 2006.

Applicant received the SOR on May 6, 2013; answered it on May 23, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 2, 2013, and the case was assigned to me on July 15, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 25,

2013, scheduling the hearing for August 15, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on August 22, 2013.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶ 1.b and 1.c. He denied SOR ¶ 1.a and 2.b through 2.d. He did not respond to SOR ¶ 2.a. He admitted SOR ¶ 2.e, but he denied that the falsification was deliberate. I treated his qualified admission of SOR ¶ 2.e as a denial. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 50-year-old engineer employed by a defense contractor since October 2002. He previously worked for the same employer from October 1983 to August 2000. (GX 1 at 10-11.) He has held a security clearance since 1987.<sup>1</sup>

Applicant married in March 1998 and divorced in May 2004. He and his wife had two daughters during the marriage, now ages 15 and 11. Applicant's cohabitant since December 2004 has three children, two of whom are teenagers. (Tr. 49-50.)

Applicant testified that he started using marijuana while he was a junior in high school, and that he used it about ten times before he graduated in 1981. He testified that he did not use any illegal drugs from 1981 to 2004. After his divorce in 2004, he started an auto racing team and an auto garage with his brother and a few friends. He was offered marijuana by an associate and accepted it. Most of his marijuana use was at the garage, but he also used it at house parties and sporting events. (Tr. 29-31.) Applicant testified that he no longer has the garage and no longer associates with marijuana users. (Tr. 36.) He does not believe that his brother continues to use marijuana. (Tr. 46.) When asked why he used marijuana, he responded: "It's difficult to answer. I would say because of the availability." (Tr. 47.)

In a personnel security questionnaire (PSQ) submitted in August 1989, Applicant answered "No" to Question 18a, asking "Have you ever used . . . cannabis (to include marijuana or hashish)?" (GX 4 at 3.) At the hearing, he testified that so much time had passed since he submitted this PSQ that he could not remember why he did not disclose his marijuana use while in high school. (Tr. 33.)

In a subsequent PSQ submitted in January 1994, Applicant answered "Yes" to Question 22a, asking "Have you ever . . . used or possessed . . . cannabis (to include

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<sup>1</sup> The SOR alleges that Applicant received a clearance in August 1989. In his response to DOHA interrogatories and at the hearing, he stated that he received a clearance in 1987. (GX 5 at 13; Tr. 27). His statement is corroborated by an Office of Personnel Management report, which reflected a background investigation in May 1987 and a second background investigation in August 1989. (GX 5 at 7.)

marijuana or hashish) . . . ?” In his handwritten explanation for the affirmative answer to Question 22, he stated, “Used marijuana in 1980 and 81, never used after, sold, bought, or intend to use ever again.” (GX 3 at 4-5.)

In an SCA submitted in September 2000, Applicant answered “No” to Question 27, asking, “Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . . ?” He also answered “No” to Question 28, asking “Have you EVER illegally used a controlled substance . . . while possessing a security clearance . . . ?” (Emphasis in original.)

In Applicant’s most recent SCA, submitted in August 2011, he answered “Yes” to Question 23a, asking, “In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.) . . . ?” He explained his affirmative answer to Question 23a by stating that he used marijuana from January 2004 to “present.” He described his use of marijuana as “occasional recreational use over this time period. Perhaps 30 to 40 times in total.” At the hearing, he testified that he did not intend to admit that he was still using marijuana when he submitted the SCA. He used the work “present” because he was counting back seven years from the date he submitted the SCA. (Tr. 35.) He answered “No” to Question 23b, asking, “Have you EVER illegally used a controlled substance while possessing a security clearance . . . ?” (Emphasis in original.)

A security investigator conducted a personal subject interview (PSI) in December 2011. The investigator’s summary of the interview recited Applicant’s statement that he currently smokes marijuana once every other month. The summary also stated that Applicant has no intention to completely stop smoking marijuana. In response to DOHA interrogatories in April 2013, Applicant disputed the accuracy of the investigator’s PSI summary, stating that the investigator asked him the frequency of his use from his first-time use in high school until the date of the PSI. Applicant denied saying that he “currently” used marijuana. Applicant also disputed the PSI summary stating that he had no intention of stopping his use of marijuana. He stated that the investigator asked him if he had a plan to quit, and he responded “No,” because he had no plan to quit. He explained that his use was so infrequent over the previous ten years that “there was nothing to quit.” (GX 5 at 4.)

In response to the April 2013 interrogatories, Applicant stated that he used cannabis “rarely” from 1980 to December 2010, and that he intended to never use it again. He stated that he decided to stop using illegal substances in February 2012, “after realizing the seriousness of use and how it could affect [his] clearance/career and [his] ability to support [his] family.” He stated that he has not completed and is not currently participating in any recognized rehabilitation program, rehabilitation support group, or any other counseling or treatment. He also stated that he had not made any changes in his personal or professional situation which would be indicative of a change of lifestyle. (GX 5 at 10-12.)

Applicant admitted at the hearing that, during the PSI or in his responses to interrogatories, he did not mention that he did not use marijuana from 1981 to 2004. He explained that he did not mention the 23-year break in his marijuana use because he was only asked when he started to use marijuana, when he last used marijuana, and how often he used it. He was not asked to provide a timeline of his marijuana use, reflecting periods when he stopped and then resumed use. (Tr. 37-44, 62.)

In his handwritten response to the SOR, Applicant admitted purchasing and using marijuana from 1980 to 1986. This admission was inconsistent with his hearing testimony, in which he stated that he purchased and used marijuana from 1980 to 1981 and did not use it again until 2004. He had no explanation for this discrepancy, testifying: "I can't explain that. It was just a mistake." (Tr. 54.)

At the hearing, he testified that his last use of marijuana was in December 2010, but that he did not make the decision to quit until February 2012. (Tr. 38-39.) He testified that when he decided to quit, his use of marijuana had become very infrequent, and his interest in use of marijuana "just faded away." (Tr. 53.)

Applicant's facility security officer (FSO) submitted a letter supporting his application to continue his clearance. He described Applicant as a "model employee" who has never had any security violations. (AX A.) Applicant testified that his FSO is not aware of his marijuana use, and that he probably would lose his job if his FSO or his supervisor found out about it. (Tr. 46-47.) None of Applicant's coworkers are aware of his marijuana use. (Tr. 31.)

At the hearing, Applicant submitted a "Letter of Intent," in which he states, "I, [Applicant], swear to the court to never use illegal drugs from this day forward. I understand and agree to an immediate revocation of my security clearance should any abuse ever occur." (AX B.)

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline H, Drug Involvement**

In his response to the SOR, Applicant denied the allegation in SOR ¶ 1.a that he used marijuana about once every two months from 1980 to at least December 2010; however, he admitted purchasing and using it once every two months from 1980 to approximately 1986. He admitted the allegation in SOR ¶ 1.b that he purchased

marijuana on multiple occasions, but he stated that he did so only from 1980 to 1986. He admitted the allegation in SOR ¶ 1.c that he used marijuana on multiple occasions after receiving a security clearance, but he stated that he used it very rarely from 2005 to 2010.

The concern under this guideline 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.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, 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).”

Applicant's admissions in his security clearance application, responses to interrogatories, and at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

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.

The following mitigating conditions under this guideline are potentially relevant:

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; and

AG ¶ 26(b): a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

The first prong of AG ¶ 26(a) (“happened so long ago”) focuses on whether the drug involvement was recent. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient

to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

All the evidence of Applicant’s marijuana use is based on his admissions, which were not consistent regarding the dates of use. At the hearing, he testified that he last used marijuana in December 2010. His hearing testimony on this point was consistent with his responses to the SOR. However, when he submitted his SCA in August 2011, he stated that he used marijuana until the “present.” The summary of his December 2011 PSI recites that Applicant was “currently” using marijuana and had no intention of quitting. I found Applicant’s explanation using the term “present” in his SCA plausible and credible. I also found his dispute of the accuracy of the PSI summary plausible and credible.

Applicant’s handwritten response to the SOR admits using and purchasing marijuana from 1980 to 1986. The fact that his response was handwritten is significant, because a handwritten response minimized the opportunity for inadvertent mistakes. At the hearing, he recanted this admission to using and purchasing marijuana after 1981, characterizing this part of his response to the SOR as a mistake. The discrepancy between Applicant’s hearing testimony and his answer to the SOR is significant. If Applicant stopped using marijuana in 1981, his drug involvement was limited to his high school years. If he did not stop using marijuana until 1986, his marijuana continued through his first three years of working for his current employer. If he stopped using marijuana in 1986, it would have been shortly before he applied for his first security clearance in 1987. Furthermore, if he did not stop using marijuana until 1986, his statement in his 1994 PSQ that he did not use marijuana after 1981 was false.<sup>2</sup>

I conclude that Applicant used marijuana from 1980 to 1986, and he resumed his marijuana use in 2004. He stopped using marijuana in December 2010. His use of marijuana before December 2010 was infrequent and declining. He has stopped associating with marijuana users, focused his attention on his family and his auto racing hobby, and declared his intent to never use marijuana again. His abstinence from marijuana use from December 2010 to the date of the hearing is a significant time period. However, its significance is diminished by the fact that it followed a long period of marijuana use while holding a security clearance. Furthermore, Applicant’s conflicting statements about the duration of his marijuana use raise doubt about his current reliability, trustworthiness, or good judgment. See ISCR Case No. 08-09232 at 3 (App. Bd. Sep. 9, 2010) (Inconsistent statements may be considered in assessing credibility, evaluating evidence, and considering whether an applicant has demonstrated rehabilitation.). I conclude that AG ¶ 26(a) is not established.

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<sup>2</sup> Falsification of the 1994 PSQ was not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant’s statement in his 1994 PSQ for these limited purposes.

AG ¶ 26(b) is not established. Applicant has disassociated from his marijuana-using associates, abstained from marijuana use since December 2010, and submitted his signed statement of intent, providing for automatic revocation of his clearance if he uses marijuana again. However, he made the same promise in his January 1994 PSQ, and he broke it in 2004. His broken promise, grievous violation of trust from 2004 to 2010, and his conflicting statements about the duration of his marijuana use undermine the credibility of his declared intent to never use marijuana again.

### **Guideline E, Personal Conduct**

The SOR cross-alleges SOR ¶ 1.c under this guideline, alleging Applicant's drug involvement while holding a security clearance (SOR ¶ 2.a). The SOR also alleges that Applicant falsified his August 1989 PSQ by omitting his use of marijuana from 1980 to 1989 (SOR ¶ 2.b); falsified his September 2000 SCA by omitting his use of marijuana from September 1993 to September 2000 (SOR ¶ 2.c); falsified his September 2000 SCA by omitting his use of marijuana after being granted a security clearance in 1989 (SOR ¶ 2.d); and falsified his August 2011 SCA by omitting his use of marijuana after being granted a security clearance (SOR ¶ 2.e).

The concern under this guideline is set out in AG ¶ 15 as follows:

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's admissions that he used marijuana on multiple occasions while holding a security clearance are sufficient to establish SOR ¶ 2.a, cross-alleging drug involvement while holding a security clearance. His admissions raise the following disqualifying conditions under this guideline:

AG ¶ 16(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;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to



comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The disqualifying condition relevant to the allegations of falsification in SOR ¶¶ 2.b-2.e is AG ¶ 16(a):

[D]eliberate 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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to the determination whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant offered no explanation or excuse for his failure to disclose his marijuana use in his August 1989 PSQ, claiming only that he could not remember why he answered "No" to the question whether he had "ever" used illegal drugs. He demonstrated during his testimony that he understood that the drug-related questions on various versions of the PSQ and SCA sometimes asked if he "ever" used drugs and some versions were limited to the previous seven years. He has repeatedly admitted using marijuana while in high school. He admitted in his answer to the SOR that he purchased and used marijuana from 1980 to 1986. I conclude that AG ¶ 16(a) is established for the August 1989 PSQ, alleged in SOR ¶ 2.b.<sup>3</sup>

Applicant denied falsifying his September 2000 SCA, and asserted that he did not use marijuana from September 1993 to September 2000. His denial is consistent with his testimony at the hearing, his statement in his January 1994 PSQ that he did not use marijuana after 1981, and his admission in his answer to the SOR that he used

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<sup>3</sup> SOR ¶ 2.b alleges that Applicant deliberately omitted his use of marijuana between 1980 and 1989. I found that he used marijuana from 1980 to 1986, which is sufficient to establish AG ¶ 16(a).

marijuana from 1980 to 1986. The only proof that he used marijuana from 1986 to 2004 is an inference from the December 2011 PSI summary and his response to April 2013 interrogatories. The inference is that his use of marijuana was continuous from 1980 to 2010, because he admitted that he started using marijuana in 1980, stated that he stopped using marijuana in 2010, but did not mention a long break in his marijuana use. This inference is refuted by Applicant's testimony at the hearing. He plausibly and credibly explained that he did not tell the investigator about the long break in his marijuana use or mention it in his response to the interrogatories because he was asked only the beginning and ending dates of his use, and he was not asked to provide a timeline reflecting periods when he stopped and then resumed use. I conclude that AG ¶ 16(a) is not established for the September 2000 SCA, alleged in SOR ¶¶ 2.c and 2.d.

Applicant denied that his negative answer to Question 23b ("Have you EVER illegally used a controlled substance while possessing a security clearance . . . ?") on his August 2011 SCA was a deliberate falsification. He correctly pointed out in his answer to the SOR that he answered Question 23a on the same SCA in the affirmative and disclosed that he used marijuana from January 2004 to "present," a period during which he held a clearance. I conclude that his negative answer to Question 23b was a careless mistake and not a deliberate falsification. I conclude that AG ¶ 16(a) is not established for the August 2011 SCA.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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;

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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established for Applicant's falsification of his August 1989 PSQ. He did not disclose marijuana use in his August 1989 PSQ, but he disclosed it in his January 1994 PSQ. That effort was not "prompt." It appears that he voluntarily disclosed his marijuana use and was not confronted with extrinsic evidence of it; however, he was

not entirely truthful in his January 1994 PSQ, because he did not disclose that he used marijuana until 1986.

AG ¶ 17(c) is not established for Applicant's marijuana use. Although he stopped using marijuana almost three years ago, his use of marijuana while holding a clearance was a serious breach of trust. It was frequent, extended over a period of several years, and did not happen under unique circumstances making it unlikely to recur. His conflicting statements about the duration of his marijuana use raise doubt about his current reliability, trustworthiness, or good judgment.

AG ¶ 17(c) also is not established for Applicant's falsification of his August 1989 PSQ. While it happened long ago, it was a serious violation of trust and undermined the integrity of the security clearance system. It did not occur under unique circumstances. In the years following the falsification of this PSQ, he has made conflicting statements about the duration of his marijuana use, raising doubts about his current reliability, trustworthiness, and good judgment.

AG ¶ 17(d) is not established. Applicant has acknowledged his behavior, stopped associating with his former marijuana-using associates, and put himself on probation by submitting his statement of intent. However, for the reasons set out in the above discussions of AG ¶¶ 26(a) and 26(b), I am not satisfied that Applicant's conduct will not recur.

AG ¶ 17(e) is not established. Applicant's supervisors, FSO, and coworkers are unaware of his drug involvement. He admitted that disclosure of his past drug use could cost him his job. He remains vulnerable to exploitation, manipulation, or duress.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was a mature adult when he resumed his marijuana use in 2004, knowing the consequences of his conduct. Although his divorce may have been a factor in his decision to use marijuana, he testified that he had no specific reason for using it, except that it was available, and he continued to use it for at least the next six years. He has worked for his current employer for almost 28 years and held a security clearance since 1987, apparently without any security incidents. Although he is well regarded by his FSO, he has not divulged his marijuana use to his supervisors or coworkers, making him vulnerable to exploitation, manipulation, or duress.

After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his drug involvement and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.e:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge