



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



In the matter of:

REDACTED

Applicant for Security Clearance

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ISCR Case No. 16-02364

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

10/24/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has used marijuana for at least 14 years. He experimented with hallucinogenic mushrooms and cocaine before 2009, and took Vicodin that was not prescribed for him in January 2010. He has provided some financial support for his girlfriend, who is a resident citizen of the Philippines, but he does not exhibit a preference for the Philippines. Drug involvement and related personal conduct security concerns persist because of his drug activity and his failure to clearly and convincingly commit to discontinue his marijuana use. Clearance is denied.

Statement of the Case

On October 29, 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), Guideline E (personal conduct), and Guideline C (foreign preference). The SOR explained why the DOD CAF 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* (AG) effective within the DOD on September 1, 2006.

On November 23, 2016, Applicant answered the SOR allegations and requested a decision on the written record without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 6, 2017, the Government submitted a File of Relevant Material (FORM) consisting of four exhibits (Items 1-4). On January 9, 2017, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 16, 2017. No response to the FORM was received by the February 15, 2017 deadline. On October 1, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

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 supersedes 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

Evidentiary Ruling

Department Counsel submitted as Item 3 a summary of a subject interview of Applicant conducted on May 18, 2015. The summary was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summaries did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

Unlike the applicant in ISCR Case No. 15-01807, Applicant did not submit a response to the FORM submitted in his case. However, as in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

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

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He was advised that if he did not respond, the interview summary may be considered as evidence in his case. Applicant chose to rely solely on the record presented in the FORM, which included the information reflected in the interview summary, however disqualifying, mitigating, or exculpatory the information. I cannot presume without any evidence that Applicant failed to understand his due process rights or obligations under the Directive or that he did not want the summary of his interview considered in his case. Accordingly, I accepted Item 3 in the record, subject to issues of relevance and materiality in light of the entire record.

Administrative Notice

In Item 4 of the FORM, the Government requested administrative notice of several facts pertinent to the Philippines, as set forth in an Administrative Notice request dated January 6, 2017.² The Government's request was based on five publications from the U.S. State Department. I was provided extracts of the documents and given the URLs where I

²The Government made references in the Administrative Notice request to the requirement under Guideline B to consider the identity of the foreign country in which the foreign contact or financial interested is located. Applicant's foreign ties were alleged under Guideline C and not Guideline B. Even so, the particular circumstances of the foreign country at issue are relevant in Guideline C cases as well.

could obtain the full documents.³ Concerning issues of relevance and materiality, the information relied on by the Government in its Administrative Notice request was current as of the request. The State Department has since released its *Country Reports on Human Rights Practices for 2016—Philippines*, and on March 28, 2017, issued a new *Philippines Travel Warning*. In accord with Appeal Board precedent to consider the most current political conditions in a foreign country when evaluating Guideline B or Guideline C concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I reviewed the full texts of the updated publications, which may be accessed from the State Department’s website www.state.gov. With that caveat, the facts administratively noticed are set forth below.

Summary of SOR Allegations

The SOR alleges under Guideline H and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant used illegal drugs daily, to include marijuana, mushrooms, and cocaine, with varying frequency from about October 2002 to at least February 2015 (SOR ¶ 1.a); that he purchased marijuana from October 2002 to at least June 2014 (SOR ¶ 1.b); that he took the prescription drug Vicodin without a prescription (SOR ¶ 1.c); and that he intends to continue to use marijuana until he obtains a security clearance (SOR ¶ 1.d). Under Guideline C, Applicant allegedly has acted to indicate a preference for a foreign country because his girlfriend and her children are resident citizens of the Philippines (SOR ¶ 3.a), and he provided approximately \$8,000 to his girlfriend in the Philippines (SOR ¶ 3.b).

When he responded to the SOR allegations, Applicant admitted that he had used marijuana, but not on a daily basis after high school. He admitted that he had tried mushrooms and cocaine four times each, but denied any use of either drug after 2008. He admitted that he had purchased marijuana; that he had taken two Vicodin pills without a prescription to ease the pain of a migraine headache, and that he continues using marijuana until his security clearance has been obtained. He stated, “I am willing to quit if it means me obtaining a clearance.” Applicant denied that he exercised questionable judgment under Guideline E, citing his honesty about his drug use, his college degree, and his six-year employment as evidence of his ability to comply with rules and regulations. Concerning the Guideline C allegations, Applicant admitted the Philippine residency and citizenship of his girlfriend and her children as well as him providing her financial support from time to time to help his “family to be.”

Findings of Fact

After considering the FORM, which includes Applicant’s response to the SOR as Item 1, I make the following findings of fact.

³ The Government’s request for administrative notice was based on the following publications of the U.S. State Department: *Country Reports on Human Rights Practices 2015-Philippines*, published April 13, 2016; *Country Information-Philippines*, dated December 20, 2016; *Country Reports on Terrorism 2015*, dated June 2, 2016; *Philippines Travel Warning*, dated December 20, 2016; and on remarks by the Assistant Secretary, Bureau of East Asian and Pacific Affairs, given at the Philippines Department of Foreign Affairs on October 24, 2016.

Applicant is a 31-year-old college graduate with a bachelor's degree in engineering technology awarded in May 2009. On his graduation from college, he was offered a position with a defense contractor conditioned on him obtaining a security clearance. After his security clearance was denied, he began working for his current employer as a test manager in June 2010. Applicant reports no military service and has never married. Applicant still lives at home with his parents. (Items 1-3.)

Drug Involvement

Applicant began using marijuana in approximately October 2002, when he was in high school. Applicant and three of his friends, including friend X, skipped classes on a daily basis and smoked marijuana together near the high school. He also used marijuana at house parties on the weekends. Applicant purchased marijuana through friend X and also obtained it from other students. After Applicant began college in August 2004, he stopped using marijuana for a couple of months to ensure that he could handle his studies. Applicant resumed using marijuana in October 2004, approximately one marijuana "joint" every other day, in his home and at college parties. He continued to use marijuana with that frequency until June 2010, when he began working for his current employer. Applicant obtained his marijuana from college classmates. (Items 1-3.)

Applicant used cocaine, including crack cocaine, four times between June 2007 and August 2008 at parties. He was with friend X and another friend the first time, and he inhaled cocaine out of curiosity. On the third and fourth occasions, he used crack cocaine. He did not like the effect of the drug on him and resolved not to use any cocaine in the future. Each time, he was given the cocaine free of charge. (Items 1-3.)

Applicant also experimented with hallucinogenic mushrooms from 2007 to October 2008, at a frequency of one mushroom every three to four months. He obtained the hallucinogenic mushrooms from friend X, and used the drug with him. Applicant ingested marijuana with the mushrooms to enhance the effect of the drug. On the last occasion, he experienced hallucinations lasting more than four hours. He disliked that effect and decided not to use any hallucinogenic mushrooms again. (Items 1-3.)

In January 2010, Applicant was struck in the head when he tried to break up a fight outside a nightclub. Applicant reports that he suffered a concussion, and when he got home, he asked his father for a painkiller. He ingested two Vicodin pills from his father's prescription within 24 hours. (Items 1-3.)

After June 2010, Applicant used marijuana once or twice a week on the weekends. He obtained his marijuana through friend X and spent \$40 to \$60 every two to three months for the drug. (Items 1-3.)

On February 22, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded affirmatively to an inquiry concerning any illegal use of a drug or controlled substance in the last seven years.

He indicated that he used "THC" from October 2002 to February 2015 and elaborated as follows:

When I was in High School, I used on a daily basis. Would skip class and go smoke marijuana. When I was in college the frequency of use went down to about 3 to 4 times a week. Would smoke before going to the movies or before playing basketball or before playing video games. After college up until October of this year would smoke once on the weekend before playing video games or watching a movie at home.

Applicant denied any intention of future use and stated, "My future and my career are more important to me than using this drug. If I get a security clearance I will definitely stop using." Applicant disclosed on his SF 86 that he used cocaine four times between June 2007 and August 2008 while he was drinking alcohol with friends; that he used hallucinogenic mushrooms four times between August 2008 and October 2008 "to try something new;" and that he took two Vicodin in January 2010 because was sure that he had a concussion. Applicant denied any intention to use cocaine, hallucinogenic mushrooms, or a non-prescribed analgesic in the future. Applicant responded "Yes" to an inquiry into any illegal drug purchase in the last seven years. He disclosed that he purchased marijuana between October 2002 and June 2014, about once a week in high school and since college about once a month. He also indicated that he bought hallucinogenic mushrooms twice, in August 2008 and September 2008. (Item 2.)

On May 18, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant detailed his involvement with marijuana, cocaine, hallucinogenic mushrooms, and non-prescribed Vicodin. Applicant was still using marijuana on weekends, once or twice a week, as a stress reliever, and purchasing the drug every two to three months. He expressed an intention to continue using marijuana until he obtains a security clearance, but also that he plans to stop using marijuana because he does not want it to affect his security clearance. He expressed his belief that he can drink up to eight beers and smoke one joint and still drive because he is in control. Applicant had not had any treatment or counseling for his drug use. He explained that he does not see marijuana as a bad drug because it is a natural plant with no added chemicals, and he believes it should be legalized. He reiterated that he would stop using marijuana if he was told that his security clearance would be denied because his career is important to him. (Item 3.)

As of November 2016, Applicant was still using marijuana as a stress reliever. He does not believe that his use of marijuana makes him an unreliable or untrustworthy person. (Item 1.)

Foreign Preference

Applicant has a girlfriend, whom he met online in approximately August 2013. She is a resident citizen of the Philippines and has two children, who were born in 2008 and 2009. On his February 2015 SF 86, Applicant disclosed that he had daily contact with his

girlfriend in the Philippines; that he provides her financial support on a monthly basis that, to date, had totaled \$8,000; and that he traveled to the Philippines in October 2013, March 2014, and December 2014, for six to ten days each time. (Item 2.)

During his May 2015 interview with an OPM investigator, Applicant explained that his girlfriend in the Philippines is employed as a customer service representative for a satellite radio company. She does not know that he has applied for a DOD security clearance. He expressed plans to marry his girlfriend and sponsor her immigration to the United States in 2016 or 2017. He reported daily contact by telephone with his girlfriend as well as in-person contact during four trips he took to the Philippines, including a four-day trip in November 2014 to see her, which he had forgotten to list on his SF 86. Applicant reported no unusual contact with local customs, police, security service, or foreign intelligence during his trips to the Philippines. As for his financial support for his girlfriend, Applicant explained that he began sending her \$100 to \$200 every few weeks in December 2012, when he learned that his girlfriend and her children had little food to eat. (Item 3.)

As of November 2016, Applicant was still planning to marry his girlfriend in the Philippines. He was apparently still sending her financial support from time to time because “she lives in a 3rd world country and needs financial support from time to time.” (Item 1.)

Administrative Notice

The Philippines is a multi-party, constitutional republic with a bicameral legislature. The United States recognized the Philippines as an independent state and established diplomatic relations in 1946. The United States has designated the Philippines as a major non-NATO ally, and there are close and abiding security ties between the two nations, based on strong historical and cultural links and a shared commitment to democracy and human rights. The Manila Declaration of 2011 reaffirmed the 1951 U.S.-Philippines Mutual Defense Treaty as the foundation for a robust, balanced, and responsive security partnership. The United States is the Philippines’ third-largest trading partner and one of the largest foreign investors in the Philippines. The United States and the Philippines have a bilateral trade and investment framework agreement and a tax treaty.

Philippine national elections have been generally free and fair. The country’s current president was elected in May 2016 and began the first year of his constitutionally limited six-year term on June 30, 2016. Yet civilian authorities did not maintain effective control over the Philippine National Police (PNP). The most significant human rights problems are extrajudicial killings, which increased sharply in 2016; enforced disappearances undertaken by security forces and vigilante groups; cases of governmental disregard for human rights and due process; and a weak and overburdened criminal justice system. Other human right problems in 2015 and 2016 included widespread official corruption and abuse of power, prisoner and detainee torture and abuse by security forces, violence and harassment against human rights activists by security forces, warrantless arrests, lengthy pretrial detentions, poor prison conditions, killings and harassment of journalists, violence against women, abuse and sexual exploitation of children, and trafficking in persons.

Conflicts between the government and long-running Muslim separatist, communist insurgent, and terrorist groups continue to displace civilians and kill security force members and civilians. Terrorist organizations engaged in kidnappings for ransom and bombing of civilian targets, reportedly used child soldiers in combat or auxiliary roles, and operated shadow governments in areas they controlled in 2016. In November 2016, a terrorist group planted an improvised explosive device near the U.S. Embassy in metro Manila. In April and May 2017, bombings in Quiapo, Manila killed two and injured 20.

As of July 2017, the U.S. State Department warns U.S. citizens to avoid all non-essential travel to the city of Marawi, Mindanao, and the Sulu Archipelago due to the high threat of kidnapping in that area. In September 2016, a bombing in Davao City killed 14 and wounded at least 70 people. General threats to U.S. citizens and other foreigners throughout Mindanao remain a concern. None of the documents relied on by the Government show that the Philippines engages in economic or military intelligence activity directed toward the United States.

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 on a daily basis in high school, every other day in college, and once or twice a week on the weekends since becoming employed by a defense contractor in June 2010. As of November 2016, he was still using marijuana to relieve stress, although he asserted that he would cease his marijuana use if he is granted a DOD clearance. He has purchased marijuana since October 2002, with varying frequency. Applicant also used cocaine four times between June 2007 and August 2008. He used hallucinogenic mushrooms approximately four times and purchased it twice between 2007 and October 2008. In January 2010, he ingested two Vicodin that were not prescribed for him. 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
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Further inquiry about the applicability of mitigating conditions under AG ¶ 26 is required. AG ¶ 26(a) has some applicability in that Applicant's illegal use of cocaine, hallucinogenic mushrooms, and Vicodin occurred less than five times each over five years ago. AG ¶ 26(a) provides:

(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.

However, AG ¶ 26(a) cannot reasonably apply in mitigation of his marijuana use, which occurred with sufficient regularity for over 14 years to where it casts serious doubts about his current reliability, trustworthiness, and good judgment.

Applicant candidly disclosed his drug involvement from the outset. He listed his drug use on his SF 86, provided details of his drug involvement during his substance interview, and admitted in response to the SOR that he was using marijuana to relax. He does not intend any future involvement with cocaine or hallucinogenic mushrooms or any illegal use of prescription drugs like Vicodin. AG ¶ 26(b) is triggered when the evidence suggests there is little likelihood of recurrence of drug involvement. It provides:

(b) the individual acknowledges his or her 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 drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant exercised poor judgment when he experimented with cocaine and hallucinogenic mushrooms in college and when he took some of his father's Vicodin in January 2010, but his involvement with those drugs appears to be safely in the past.

Concerning his marijuana use, Applicant satisfies AG ¶ 26(b) only in that he acknowledges his use. As of his subject interview in May 2015, he was still using marijuana and purchasing it through his friend X. There is no evidence that he has disassociated himself from friend X or other drug-using associates. While he has expressed a willingness to stop using marijuana if granted a security clearance, his conditional willingness to abstain falls considerably short of establishing AG ¶ 26(b)(3). None of the mitigating conditions apply to his marijuana use.

As set forth in Appendix B of the AGs, 50 U.S.C. § 3343 prohibits the grant or renewal of a security clearance to a person who currently is an unlawful user of a controlled substance defined in 21 U.S.C. § 802. Marijuana is a Schedule I illegal drug under federal law. As of November 2016, Applicant was still using marijuana to relax. While it is very likely that Applicant has continued to use marijuana since November 2016, there is no evidence in that regard. While the statutory prohibition may not apply, Applicant has not clearly and convincingly committed to giving up a drug that has been a part of his life for over 14 years and in his opinion should be legalized.

Guideline E: Personal Conduct

The concerns about personal conduct are set forth 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.

Information of security concern can have security significance under more than one guideline, and Applicant exhibited poor judgment as articulated in AG ¶ 15 by using illegal drugs and continuing to use marijuana after his OPM interview. He should have realized by then that his drug involvement was of concern to the DOD. He knew that his drug involvement was illegal because he expressed an opinion that marijuana should be legalized. His disregard of the drug laws shows an unwillingness to comply with rules and regulations with which he personally disagrees. It indicates that he may not properly safeguard classified or sensitive information. Because his drug involvement is sufficient for an adverse determination under Guideline H, AG ¶ 16(c) does not strictly apply. It provides:

(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 individual may not properly safeguard classified or sensitive information.

However, AG ¶ 17(g) applies because of Applicant's long association with friend X, who has been involved in some of Applicant's drug use since high school. He used illegal drugs with Applicant and he was the source or conduit through whom Applicant acquired most of his marijuana.

Concerning the potentially mitigating conditions under AG ¶ 17, his exercise of poor judgment for more than a decade was neither so infrequent or so far in the past to satisfy 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(g), "association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations," also has not been shown to apply. There is no evidence that Applicant has disassociated himself from friend X.

AG ¶ 17(d) is also not established in that Applicant has not demonstrated sufficient reform of his marijuana involvement. AG ¶ 17(d) states:

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

He has not had any counseling for his drug use or taken other steps to alleviate the stress that has led him to use marijuana to relax in recent years. He showed a lack of insight about marijuana's ability to impair his judgment and reliability when he claimed to the OPM investigator that he could safely drive after drinking up to eight beers and smoking one marijuana "joint" because he is in control. Although Applicant now acknowledges that he can see how his drug use shows a lack of judgment, he also expressed his belief that using marijuana made him an unreliable or untrustworthy person. Applicant has not yet exhibited the sound judgment that must be demanded of persons entrusted with classified or sensitive information. The personal conduct security concerns are not mitigated.

Guideline C: Foreign Preference

The security concerns about foreign preference are set forth in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The evidence is undisputed that Applicant's girlfriend and her two children are resident citizens of the Philippines; that Applicant has provided his girlfriend some financial support since approximately October 2013; and that Applicant has plans to marry his girlfriend. While these ties to the Philippines could present a risk of undue foreign influence

under Guideline B,⁴ Applicant has not exhibited a preference for the Philippines that would trigger any of the disqualifying conditions under the AGs effective from September 1, 2006, through June 7, 2017, or under the AGs effective for any adjudication on or after June 8, 2017. Department Counsel argued for the applicability of AG ¶ 10(c), which under the AGs in effect as of the issuance of the FORM stated:

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interest of a foreign person, group, organization, or government in conflict with national security interest.

There is a similar disqualifying condition under the current AGs. AG ¶ 10(d) provides:

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

To the extent that Applicant may be serving the interests of his foreign national girlfriend by providing her money for food and other living expenses, it was not shown that it was in conflict with the national security of the United States. She works as a customer service representative for a satellite radio provider in the Philippines and has no apparent government connection. The presence of terrorist activity in the Philippines may raise an issue of vulnerability under Guideline B, which was not alleged. It is noted that the Government could have moved to amend the SOR and did not choose to do so. Applicant expressed an intention to sponsor his girlfriend for U.S. immigration. He has not shown a preference for the Philippines.

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(a), I

⁴ The Government submitted facts for Administrative Notice citing the requirement to consider the foreign country under Guideline B but argued for the applicability of AG ¶ 10(c) under Guideline C. The SOR alleges Guideline C.

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

recognize there is no evidence of any adverse impact on Applicant's work because of his substance abuse. Even so, Applicant has raised considerable doubts about his judgment, reliability, and trustworthiness by using illegal drugs. He indicated that he would stop using marijuana if he was told that he would be granted a security clearance. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)).

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). 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 grant him 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge