



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



In the matter of:)
)
Redacted) ISCR Case No. 15-03222
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

03/27/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana on one occasion in February 2010 while she possessed a security clearance. She deliberately falsified her November 2012 security clearance application by denying any illegal drug involvement in the last seven years. The drug involvement concerns raised by her marijuana use are mitigated by the isolated nature of her drug abuse and the passage of time since that abuse with no intention of future illegal drug involvement. Personal conduct concerns persist because of her deliberate misrepresentation. Clearance is denied.

Statement of the Case

On November 7, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct, and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue her security clearance eligibility. The DOD CAF took the action under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense*

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on December 7, 2015, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On March 28, 2016, counsel for Applicant entered his appearance. On April 22, 2016, the case was assigned to a DOHA administrative judge to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 23, 2016, the case was transferred to me, and on June 6, 2016, I scheduled a hearing for July 14, 2016.

I convened the hearing as scheduled. Nine Government exhibits (GEs) were initially offered into evidence. GEs 1-8 were admitted, GE 3 over Applicant's objection to its relevance. Applicant also objected to a report of personal subject interview, GE 9 for identification, citing lack of authentication under ¶ E3.1.20 of the Directive. Department Counsel withdrew the document. Seven Applicant exhibits (AEs A-G) were admitted into evidence without objection. Applicant and two witnesses testified, as reflected in a transcript (Tr.) received on July 22, 2016.

I held the record open after the hearing for Applicant to submit additional documents. On July 19, 2016, counsel for Applicant forwarded an affidavit from a character reference (AE H). Department Counsel submitted no objection by the July 27, 2016 deadline for comment, and I admitted the document into evidence.

Findings of Fact

The SOR alleges under Guideline H (SOR ¶ 1.a) and cross-alleges under Guideline E (SOR ¶ 2.b) that Applicant used marijuana in approximately February 2010 while she held a security clearance. Also under Guideline E (SOR ¶ 2.a), Applicant is alleged to have deliberately falsified her November 2012 Electronic Questionnaire for Investigations Processing by responding negatively to whether she had illegally used any drugs or controlled substances in the past seven years and also to whether she had ever illegal used a drug or controlled substance while possessing a security clearance. Applicant submitted a *pro se* response in which she admitted the allegations without explanation.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 37-year-old single mother with a 14-year-old daughter. She has never married. (GE 1.) Applicant lived with her mother until age 10 or 11, when she and her siblings were taken from their mother. Applicant lived with her father and stepmother for a while, but she was a ward of the state when she graduated from high school in May 1997. At age 17, she enlisted in the U.S. military. (Tr. 51-52, 86.) She served honorably in the U.S. military from July 1997 to March 2007, when she was discharged for failure to meet physical standards. (GE 1; AE E; Tr. 52-53, 67.) She believes she has earned enough

credits online for an associate degree, but she does not have a college degree. (GEs 1-3; Tr. 67.) Applicant held a DOD top secret (TS) clearance for her military duties. In February 2004, she was granted sensitive compartmented information (SCI) access eligibility. (GEs 3, 5.) She did not use any illegal drugs when she was in the military. (Tr. 68.) Applicant had used marijuana in high school, but she did not disclose that she had used marijuana on her enlistment paperwork. (Tr. 68.) She was told by her recruiter to respond negatively to inquiry about any illegal drug use. (Tr. 87.)

After her discharge, Applicant continued to serve the U.S. military, but as a defense contractor employee in computer information security. (GEs 1-3; Tr. 55.) She left her first job in the industry in October 2008 to work for her current employer (company X), a firm that provides computer service and support for the military, U.S. government entities, and civilian defense firms. Her new worksite was on the same military base as her last active duty station, and she bought a home for herself and her daughter in the area. (GEs 1-4.)

On October 21, 2008, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for an Electronic Questionnaires for Investigations Processing (e-QIP) Investigation Request. She disclosed one collection debt of \$605 for an online college course but otherwise no issues of potential security concern. Her SCI access eligibility was renewed in March 2009. (GE 5.)

In May 2010, company X sponsored Applicant for access to SCI in support of the National Security Agency (NSA). On May 20, 2010, Applicant completed and certified to the accuracy of a Questionnaire of National Security Positions (QNSP). She responded negatively to illegal use of drugs or drug activity inquiries, including those concerning any illegal use of a controlled substance in the last seven years and any illegal use ever of a controlled substance while possessing a security clearance. (GE 2.)

In conjunction with her security access processing, Applicant was interviewed by a security and counterintelligence representative on December 13, 2010, in conjunction with a polygraph. She admitted that she had used marijuana in February 2010 following the Super Bowl in that she had taken one puff from a marijuana cigarette offered to her by the person she was dating at the time. When she used the marijuana, she held a top secret clearance and SCI access, was assigned to support the NSA, and knew that the NSA had a policy against illegal drug use. On September 23, 2011, Applicant was denied NSA SCI access eligibility because of her recent marijuana use while she held a security clearance and her failure to disclose that use on her May 2010 QNSP. (GE 5; Tr. 12-14.) Applicant did not appeal the decision. (GEs 5-7.) She was removed from the NSA contract and NSA data but was led to believe that she kept her TS clearance and SCI access eligibility. (GE 8; Tr. 76.) Applicant now “tremendously” regrets her false denial of illegal drug use on her May 2010 QNSP because it was not the right thing to do, and because “everything that [she has] worked for is at risk.” (Tr. 65-66.)

In February 2012, Applicant was transferred to her current locale for a position as an account security manager directly servicing a large defense contractor with an information technology outsourcing contract with company X. (GE 1.) According to

Applicant, she had to transfer in order to keep her job. (GE 4.) Her performance appraisal for 2012 reflects that she was “rewarded with an opportunity to further her career by taking a promotion to Compliance Manager with another division within [company X].” Her performance appraisal for 2013 reflects that she was selected to lead security at one of company X’s longest running partnerships. (AE G.)

On November 7, 2012, Applicant electronically certified to the accuracy of an SF 86 completed to renew her security clearance eligibility. She signed the form on November 21, 2012. Applicant responded negatively to inquiries concerning any illegal use of drugs or controlled substances in the last seven years and any illegal use of drugs or drug activity ever while possessing a security clearance. Applicant answered “Yes” to whether she had ever had her security clearance eligibility or access authorization denied, suspended, or revoked. She disclosed that the NSA had denied her eligibility in 2011 for an “Unsuccessful Lifestyle polygraph.” (GE 1.) She now acknowledges that she was trying to conceal the drug use that had led to her loss of access to NSA facilities and data. (Tr. 78.)

On January 29, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). In discussing the denial of her eligibility for an NSA clearance at the TS/SCI level, Applicant indicated that she was notified by the NSA that she no longer held access to NSA material because of a failed polygraph. She claimed that she could not recall whether the notification letter detailed the specific reasons. Applicant indicated that she had not known before the current investigation that her TS/SCI access had been cancelled. She advised that she was unaware of any issues or incidents that would result in the denial of her security clearance eligibility. She also denied having concealed or falsified relevant material on any form used to conduct investigations or determine security clearance eligibility and having deliberately provided false or misleading information concerning relevant matters to any investigator in connection with a personnel security determination. (GE 8; Tr. 80-81.) Applicant admits that she “thought [she] was smarter than the government” by not disclosing her drug use. (Tr. 91.)

Applicant was interviewed on May 2, 2013, by a different OPM investigator. (Tr. 81.) She “felt like it was time to come clean” (Tr. 91), and she volunteered that she had used marijuana fewer than ten times between 1994 and her last use in February 2010, which was the only time that she had used marijuana while possessing a security clearance.¹ She indicated that she had taken four to five “pulls” on a marijuana cigarette that was provided to her by “a friend” celebrating the Super Bowl.² She explained that she had not disclosed her marijuana use on her SF 86 because she feared she would lose her job and be unable to provide financially for her daughter. The marijuana was always provided to her in social settings. She stated that she was “not thinking” when she used marijuana. She expressed

¹ Applicant testified that she had smoked marijuana only one time as an adult, which was in February 2010 to celebrate after the Super Bowl. (Tr. 59-60.) She admitted that her then boyfriend had used marijuana in her presence on other occasions. (Tr. 71.)

² Regarding the discrepancy between whether she took one puff and whether she took four or five “pulls” from a marijuana cigarette, Applicant testified that she does not now recall how many puffs she took or whether she “got high.” (Tr. 70.) Whether she took one puff or five puffs from a marijuana cigarette, the fact remains that she used marijuana while holding a security clearance.

an intention to refrain from using marijuana in the future because her use of the drug had led to her failing a lifestyle polygraph test. Applicant denied any current association with known illegal drug users. In discussing the NSA denial of her SCI access eligibility, Applicant related that she had failed a lifestyle polygraph after admitting that she had used marijuana in February 2010. Applicant added that during her exit briefing from an NSA facility, Applicant was told that she could no longer work in the building because she failed the polygraph. Shortly thereafter, she received a letter that she was no longer eligible for access to NSA data because he had used an illegal drug while working there with access. (GE 4.)

In response to drug interrogatories from DOHA, Applicant indicated on October 20, 2015, that she had used marijuana only once since November 2005, on February 7, 2010. She explained that she had ceased using illegal drugs because she was never a habitual user and because of the negative impact on her clearance. As to why she did not disclose any illegal drug use on her November 2012 SF 86, Applicant stated that she feared she would be terminated from her employment. (GE 4.)

On March 29, 2016, Applicant signed a statement of intention declaring that she was not addicted to any controlled substance, had no future intention to use any illegal controlled substance, and would submit to random drug testing with immediate revocation of her security clearance eligibility for any future positive drug screen. (AD E.) Applicant does not intend to do anything to jeopardize her security clearance eligibility in the future. (Tr. 65.) She expressed a willingness to take a drug screen at any time. (Tr. 84.) She admitted that she “absolutely” knew that using an illegal drug while holding a security clearance was not permitted. (Tr. 72.)

On April 22, 2016, Applicant underwent a voluntary substance abuse evaluation by a licensed social worker (LSW) credentialed as a licensed substance abuse professional (SAP) and certified substance abuse counselor (CSAC). (AEs A-C.) Applicant exhibited “excellent insight into her situation, sincere remorse, and above average judgment.” In the opinion of the LSW, Applicant did not meet the diagnostic criteria for a substance abuse disorder and did not warrant treatment. The LSW found Applicant to be not at risk of relapse and to be fully capable of safeguarding classified information. (AE A.)

As an account security manager, Applicant is presently responsible for ensuring the overall security of the information technology environment for her client. As a compliance assurance manager, she supports various security audits. (Tr. 50.)

It is very important to Applicant to be able to provide emotional and financial support for her daughter. Her daughter excels in math and is involved in several extracurricular activities. (Tr. 58.)

Applicant volunteers for several charity events in her community. She is currently a veterans’ outreach director for a local veterans’ chapter. Her responsibilities are to understand the needs of local veterans and direct them to appropriate resources. She tutors at her daughter’s school and has organized birthday parties for children at a local

homeless shelter. A recipient of several charitable activities when she was a child, it is her “way of giving back.” (Tr. 56-57.)

Work and Character References

Applicant’s annual performance appraisals at company X for 2010 through 2015 are uniformly positive. Applicant has met and in several aspects exceeded her employer’s expectations. Her work ethic and ability to deliver have not been in question. By 2010, she had already established herself as a trusted agent for their client and as a model team member. Her overall rating for 2011 was “Consistently Exceeds Expectations.” She exhibited a “can-do attitude” and a willingness to share her knowledge of security. She was recognized with the “Employee Aware of Excellence” for her dedication, initiative, professionalism, and excellence for her work on an NSA contract. Applicant consistently produced work of the highest quality. Applicant continued to demonstrate her value to her employer after her job transfer. Brought in as an information security engineer for the business unit of one of company X’s largest defense contractor partners, she functioned as an account security manager, and she quickly made significant improvements in the client’s security and compliance posture. In an account security lead position in 2014, Applicant maintained the trust and confidence of her client and account team and was considered a vital part of her employer’s cyber security organization. She proved to be very adept at handling security incidents for her client. By her annual rating in 2015, she had expanded her knowledge of security best practices to where she is now the recognized source for addressing sensitive security issues at her worksite. (AE G.)

Applicant’s current rating supervisor provided an affidavit attesting to her dedication as cyber-security lead for their client. This supervisor found her to be honest, loyal, and trustworthy, and he can count on her to ensure compliance requirements are met and security policies are enforced. Applicant explained to him that the government had concerns with her polygraph test and “prior falsified document pertaining to a one-time use of marijuana.” A retired military officer who has held a DOD security clearance, her supervisor has personally witnessed no issues of concern about Applicant and recommends that she be granted security clearance eligibility. (AE H.)

Thirteen other individuals, including some of Applicant’s previous and present co-workers, authored affidavits, and two professional colleagues testified for her. All endorse security clearance eligibility for Applicant. Applicant’s officemate for the past three years attested to Applicant being focused and efficient, careful to follow the intent of security regulations, and not being afraid to admit errors. Applicant told him that the government has concerns about her having taken one puff from a marijuana cigarette following her team winning the Super Bowl and about her not revealing this fact until after a polygraph test taken for clearance renewal for the NSA. He believes Applicant revealed the facts during her current background investigation to renew her security clearance, but he is unaware at what stage in the process.³ He has not seen any indication of substance abuse

³ When asked on cross-examination whether she had informed her references that she lied on two applications and had not been truthful with investigators, Applicant responded that she “was clear” with those character references who asked (“of course, I told them and I explained it”). Applicant did not show the

by Applicant either at or away from work and is convinced that Applicant understands and respects the trust and responsibility that a security clearance entails. (AE F.)

A friend of Applicant's for the past six years has benefitted from Applicant's advice, perspective, and logical approach. Applicant has been consistently honest with him and has shown no signs of drug use or abuse. (AE F.)

A friend of some 17 years, since they were in military training together, considers Applicant to have "exemplary character." Applicant was instrumental in ensuring that he maintained a positive outlook in the midst of some family turmoil. She explained to him that the government has concerns about her "confessed use of cannabis and the willing reluctances of her informing her employer of her use of a prohibited substance." He considers her decision to be truthful to her examiner to be evidence of her strong character, and he believes Applicant is committed to not repeating her mistake of consuming cannabis. In his opinion, Applicant is not a threat to national security. (AE F.)

A friend of Applicant's for the past 15 years has witnessed Applicant to be an exceptional parent. In reference to Applicant providing "questionable information during her security clearance investigation process," Applicant regrets the lapse of judgment that brought into question her long record of service. (AE F.)

A former colleague, whom Applicant mentored, considers Applicant to be a good role model, very honest, and reliable. Applicant was an upstanding citizen in that she volunteered to feed the homeless and sponsored monthly birthday parties for children in shelters. Currently a field intelligence officer for a government agency, this former colleague holds a TS/SCI clearance. He witnessed nothing about Applicant that gives him cause for security concern. (AE F.)

An employee of the defense contractor serviced by Applicant interacts with her at least twice weekly by telephone and email and occasionally in person over lunch. Applicant has been prompt and professional about her job tasks and addressing issues. She made him aware that she had used marijuana and that she admitted to the drug use only after a polygraph was administered. He found Applicant to be honest and open, and he witnessed nothing about Applicant that gives him cause for concern. (AE F.)

A friend of Applicant for nine years attested that he can rely on Applicant for anything. He has never witnessed her partake in the illegal use of drugs. Another friend, who has known Applicant for at least 12 years, described Applicant as an "awesome mother, friend, and person." He has never seen Applicant to be other than well-mannered and willing to be there for anyone who needs her. (AE F.)

A friend, who was stationed with Applicant from 2000 to 2004, understands that Applicant's trust and judgment are in question because she was not completely honest on her SF 86. This friend believes it was "definitely out of character and an isolated incident." In her experience, Applicant has always been dependable and trustworthy. (AE F.)

Government's documents to them or to the two co-workers who testified in person. (Tr. 82.)

A family friend for about three years, who holds a security clearance, attested to Applicant hosting multiple baby showers for him and his wife. On learning from Applicant that the government had some concerns regarding "misconstruing a government form which contradicted a polygraph interview question," this friend was "caught off-guard." In his opinion, it was an isolated incident not indicative of Applicant's character. (AE F.)

A former employee of company X, who had regular contact with Applicant from October 2011 to October 2014, when he was a system administrator on the same account, never found her to be dishonest or to act without integrity. She handled their client's data with utmost care. Applicant shared with him that the government has concerns about her integrity because she omitted use of a controlled substance on her security clearance application. In both work and social environments, she has given him no reason to doubt her sobriety. (AE F.)

A former military colleague, who was stationed with Applicant some 16 years ago, likewise witnessed no conduct by Applicant to cause her to question Applicant's honesty and trustworthiness. Applicant informed her about her drug use and "unwillingness to admit use." She believes Applicant to be of exemplary character. (AE F.)

A current co-worker since November 2013 has worked closely with Applicant in performing various audits. Applicant has demonstrated integrity, attention to detail, and professionalism. She trusts her implicitly with information. (AE F.)

A financial analyst, who has been employed by Applicant's client company for 13 years, worked with her on quarterly information audits over the last three years. He appreciated her professionalism and honesty on the job, and they became social acquaintances. As for the government's concerns, he was made aware in June 2016 that it involves one issue of Applicant falsifying her security clearance application about drug use. He does not think that it accurately reflects Applicant's character. He holds a DOD secret clearance and recommends her for security clearance eligibility. (Tr. 33-39.)

Company X's program executive with oversight over the information technology support contract at Applicant's worksite is familiar with Applicant's job performance as a security compliance manager. He described her as a "model worker," very prompt and good at completing tasks. In his experience, Applicant has always been professional and trustworthy. She was responsible for completing two large-scale information technology security audits. As he understands the government's concerns about Applicant's security clearance eligibility, Applicant intentionally checked off a box on her SF 86 indicating that she did not use any drugs when she had previously used marijuana on one occasion, in celebration of the Super Bowl. He also knows that Applicant was not truthful on one occasion to an investigator during an interview. He does not believe these concerns should be cause for denial of her security clearance eligibility. (Tr. 43-48.)

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 EO 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 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.” Disqualifying condition AG ¶ 25(a), “any drug abuse,” applies because Applicant used marijuana with a former friend while celebrating a Super Bowl victory in February 2010. There is discrepant information about whether she took one puff or four to five “pulls” from a marijuana cigarette on that occasion, but there is no evidence that she purchased the drug. AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia,” is implicated only in that Applicant had physical custody of the marijuana cigarette while smoking it. Even accounting for Applicant's marijuana use in high school sometime between 1994 and 1997, which was not alleged,⁵ her marijuana use in February 2010 would raise little security concern were it not for the fact that Applicant held a TS clearance with SCI access

⁴Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I drug. Despite some states providing for medical marijuana use or the decriminalization or legalization of recreational use of minor amounts of the drug, marijuana remains a Schedule I controlled substance under federal law. Such drugs 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.

⁵ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). Applicant's involvement with marijuana as a teenager is relevant only in that her use in February 2010 was not the only time she ever used the drug. Even so, her illegal drug use as a teenager bears little relevance to her current security worthiness.

eligibility for her duties in support of the NSA at the time. AG ¶ 25(g), “any illegal drug use after being granted a security clearance,” is established.

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,” applies in that her use in February 2010 was infrequent and occurred sufficiently long ago to where it could have been mitigated under AG ¶ 26(a) had Applicant not held TS/SCI eligibility at that time. Although Applicant has indicated that she was “not thinking” when she used the marijuana, she admitted at her hearing that she “absolutely” knew using illegal drug use while holding a security clearance was not permitted. The circumstances of her use cast doubt on her reliability, trustworthiness, and judgment, so AG ¶ 26(a) does not fully apply.

Applicant denies any intention of illegal drug use in the future. Under AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future” may be shown by the following:

- (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.

Applicant has a strong case for mitigation under AG ¶ 26(b), notwithstanding the concerns about her credibility because of her demonstrated lack of candor about her drug use as outlined in Guideline E, *infra*. There is no evidence that Applicant has used any illegal drug since February 2010, more than six years ago. She is no longer dating the man with whom she used marijuana in February 2010. There is no evidence that she currently associates with any known drug users. She executed the signed statement of no intention required under AG ¶ 26(b)(4). A licensed social worker with credentials in substance abuse counseling evaluated Applicant in April 2016 and concluded Applicant was not at risk of relapse. Her marijuana use as an adult appears to have been situational and not characteristic of her lifestyle. Although her use of marijuana while she held a high level of clearance is certainly not condoned, I find it unlikely that it will reoccur. The drug involvement security concerns are mitigated.

Guideline E, Personal Conduct

The concerns for personal conduct are articulated 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.

Concerning the Government's case for disqualification under the personal conduct guideline because of Applicant's marijuana use while she held an active security clearance (SOR ¶ 2.b), the Appeal Board has held that security-related conduct can be considered under more than one guideline, and in an appropriate case, be given independent weight under each. See ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). Applicant exercised "questionable judgment" within the general security concerns set forth in AG ¶ 15 when she used marijuana while holding a TS clearance and SCI access eligibility. Separate from the risk of physiological impairment associated with the use of a mood-altering substance, which is a Guideline H concern, Applicant had an obligation as a clearance holder to comply with DOD and NSA policy, including the prohibitions against drug involvement. 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 standings," also applies because her use of marijuana could negatively impact her employment and her standing among her co-workers.

Applicant indicates that she was not thinking properly when she smoked marijuana in February 2010. Nothing about the circumstance of her use mitigates or justifies it. That being said, Applicant knows it was a mistake to smoke marijuana, and she does not intend to repeat the same mistake. She regrets her exercise of poor judgment. Mitigating condition AG ¶ 17(d) is established with respect to her marijuana use. AG ¶ 17(d) provides:

(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.

Of primary concern in this case is Applicant's demonstrated lack of trustworthiness in deliberately concealing her February 2010 marijuana use when she completed her November 2012 SF 86 (SOR ¶ 2.a). In addition to AG ¶ 16(e), ¶ 16(a) applies to her falsification, as follows:

(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.

Applicant's voluntary disclosure of her marijuana use during her May 2013 OPM interview is viewed favorably. However, apart from her obligation as a clearance holder to self-report known adverse information, Applicant had an earlier opportunity to come clean during her January 2013 OPM interview. Instead of correcting the record, she claimed to not know of any incident or issue that could have caused her to lose her access to NSA material. She falsely denied that she had ever concealed or falsified relevant material on any form used to conduct investigations or to determine security clearance eligibility, despite her false denials of any illegal drug use when she completed her May 2010 QNSP

and her November 2012 SF 86. Applicant denied to the OPM investigator in January 2013 that she had ever provided false or misleading information in connection with a personnel security determination even as she was claiming to know of no conduct of possible security concern. Applicant's May 2013 rectification cannot be considered prompt under the circumstances. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," does not apply.

Some consideration is warranted of AG ¶ 17(c) since more than three years have passed since Applicant's misrepresentations. AG ¶ 17(c) provides:

(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.

Yet, by falsely certifying to the accuracy of her November 2012 SF 86 under the advisement that a knowing and willful false statement on the form could be punished by a fine or imprisonment or both under Title 18, Section 1001 of the United States Code, Applicant committed felonious conduct. Deliberate falsification of relevant and material inquiries is clearly serious, for it undermines the very integrity of the security clearance process. The government must be able to rely on the representations of those persons entrusted with access to classified information. Even if her November 2012 intentional concealment can reasonably be characterized as infrequent for the purposes of mitigation under AG ¶ 17(c), the doubts about her trustworthiness are compounded by her falsification of similar illegal drug inquiries on her May QNSP and her misrepresentations during her January 2013 interview. AG ¶ 17(c) has limited applicability.

Applicant exhibited some reform by volunteering her drug use during her second OPM interview, which was held in May 2013. There is no evidence that she had to be confronted about her February 2010 marijuana use. The OPM interviewer reported that Applicant "volunteered" that she had used an illegal drug in the last seven years when she possessed a security clearance. Applicant admitted to the investigator that she had not disclosed her marijuana use on her SF 86 because she feared she would lose her job. Applicant satisfies a component of AG ¶ 17(d) by acknowledging her drug use in contravention of DOD and NSA policies prohibiting illegal drug involvement. AG ¶ 17(d) provides:

(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 factor that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's admissions to her past drug use during her May 2013 interview and her July 2016 hearing reduce the vulnerability issues raised by her concealment of information that could affect her clearance, her employment, and her personal standing among her

colleagues and friends. AG ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” has some applicability.

Yet some concerns persist about Applicant’s reform. The NSA’s clearance denial decision from September 2011 indicates that Applicant told an interviewer in December 2010 that she took one puff from a marijuana cigarette in February 2010 with a male friend she was dating at the time. In May 2013, she told the OPM investigator that she took four to five “pulls” from the marijuana cigarette in February 2010. There is a discrepancy as to how many puffs of marijuana she took in February 2010. She testified about the discrepancy that she does not now recall how many puffs she took or whether she even got high. It is difficult to believe that Applicant would have trouble recalling the details of a single episode of marijuana use as an adult, although the discrepancy in the number of puffs is minor.

Some doubt exists as to whether Applicant’s references are fully aware of the extent of her misrepresentations. While several co-workers and friends provided very positive endorsements, not one reference mentioned knowing about Applicant’s repeated security questionnaire falsifications separated by two years (May 2010 QNSP and November 2012 SF 86) or her January 2013 misrepresentations to the OPM investigator. A reference who understands that Applicant “was not completely honest while filling out the SF 86,” believes it was an isolated incident. A family friend indicated that “the government has specific concerns regarding misconstruing a government form which contradicted a polygraph interview question.” Applicant reportedly told her officemate that she took one puff on a marijuana cigarette following the Super Bowl and that she did not reveal this use until after a polygraph test during her clearance renewal for work in support of the NSA. Her officemate understands that both of these facts were revealed for Applicant’s current clearance renewal, and he believes Applicant brought up the information, although he does not know at what stage. Applicant is seen as less vulnerable in that some friends and colleagues know about her use of marijuana in 2010 and about her concealment of that drug use at one time. However, it is difficult to give full mitigating weight to her latest rectification, given she showed some reform in the past during her December 2010 interview for the NSA only to then falsify her November 2012 SF 86 and her January 2013 interview. The personal conduct security concerns are not adequately mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁶ In making the overall commonsense determination required under AG ¶ 2(c), I have

⁶The 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

to consider the seriousness of Applicant's drug use while holding at TS clearance and special access eligibility. At the same time, it was aberrational and not recent as of her security clearance hearing. Unfortunately, this case is not only about an isolated use of marijuana in celebration of a Super Bowl victory. It is difficult to see how Applicant felt she could out-smart the government by reporting the NSA denial of access eligibility for an "unsuccessful life polygraph" on her SF 86 but then claim to know of no reason for the action. She belied the trust placed in her by virtue of her security clearance without reasonable justification. That conduct is difficult to reconcile with the very positive endorsements that co-workers and friends provided. They uniformly attest to her exemplary character, to her dedication at work, to her reliability and her trustworthiness.

Applicant's contributions to her employer certainly weigh in her favor, but when faced with a decision to do the right thing and report the drug use that she knew was wrong, she chose to act in her self-interest, not only for NSA access eligibility in May 2010, but in November 2012 and January 2013 in renewal of her security clearance eligibility. A determination of any applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern. It is also 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). The Government must be able to rely on those persons holding security clearance eligibility to fulfill their responsibilities consistent with laws, regulations, and policies, and without regard to their personal interests. For the reasons discussed, Applicant has raised enough doubt in that regard to where I am unable to conclude that it is clearly consistent with the national interest to continue her security clearance eligibility.

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

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge