DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
(Redacted)	)	ISCR Case No. 15-07309
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Francis J. Flanagan, Esq.

07/05/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana until his arrest for driving under the influence of marijuana in January 2014. The drug involvement security concerns are mitigated by the passage of time with no intention of any future drug involvement. Personal conduct security concerns persist because of his lack of candor about his illegal drug involvement on two security clearance applications. Clearance is denied.

Statement of the Case

On May 31, 2016, 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 it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

On July 19, 2016, counsel for Applicant entered his appearance, and Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Applicant submitted his notarized response to the SOR allegations on August 11, 2016. On October 28, 2016, 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 a security clearance for Applicant. On November 1, 2016, I scheduled a hearing for November 30, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and nine Applicant exhibits (AE A-I) were admitted into evidence without objection. Applicant and a witness testified, as reflected in a transcript (Tr.) received on December 9, 2016.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.[1]

Summary of SOR Allegations

The SOR alleges under Guideline H and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant used marijuana on various occasions between the late 1990s and January 2014 (SOR ¶ 1.a), after being granted a DOD clearance in April 2002 (SOR ¶ 1.b), and that Applicant was arrested in January 2014 for possession of a controlled substance (marijuana) and operating under the influence of drugs (SOR ¶ 1.c). Under Guideline E, Applicant is alleged to have falsified his August 2001 security clearance application (SF 86) by responding negatively to an inquiry about any use of illegal drugs or drug activity in the last seven years (SOR ¶ 2.b). Applicant is also alleged to have falsified his February 2012 Electronic Questionnaire for Investigations Processing (e-QIP) by responding "No" to inquiries concerning any illegal use of a drug or controlled substance in the last seven years (SOR ¶ 2.c) and any illegal use or involvement with a drug or controlled substance while possessing a security clearance (SOR ¶ 2.d). When Applicant responded to the SOR, he did not answer SOR ¶ 2.a, but he admitted the conduct as alleged under Guideline H. Applicant also admitted the alleged falsifications. At his hearing, Applicant admitted SOR ¶ 2.a.

Findings of Fact

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

[1] Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Applicant is a 38-year-old engineer with a bachelor's degree awarded in May 2001. He began working for his current defense contractor employer in July 2001 and has held a DOD secret clearance since April 2002. He has not married. (GEs 1-2; AEs A, D; Tr. 22, 33.)

Applicant began using marijuana when he was in college in the late 1990s. He largely experimented with marijuana in college, at times using it for three days in a row on the weekends. Months also passed with no usage of marijuana. He passed a pre-employment drug screen for his current employer and used no illegal drugs for about seven years after he started working for the company in July 2001. Applicant knew that his employer had a policy prohibiting illegal drug involvement and that marijuana use was illegal. (GE 3; AE D; Tr. 35-37, 44.)

On August 8, 2001, Applicant completed and certified to the accuracy of a security clearance application for a secret clearance. He answered "No" to the following inquiry:

> Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs? (GE 2.)

Applicant knew that his answer was false. When asked at this hearing why he falsified his security clearance application, Applicant responded, "I have no good reason why I answered that way. I—I knew—I—I don't know why I answered it like that." He admitted that he "was not being smart at the time." (Tr. 45.)

Despite holding a DOD secret clearance granted to him in April 2002, Applicant resumed his use of marijuana in 2008. There was no precipitating event for his drug use that he can recall. He continued to use marijuana every few months for a couple of days at a time, more frequently in the winters, until mid-January 2014, when he was arrested for driving under the influence of marijuana (DUI). He used the drug alone in his apartment on weekends or after work, for "spiritual enrichment," as an escape, and to relax, knowing that it violated his employer's drug policy. He enjoyed the taste and did not drink much alcohol at the time. He did not use marijuana before reporting for work or while at work. Applicant obtained his marijuana during the winter months. He bought a quarter ounce of marijuana for approximately $200 each time from the same supplier when he went snowboarding. Applicant did not know his supplier. He apparently smelled some marijuana while snowboarding out of bounds at a ski resort, and he discovered several people smoking the drug inside a small shelter. He asked whether he could purchase some marijuana and was directed to his supplier. There were times when Applicant snowboarded every weekend, and he purchased marijuana frequently. (GE 3; AE D; Tr. 37-38, 49-51.) His purchases of marijuana did not cause him any financial problems. (Tr. 28.)

To renew his security clearance eligibility, on February 6, 2012, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86)

incorporated within an e-QIP. Applicant responded negatively to all inquiries concerning illegal use of drugs or drug activity, including the following:

> **In the last seven (7) years**, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance;
>
> **In the last seven (7) years**, have you ever been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?; and
>
> Have you **EVER** illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed? (GE 1.)

At his hearing, Applicant had "no good answer" for why he was not candid about his illegal drug involvement on his SF 86. (Tr. 46.)

On January 23, 2014, Applicant was stopped by the police for having a headlight out on his vehicle. The officer smelled marijuana on him and administered a field sobriety test, which he failed. A quarter ounce of marijuana was found during a search of his vehicle. Applicant was arrested for failure to display headlights, DUI (marijuana), and possession of marijuana. A manager at work read a newspaper report of Applicant's arrest and informed Applicant's supervisor. At the direction of his supervisor, Applicant reported his arrest for DUI to their facility security office. Applicant did not indicate that his arrest was marijuana related, but he returned later that day and corrected the record. On January 28, 2014, the security department submitted an adverse incident report, notifying the DOD that Applicant had been arrested for DUI, possession of marijuana (an infraction), and a headlight violation. (GEs 3, 4; AE D; Tr. 27, 39-44.)

On March 13, 2014, Applicant appeared in court for the DUI. He was ordered to attend 10 weeks of counseling (one hour per week), which he started in May 2014. His driver's license was ordered suspended for two months for refusal to submit to a chemical test. After an administrative hearing on May 7, 2014, it was determined that Applicant did not refuse to submit to a test or analysis, and the license suspension was rescinded. Applicant completed group counseling and stayed out of trouble for one year. In March 2015, the court dismissed the DUI. The possession of marijuana infraction and headlight violation were nolle prossed. Under state law, all charges were dismissed and erased from Applicant's record on April 13, 2016.[2] (GEs 3-4; AEs D-F.)

[2] The charges were erased under § 54-142a of the state's statutes, which provides in pertinent part as follows:

> Sec. 54-142a**.** (Formerly Sec. 54-90). Erasure of criminal records. (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of

Applicant stopped using marijuana after his arrest in January 2014. He experienced no physiological or psychological effects from not using marijuana. (AE D.) He has not had any contact with his marijuana supplier since his arrest. (Tr. 39.)

On July 1, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his arrest and his marijuana use. Applicant indicated that his DUI was marijuana related. He ceased using marijuana when he began his defense contractor employment and abstained for about six to seven years. He detailed use of marijuana from approximately 2008 to 2014 every few months for a couple days at a time. He denied any use of marijuana since his arrest because it no longer felt like an escape for him. He also denied any intention of future use if fortunate enough to keep his employment with the defense contractor. Applicant could not say whether he would use drugs if not employed in the defense industry, although he indicated that it would be hard for him to resume drug use.[3] He denied any current socialization or affiliation with any known drug user. Asked why he had responded negatively to the drug-use inquiry on his 2012 SF 86, Applicant responded that he had not gotten into any trouble using marijuana. (GE 3.)

In November 2016, Applicant underwent a voluntary substance abuse assessment by a licensed clinical social worker (LCSW) with a private substance abuse and mental health counseling practice. Applicant admitted to the LCSW that, on his application to renew his security clearance, he reported that he had not used any marijuana, but that he "contradicted his signed statement" during his interview with an investigator. Applicant appeared as open and forthcoming about his current alcohol use and his past use of marijuana during his evaluation. The LCSW found no indication that Applicant has or had a substance use disorder, either with respect to alcohol or marijuana, and he stated in part:

> the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.
>
> (c) (1) Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.
>
> (3) Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

[3] Applicant was asked why he had not unequivocally disavowed any future involvement with marijuana during his interview. He responded that he could not recall why other than that he was "very nervous" and felt like he was having an "anxiety attack" during his interview. (Tr. 47-48.)

> It is clear that [Applicant] has used both alcohol and marijuana over the course of his adult life. He has abstained from marijuana for long periods of time and it does not appear that it has ever been a detriment to his work, personal life or social life. . . . He clearly has learned from his past mistake/arrest and has committed to remaining abstinent from marijuana. He does not present a danger to himself or others from his substance usage at this time. (AE D.)

At his hearing, Applicant apologized for his marijuana use, and he expressed embarrassment and shame for his actions. He denied any marijuana use in the last two years and indicated that he was no longer using the drug. (Tr. 21, 33, 52.)

Applicant is religiously observant. He has been an active participant in his congregation since 2003, but since his arrest, he has become more committed to his faith. (Tr. 29-32.) He is known within his religious community as hardworking and responsible, and as someone deserving of "a second chance." (AEs B, C.)

Work References

Applicant enjoys and values his work for his employer. (Tr. 22.) Applicant was promoted to the position of senior engineer in 2006. (AEs A, H.) He has consistently exceeded his job requirements since at least 2010. Available performance evaluations, which cover five of the last six years, show that he has no record of any disciplinary infractions. (AE H.)

Co-workers attest to Applicant being a hard worker with an attention to detail. An engineer at work, who has known Applicant for ten years, described Applicant as "ethical, humble, very concerned with correctly accomplishing his tasks, and is an example of having good moral character." (AE I.) Another colleague, who serves as the department's technical leader, has worked closely with Applicant in the last five years. Aware that Applicant was involved in a traffic stop and possessed marijuana on that occasion, he believes Applicant is a valuable asset to their employer and not a risk to national security. (AE G.)

Applicant's supervisor, who has worked for their employer since 1978 and holds a DOD secret clearance, confirmed that he became aware of Applicant's arrest by a co-worker who had seen a newspaper report. He advised Applicant "right away" to inform security about his arrest. In early November 2016, he came to learn about Applicant's lack of candor on his security clearance application when Applicant told him about his upcoming hearing. Knowing that Applicant's arrest was marijuana related and that Applicant was not forthright when he applied for his security clearance, but not knowing the details of Applicant's marijuana use, he still wants Applicant to work for him. Applicant has been hardworking and trustworthy in carrying out his duties. Applicant has been one of the more diligent people in his work group in questioning the appropriate classification level of new

correspondence received by the group. He "absolutely" trusts Applicant with a security clearance. (Tr. 55-63.)

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(a), 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 national security eligibility will be resolved in favor of the 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 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 and Substance Misuse

The security concerns about drug involvement and substance misuse are articulated in AG ¶ 24:

> The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant used marijuana[4] in college from the late 1990s to approximately June 2001. He passed a pre-employment drug screen for his current employer and used no illegal drug from July 2001 until 2008. He discovered some people using marijuana while snowboarding that winter, and he resumed using marijuana with varying frequency, more often when he was snowboarding on the weekends. He purchased his marijuana from someone at the ski resort, spending $200 per occasion. He used the drug with varying frequency, not only while snowboarding but also alone in his residence, until he was arrested on January 23, 2014. He had marijuana in his possession and was under the influence of the drug when he was arrested. Three disqualifying conditions under AG ¶ 25 apply:

> (a) any substance misuse (see above definition);
>
> (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
>
> (f) any illegal drug use while granted access to classified information or holding a sensitive position.

[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). 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.

Application of the aforesaid disqualifying conditions triggers consideration of four potentially mitigating conditions under AG ¶ 26:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual acknowledges his or drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
>
> (1) disassociation from drug-using associates and contacts;
>
> (2) changing or avoiding the environment where drugs were used; and
>
> (3) providing a signed statement of intent to abstain from all illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
>
> (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
>
> (d) satisfactory completion of a prescribed drug treatment program, including but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's marijuana use was too frequent and recent to reasonably apply AG ¶ 26(a). His present abstinence since November 2014 was not "so long ago" when considering that he resumed using marijuana in 2008 after seven years of abstinence. Applicant has a case for mitigation under AG ¶ 26(b), notwithstanding the concerns about his credibility because of his demonstrated lack of candor about his marijuana involvement as outlined in Guideline E, *infra*. Applicant has acknowledged and apologized for his marijuana use and taken actions to overcome his problem. He completed ten sessions of counseling as required by the court and has not associated with any known drug users since January 2014. He acquired the drug at a ski resort. There is no evidence that he purchased the drug in other settings. He satisfies AG ¶ 26(b)(1) in that he has not had any contact since his arrest with his former supplier. There is no signed statement in evidence to satisfy AG ¶ 26(b)(3). However, Applicant testified under advisement of Title 18, Section 1001 of the United States Code that he is "done" with marijuana. He is keenly aware that his use of marijuana could cost him the security clearance that he needs to maintain his employment with a defense contractor. He clearly understands that he has to abstain for continued security clearance eligibility. He demonstrated a strengthened commitment to religious observance that is inconsistent with future drug involvement. AG ¶ 26(d) also has some applicability because he completed ten sessions of court-ordered substance abuse counseling in 2014, and he has a favorable prognosis by a LCSW who evaluated him in

November 2016. Whether or not Applicant would have stopped using marijuana without his arrest, he appears to have put his marijuana use behind him. His arrest is a credible catalyst for reform. His use of marijuana while holding a DOD secret clearance is certainly not condoned, but he is unlikely to use marijuana in the future.

Guideline E: Personal Conduct

The concerns about 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Concerning the Government's case for disqualification under the personal conduct guideline because of Applicant's marijuana use while he held an active security clearance (SOR ¶ 2.a), 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 he repeatedly used marijuana while holding a secret clearance. 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 the DOD's and his employer's policies prohibiting illegal drug use. AG ¶ 16(d) provides:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself of 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:
>
> (3) a pattern of dishonesty or rule violations.

Applicant knew when he resumed his marijuana use in 2008 that it was illegal as well as contrary to the DOD's and his employer's policies prohibiting such drug involvement. Nothing about the circumstances of his repeated marijuana use and purchase mitigates or justifies his deliberate noncompliance with the DOD's and his employer's policies.

Also of significant concern in this case is Applicant's demonstrated lack of trustworthiness. He falsely denied any illegal drug use in the last seven years when he completed his initial security clearance application in August 2001. Instead of taking the

opportunity to come clean about his drug involvement on his February 2012 application to renew his security clearance eligibility, he falsely responded "No" to inquiries concerning any illegal drug use in the last seven years, any involvement in the illegal purchase of any drug in the last seven years, and any illegal use of a drug whatsoever while possessing a security clearance. Disqualifying condition AG ¶ 16(a) applies, 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 detailed admissions about his arrest, marijuana use, and marijuana purchases during his July 2015 OPM interview constitute some evidence in reform, but they must be considered in light of his repeated SF 86 falsifications and his failure to be fully candid with security officials at work about the nature of his arrest on his initial report to his employer in January 2014. As a clearance holder, Applicant had a duty to self-report adverse information accurately. His DUI arrest came to the attention of his supervisor by a manager, who read a newspaper report of Applicant's arrest. When directed by his supervisor to report his arrest to their security department, Applicant chose to conceal that his DUI was marijuana related. While he corrected the record later that day, neither his report to security officials nor his belated disclosures to the OPM investigator in 2015 satisfy AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Applicant was granted a DOD secret clearance in April 2002 based on a false denial of any illegal drug use. He compounded the concerns about his security worthiness by resuming marijuana use in knowing contravention of DOD policy and the terms of his security clearance eligibility, and then by falsely certifying to the accuracy of a security clearance application to renew his clearance in February 2012. Applicant was under the advisement in August 2001 and in February 2012 that a knowing and willful false statement could be punished by a fine or imprisonment under Title 18, Section 1001 of the United States Code. 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," applies only in that his SF 86 falsifications are not recent. 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.

Applicant exhibited some reform of his marijuana use and purchase under AG ¶ 17(d) by admitting and apologizing for his marijuana use while holding a DOD clearance and by resolving not to use any illegal drug in the future. 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

However, Applicant undermined his case in reform of the trustworthiness concerns by concealing the nature of his arrest from security officials at work on first report. Although Applicant acknowledged at his hearing that he had lied about his marijuana use on his security clearance applications, he claimed to not know why he answered the drug inquiries as he did in 2001 or 2012. It is not enough in reform to respond that he does not have a good answer for his knowingly false responses. In all likelihood, Applicant chose not to list his marijuana use in 2001 and again in 2012 because he did not want it to affect his employment. Doubts persist about whether he can be counted on to comply with security requirements, which include self-reporting adverse information. The personal conduct concerns are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).[5] In making the overall commonsense determination required under AG ¶ 2(c), Applicant's youth and peer pressure may well have played a role in his use of marijuana in college. Applicant exhibited good judgment in ceasing his marijuana use before he started his career with a defense contractor. Having chosen to put his drug use behind him at that time, he likely did not want it to affect his first professional job out of college with his employer. He made a poor choice in concealing his drug involvement and was granted his security clearance based on a lie. Even so, it could well have been mitigated had he not resumed his drug involvement in 2008 and then lied about it. Applicant's record of valuable contributions to his employer weighs in his favor, but it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). 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 his security clearance eligibility.

[5] The factors under AG ¶ 2(d) 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 H:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.d:	Against Applicant

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.

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Elizabeth M. Matchinski
Administrative Judge