DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 17-00332
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

07/25/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used and purchased marijuana from approximately 1988 to 2015. He falsified his February 2016 security clearance application by denying any illegal drug use and purchases in the last seven years. The drug involvement and personal conduct concerns are not mitigated. Clearance is denied.

Statement of the Case

On April 3, 2017, 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 substance misuse, and Guideline E, personal conduct. 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* effective within the DOD on September 1, 2006.

Applicant responded to the SOR on April 18, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 9, 2018, 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 January 11, 2018, I scheduled a hearing for February 9, 2018. With the agreement of the parties, on January 24, 2018, I rescheduled the hearing for February 7, 2018.

At the hearing, two Government exhibits (GEs 1-2) were admitted in evidence. An October 31, 2017 letter forwarding discovery of the GEs to Applicant's counsel was marked as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. Three Applicant exhibits (AEs A-C) were admitted in evidence. Applicant and one witness testified, as reflected in a transcript (Tr.) received on February 15, 2018.

While this case was pending a hearing, 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 superseded 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.e) that Applicant used marijuana (SOR ¶ 1.a) and illegally purchased marijuana (SOR ¶ 1.b) from age 14 (1988) to at least age 41 (2015), and that he was arrested for possession of marijuana on September 18, 2003 (SOR ¶ 1.c). Applicant is also alleged under Guideline E to have deliberately falsified his February 11, 2016 Electronic Questionnaires for Investigations Processing (e-QIP) by denying any illegal use (SOR ¶ 2.a) and any illegal purchase (SOR ¶ 2.b) of a drug or controlled substance in the last seven years. Additionally, Applicant is alleged to associate with individuals who use illegal substances (SOR ¶ 2.c) and to have been arrested in March 2013 for driving while intoxicated (DWI) (SOR ¶ 2.d). When Applicant responded to the SOR, he admitted the allegations of marijuana use and purchase; his arrests for possession of marijuana in 2003 and for DWI in 2013; and his association with individuals who use illegal substances. He denied that he deliberately falsified his e-QIP.

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 44-year-old college graduate with a bachelor's degree awarded in May 1996. He was employed as a pipefitter by a defense contractor from March 2016 until April 2017, when he was laid off. (Tr. 34.) He is still being sponsored by the defense contractor and is subject to recall should his security clearance be adjudicated favorably. (Tr. 26.) Applicant married in January 2013, and he and his spouse have a three-year-old son. Applicant also has two children, now ages 10 and 12, from a previous relationship, who live with him and his spouse. (GEs 1-2; AE B; Tr. 42.)

Applicant used alcohol before he became of age to drink legally. He was arrested for DWI in 1992, after consuming a "significant amount" of alcohol at a party with friends. He offered to drive home because he was not as inebriated as his friends. He was stopped and administered a field sobriety test, which he failed. He was required to complete community service. (GE 2; AE B.) He was arrested in approximately 1996 for another DWI after drinking at a bar with friends. He failed field sobriety tests. He was convicted of refusing to take a breathalyzer, and his license was suspended. (GE 2.)

Applicant also began to use marijuana as a teenager, and he continued to use the drug to age 41. During an interview with an Office of Personnel Management (OPM) investigator in July 2016, he indicated that he had used marijuana approximately twice a week from age 14; that the frequency of his use declined during his 30s; but also that he continued to use marijuana until he was 40 or 41 years old. Applicant related that he used marijuana with friends and family members, who are not identified by name in the record. He purchased marijuana from various friends and acquaintances over the years of his use, spending approximately $30 a month. He enjoyed using marijuana and its calming effect. (GE 2.) He knew that marijuana was illegal when he used it. (Tr. 62.)

At his security clearance hearing, Applicant admitted that he used marijuana from age 14 until sometime in 2015. (Tr. 39, 43, 54.) He described the frequency of his use as "mostly when I was younger and I didn't know as well with frequency, and then as I got older, much less frequent, very rarely, perhaps to sleep really." He testified that, from his late 20s on, his use of marijuana was "a handful of times, maybe five, just for stress," over the course of a year. He denied any use of marijuana since 2015. He realized that he needed to change his career because of his growing family, and that there were other ways to help him sleep. (Tr. 39.) He asserted that he does not intend to use marijuana in the future. When asked why, Applicant responded, "I don't need to. That's in my past and that's where let's leave it." (Tr. 43.) He also denied any purchase of marijuana as he grew older. He worked in the restaurant industry, primarily as a bar manager or bartender, for about 20 years after college. Drugs were always around so "the need to purchase was never really there, it was just kind of given." (Tr. 40.)

Applicant was working at a café on September 18, 2003, when he was arrested for misdemeanor possession of marijuana. He had been given some marijuana by a customer as his tip shortly before the police raided the premises, and he was arrested along with some others. He was convicted, fined, and assessed court costs. (GE 2; Tr. 40-41.)

In March 2013, Applicant and his spouse met another couple for dinner at a local casino. Applicant consumed one drink before dinner, split a bottle of wine at dinner, and had another drink before leaving. He and his wife had an argument while in route home. To "cool off," Applicant pulled the car to the roadside and exited the vehicle. A police officer stopped and had Applicant submit to field sobriety tests. Applicant believed he passed them, but he was arrested for DWI. Applicant refused to take a breathalyzer. He was found guilty of refusing to submit to the breathalyzer and ordered to complete an alcohol education course and fined. With court costs, his fine, and attorney fees, the offense cost him about $3,000. (GE 2; Tr. 51.) His driver's license was ordered suspended for six months, although Applicant testified that he applied for permission to drive to and from work, which was granted. He denies any problem with alcohol. (Tr. 50.)

In July 2015, Applicant resigned from his then employment as a bartender. He had been with that employer for six or seven months when the business was sold, and the new owner informed him that he was being replaced with the owner's son. (GE 1.) The loss of that job led Applicant to cease his marijuana use.[2] (Tr. 62.) In August 2015, Applicant began working as a laborer for a builder. (GE 1.)

Applicant applied for a position with a defense contractor, and on February 11, 2016, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an e-QIP. He responded affirmatively to police record inquiries concerning any arrests or criminal charges in the last seven years and disclosed his March 2013 DWI, indicating that the charge was expunged from his record. However, he answered "No" to a police record inquiry concerning whether he had ever been charged with an offense related to alcohol or drugs. Applicant also answered "No" to inquiries concerning any illegal use of a drug or controlled substance in the last seven years and any involvement in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance in the last seven years. (GE 1.) Applicant began working for a defense contractor on March 7, 2016. (GE 2.)

On July 1, 2016, Applicant was interviewed by the OPM investigator, in part about his March 2013 DWI arrest. After indicating that the DWI was his only offense, Applicant was then confronted with his arrest for possession of marijuana in September 2003. He explained that he had not listed the arrest because he thought he only had to list offenses that occurred within the last seven years. Applicant then volunteered that he had previously been arrested for DWI in 1992 after consuming a "significant amount" of alcohol and again in 1996 after drinking about four beers and a shot of hard liquor at a bar. In view of his arrest for marijuana possession, he was then asked about his involvement with illegal drugs. Applicant related that he used and purchased marijuana between the ages of 14 and 40 or 41. He indicated that he stopped using marijuana at age 41 because he decided

[2] Applicant testified that his spouse suggested that he use melatonin as a sleep aid in lieu of marijuana "a couple years ago." He admitted that it worked for him, but "marijuana had worked and there was a time when [he] didn't need to change that, but then there came a time to change that so [he] did." When asked about the catalyst for the change, he indicated that after the restaurant closed, he could not find a job in the industry that gave him the benefits or income that he needed to support his family. (Tr. 62-62.)

he no longer needed to continue using it. Applicant denied any use of other illegal substances and any intention of future use as he realized that illegal drug involvement is not allowed of defense-contractor employees. Applicant indicated that he had not disclosed his marijuana use on his e-QIP because he thought it would prevent him from getting a job with his defense-contractor employer. (GE 2.)

Applicant was given an opportunity to review and correct a summary of his OPM interview. When he responded on February 15, 2017, he made a couple of corrections about his DWI offenses, claiming that he did not refuse a breathalyzer when he was arrested at age 17 for DWI and that he has no recall of refusing to take a breathalyzer when he was arrested in 1996. He made no corrections to his account of his drug involvement or to his stated reason for responding negatively to the drug-use inquiry on his e-QIP. (GE 2.)

Applicant now cites his attention deficit disorder, diagnosed in August 1994 just before his junior year in college (AEs A-B), as a possible cause of his inaccurate response to the drug inquiry on his SF 86. He had problems completing tests on time and understanding questions in school. (Tr. 29.) When asked whether his reading comprehension issues were a factor in his e-QIP omission of his drug use, Applicant responded, "It may have, yes." (Tr. 45.)

Applicant provided an August 1994 evaluation to determine his eligibility for academic support services for students with special needs. He showed abilities ranging from the high average to the very superior range of intellectual functioning, but he was determined eligible for supportive services at the college level as a student with a specific learning disability in the area of auditory processing. He showed strengths in tasks measuring social judgment and reasoning, short-term memory, and abstract reasoning but weakness on tasks measuring long-term recall of isolated facts and auditory processing in his head without the aid of paper and pencil. It was felt that he could benefit from having tests read to him to insure that he understood them. (AE A.)

When asked on direct examination about his negative responses to the drug inquiries on his e-QIP, Applicant responded as follows:

> I'm not sure I understood the timeline. I know it is an extensive questionnaire. There were lots of questions, and some of them were a little hard to understand, and I answered that one incorrectly. It was not an intention to lie or to deceive, which is why in the interview afterwards with the agent, I told him. When he asked about anything in my past, I told him. So, I wasn't trying to hide anything. I believe I just answered it incorrectly. (Tr. 44.)

Regarding his e-QIP denial of any illegal drug purchases in the last seven years, Applicant explained, "I understand that now, that I misunderstood the question. I think I just saw maybe purchase, I just saw that and answered no, because I hadn't purchased it in a very long time." (Tr. 46.) He denied any purchase of marijuana in the seven years preceding his completion of the e-QIP in February 2016. (Tr. 57.) He responded that the drug was

provided to him each time at "bars, places of employment." He denied smoking the drug while at work. (Tr. 57.) He offered no explanation for why he admitted that he purchased marijuana from the ages of 14 to 41 when he answered the SOR.

When confronted about his admission to the OPM investigator that he had not listed his drug involvement on his e-QIP because he thought it would prevent him from obtaining employment with a defense contractor, Applicant claimed that he could not recall the words that he used, but he did not intend to falsify. He then indicated that he did not understand the question. Yet he added, "If that's what I said, then there's no denying that I said it." Applicant further testified:

> I believe I said that I knew use would not allow me to get that kind of job or those jobs, that's why I had stopped because I couldn't anymore to get the type of employment I needed that would supplement my family to live and be able to provide what I needed. (Tr. 55-56.)

Applicant has ongoing contact with his mother-in-law, who, he asserts without corroboration, has a medical marijuana card that authorizes her to legally use marijuana for her post-traumatic stress disorder. He testified that he has no choice but to continue to associate with his mother-in-law. He denies any present association with other persons who use marijuana or other illegal drug. (Tr. 47-48.) He testified that he is not around his mother-in-law when she smokes marijuana. (Tr. 57.)

Applicant collected unemployment compensation until October 2017 while looking for work. (Tr. 42.) In January 2018, another government agency determined that Applicant was eligible to hold a hazardous materials endorsement. He obtained a transportation worker credential that is valid to January 2023. (AE C.) After passing a required drug screen, he obtained his commercial driver's license. As of February 2018, he was applying for employment at various trucking companies. (Tr. 35-37.)

Character reference

A general foreman, who was a supervisor during Applicant's employment for the defense contractor, testified that he had an opportunity to observe Applicant's work on a daily basis. He gave Applicant his assignments, checked on his progress, and evaluated his performance for raises. Applicant exhibited no behavior that would be a breach of security. He was a very good worker and well-liked by his co-workers. Applicant was "a go-to guy" for them. He performed work of high quality that did not need to be reworked and was wanted as a partner because he could be counted on to fully commit to the job. The general foreman is aware that Applicant has acknowledged using marijuana in the past and that Applicant had been arrested for DWI. He has no concerns about Applicant's ability to perform his job or maintain security. He believes it would be "a loss" for the company if Applicant does not return to the job. Applicant made "a very good lasting impression" among his co-workers. (Tr. 16-23.)

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 set forth 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 for some 27 years, twice a week from his teens into his 30s when it declined somewhat. He now asserts that his use became approximately five times a year. He purchased marijuana for his personal consumption at a cost to him of approximately $30 a month. He told an OPM investigator that he had purchased his marijuana from various friends and acquaintances over the years, but he did not provide a date for his last purchase. He now claims that he has not purchased marijuana in a long time, and not within seven years of his e-QIP. Disqualifying conditions AG ¶ 25(a), "any substance misuse (see above definition)," and AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," apply.

AG ¶ 26(a) provides for mitigation when the drug involvement and substance misuse "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." Applicant's marijuana use began declining in the mid-2000s. However, it occurred too many times and over too many years to reasonably apply AG ¶ 26(a).

AG ¶ 26(b) applies when an individual acknowledges his or her drug involvement and has no intention of future drug activity:

> (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's drug involvement predates his application for a DOD security clearance and his employment with a defense contractor. During his interview with the OPM investigator on July 1, 2016, he indicated that he had stopped using marijuana at age 41. He either did not recall or would not provide a specific date. He now cites the loss of his bartender job, which occurred in July 2015, and his inability to find employment in the restaurant industry which would give him the income needed to support his family, as the situations that led him to stop using marijuana. His abstinence of two plus years as of his February 2018 security clearance hearing is viewed favorably, but it is too brief to constitute "an established pattern of abstinence" when compared to his 27 years of admitted enjoyment of marijuana. As for the concerns raised by his association with persons who use illegal drugs, Applicant told the OPM investigator that he had used marijuana with family and friends. He admitted the allegation when he answered the SOR. However, he testified that his association with known drug users is now limited to his mother-in-law, who apparently uses marijuana for medical purposes.[3] It would be unreasonable to expect Applicant to terminate his relationship with his mother-in-law. However, he can be expected to avoid situations where she is using drugs. In that regard, Applicant's uncorroborated testimony is that he is not around when his mother-in-law uses marijuana.

AG ¶ 26(b)(2) does not apply because of the disparate circumstances under which he used marijuana. Applicant told the OPM investigator that he used marijuana with family and friends, and that he enjoyed the drug's calming effect. At his hearing, he testified that, as he got older, he used marijuana to help him sleep. He claims he used it only on a handful of occasions per year. His admission of July 2016 that he "spent approximately $30 per month on purchasing MJ (marijuana) over the years" is not easily reconciled with his current testimony of limited use near the end and no purchases in a long time, including not in the seven years before his e-QIP. When he responded to the SOR, he admitted the allegations of use and purchase of marijuana from the ages of 14 to 41. Applicant did not provide the signed statement of intention to abstain needed for AG ¶ 26(b)(3), although he did indicate in July 2016 that he has no intention of using marijuana or any other illegal drug in the future because he realized illegal drug use is prohibited by defense-contractor employees. Even assuming the significant decline in his marijuana use starting in the mid-2000s, his many years of drug involvement, including in some circumstances that were not fully explained, makes it difficult to conclude that his drug use will not reoccur. He provided no corroboration from family or friends of his change to a drug-free lifestyle, and he has not always been fully forthright about his drug involvement.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

[3] Applicant testified about his association with his mother-in-law that she has a medical marijuana card so it's not illegal for her to use marijuana. He denied any knowing association with anyone else who uses marijuana or any other illegal substance. His counsel then moved for his SOR respond to be changed to a denial to the allegation, which I granted. His counsel also stated, however, "The admission at the time was accurate." (Tr. 48.)

> 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 investigations or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:
>
> (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
>
> (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant certified to the accuracy of a February 2016 e-QIP on which he responded negatively to inquiries concerning any illegal drug use in the last seven years and any illegal drug purchases in the last seven years. Applicant denies any intention to deceive, citing his problem understanding at times what is being asked of him on written forms. The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true. To raise security concerns under Guideline E, the answers must be deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record as a whole. *See, e.g*. ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017); ISCR Case No. 10-04821 (App. Bd. May 21, 2012). At his hearing, Applicant asserted that he was not sure about the timeline and that some of the questions on the e-QIP were hard to understand. However, when asked by the OPM investigator about his failure to report his marijuana use on the form, he did not indicate any problem with reading comprehension or misunderstanding of the illegal drug inquiries. Instead, he explained that he failed to list his marijuana use because he thought it would prevent him from getting his job with the defense contractor. Applicant clearly knew what was being asked, and he acted in his self-interest. His response to the illegal drug use question was knowingly false.

As for his negative response to the purchase inquiry, Applicant testified at his hearing that he answered "no" because he had not purchased marijuana "in a very long time." Stated otherwise, his marijuana use was outside the scope of the inquiry so it was not required to be reported. The problem with this explanation is that it undercuts his testimony that he did not understand what was being asked. It also contradicts his Answer to the SOR wherein he admitted that he had purchased marijuana as alleged from the age of 14 to at least the age of 41. In all likelihood, he responded negatively to the drug purchase question because of his concern that he would be denied employment with a

defense contractor. His knowing and intentional omissions of his marijuana use and marijuana purchases from his e-QIP establish AG ¶ 16(a), which provides:

> (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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Concerning Applicant's marijuana use, purchases, and his arrest for illegal drug possession (SOR ¶ 2.e), 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). Separate from the risk of physiological impairment associated with the use of a mood-altering substance, which is a Guideline H concern, Applicant knowingly disregarded the laws prohibiting the use, possession, and purchase of marijuana for many years.

Applicant's arrest for DWI in March 2013 also raises some concern about his judgment. He consumed two drinks and also shared a bottle of wine before driving, and he was arrested after taking field sobriety tests that he apparently failed. The record evidence falls short of proving legal intoxication sufficient to sustain a DWI conviction, but his driving after drinking in quantity, particularly given his previous DWI arrests in 1992 and 1996,[4] raises concerns about his judgment.

Applicant's many years of cavalier disregard of the drug laws and his driving while under the influence of alcohol implicate AG ¶ 16(d)(3), which provides:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the 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.

[4] Neither of his two previous arrests for DWI were alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

> (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Applicant cites his disclosure of his drug involvement during his subject interview of July 2016 as proof that he did not knowingly falsify his e-QIP ("It was not an intention to lie or to deceive, which is why in the interview afterwards with the agent, I told him. When he asked about anything in my past, I told him."). AG ¶ 17(a) provides for mitigation when "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." The interview was held in July 2016 and was perhaps his first opportunity to correct the record. While his disclosures may have been reasonably prompt, it was not without confrontation. After discussing his listed March 2013 DWI arrest, Applicant indicated that it was his only offense. It was only after he was confronted about his 2003 arrest for marijuana possession that he admitted using and purchasing marijuana. His rectification was not completely voluntary or without prompting.

AG ¶ 17(c) partially applies. Applicant's March 2013 alcohol-related offense appears to have been an isolated incident in recent years. AG ¶ 17(c) provides for mitigation under the following circumstances:

> (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.

Almost 15 years have passed since Applicant's marijuana possession offense, but it cannot be viewed in isolation from his 27 years of marijuana use, which cannot reasonably be termed as infrequent or minor. Likewise, AG ¶ 17(c) does not apply in mitigation of his e-QIP falsification in February 2016, which violated 18 U.S.C. § 1001 and raises serious doubts about whether his representations can be relied on.

Perhaps more significantly from a trustworthiness standpoint going forward, Applicant's ongoing failure to acknowledge the intentional nature of his e-QIP falsifications reflects a lack of reform. Applicant has shown some rehabilitation of his drug involvement by not using any marijuana since approximately mid-2015. However, for the reasons noted under Guideline H, I cannot yet conclude that his drug involvement is unlikely to recur. As for his March 2013 DWI arrest, Applicant does not appear to have an alcohol problem that could present an unacceptable risk with regard to possible recurrence of similar poor judgment. AG ¶ 17(d) is only partially established. It 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant is also alleged to associate with individuals who use illegal substances. Applicant admitted the allegation, so as of the date of the issuance of the SOR in April 2017, he was apparently still associating with persons who use illegal drugs, such as marijuana. However, as of his hearing, he claimed no association with anyone who uses an illegal drug apart from his mother-in-law, who apparently has a medical marijuana card that

allows her to legally use marijuana under state law. The federal government does not recognize the use of medical marijuana as legal. Even so, Applicant's relationship with his mother-in-law does not raise security concerns apart from her being a possible source of marijuana for him to relapse into substance use. No evidence was presented showing that she uses marijuana around him or has been a source of the drug for him. AG ¶ 17(g) has some applicability. It provides:

> (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.

Whole-Person Concept

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).[5] Some of the factors in AG ¶ 2(d) were addressed under Guidelines H and E, but some warrant additional comment.

Applicant's desire to provide a stable income for his family, which the defense-contractor job provided, was a catalyst in his decision to stop using marijuana after some 27 years. According to his now former supervisor, Applicant exhibited no behavior at work that would be a breach of security. He was a very good worker and well-liked by his co-workers. Applicant was "a go-to guy" for them. He performed work of high quality that did not need to be reworked and was wanted as a partner because he could be counted on to fully commit to the job.

Yet 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). Of special concern in this case is Applicant's lack of candor at times about his drug involvement. The Government must be able to rely on those persons granted 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 grant him eligibility for a security clearance.

[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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.d:	For Applicant
Subparagraph 2.e:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge