



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



In the matter of: )  
)  
) ISCR Case No. 14-05244  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

03/18/2016

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant illegally used and purchased controlled substances, primarily marijuana, between December 2007 and February 2013. He declined to reveal the identities of the persons with whom he used drugs or from whom he bought drugs, knowing that a failure to fully cooperate could negatively affect his security clearance. He does not currently intend to abuse any drug in the future, but he risks his abstinence by continuing to be in the presence of friends and roommates when they are smoking marijuana. Clearance is denied.

**Statement of the Case**

On December 3, 2014, 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 his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR allegations on January 20, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, 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 October 26, 2015, I scheduled the hearing for November 17, 2015.

I convened the hearing as scheduled. Before the introduction of any evidence, SOR ¶ 1.h was amended without objection to allege that Applicant used the prescription drug Prozac without a prescription in February 2008. Two Government exhibits (GEs 1-2) were admitted into evidence without objection at the hearing. Department Counsel's letter forwarding discovery to Applicant on September 10, 2015, was marked as a hearing exhibit (HE 1) for the record, but was not admitted as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on December 2, 2015.

### **Summary of SOR Allegations**

The amended SOR alleges under Guideline H and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant used and purchased marijuana (SOR ¶¶ 1.a, 1.b) on multiple occasions from December 2007 to at least February 2013; sold or distributed marijuana on multiple occasions (SOR ¶ 1.c); used and purchased psilocybin mushrooms on multiple occasions (SOR ¶¶ 1.d, 1.e); used and purchased LSD once in October 2010 (SOR ¶¶ 1.f, 1.g); used the prescription drug Prozac without a prescription in February 2008 (SOR ¶ 1.h); abused Adderall on multiple occasions between January 2010 and April 2013 by exceeding his prescribed dosage (SOR ¶ 1.i); continues to possess drug paraphernalia (SOR ¶ 1.j); may use marijuana in the future (SOR ¶ 1.k); and that he used illegal drugs or misused prescription drugs after becoming employed by a DOD contractor (SOR ¶¶ 1.l and 2.c). In addition, Applicant is alleged under Guideline E to have refused to provide information when requested during a November 2013 interview with an authorized investigator for the Office of Personnel Management (OPM) about the persons with whom he used illegal drugs and from whom he purchased illegal drugs (SOR ¶ 2.b). Applicant admitted the allegations when he answered the SOR. Concerning whether he may use marijuana in the future (SOR ¶ 1.k), Applicant responded:

I understand that it is illegal to use marijuana and that it is not appropriate for me to do so, especially considering the work I do. However, it may become legalized someday, and I will retire at some point in my life. Once that happens, I might use marijuana again.

At his hearing, he offered the following in clarification of his future intent: "I do not intend on breaking the laws and rules."

### **Findings of Fact**

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

Applicant is a 24-year-old engineer with a bachelor's degree awarded in May 2013. He started as a summer intern with his current employer, a defense contractor, in June 2011. He was a part-time employee from August 2011 until June 2013, when he became a full-time employee. (GE 1; Tr. 41.)

Applicant began using marijuana in high school. From December 2007 until August 2009, when he started college, Applicant smoked marijuana on average two to three times a week. During his junior year of high school, Applicant took an antidepressant, which he believes was Prozac, on one occasion around February 2008. He accepted an offer of the drug from a friend, who had a valid prescription, because he wanted to see what its effects would be on him. (GEs 1, 2; Tr. 26.) Applicant's parents learned that Applicant used marijuana early on, when he was still in high school. His father found some drug paraphernalia that belonged to Applicant and his sister. (Tr. 31.) His parents advised him to stop using marijuana and to focus on his academics. (Tr. 34.)

Applicant found new friends in college who used marijuana. (Tr. 34.) Applicant continued to use marijuana from August 2009 to February 7, 2013, at night or on the weekends. (Tr. 33.) The frequency of his marijuana use varied significantly, depending on his academic workload. He used the drug a few times a week on average, but also multiple times a day on occasion. He also ingested baked goods containing marijuana four or five times between September 2010 and January 2013. Applicant purchased marijuana between January 2008 and January 2013 on average a few times a month from an acquaintance or a friend. "Maybe a couple of times a month at the time," he shared small quantities of "his stash" of marijuana with his friends or sold some of his marijuana to them at no profit. They were all using the drug recreationally, and he "just wanted [his] friends to have a good time." (GE 1; Tr. 24, 35.) Applicant used psilocybin (hallucinogenic or psychedelic mushrooms) four times between September 2010 and January 2012. He purchased psilocybin three times during this period for his own consumption. Around October 2010, Applicant tried LSD once out of curiosity. (GEs 1, 2.) He purchased the LSD for \$30. (GE 2.) Applicant knew the people from whom he purchased the illegal drugs that he used. (Tr. 25.)

Applicant has had a valid prescription for Adderall since early 2003. (GE 1; Tr. 28.) Approximately twice a month from January 2010 to April 2013, Applicant abused his prescription by taking more than his prescribed dose to help him focus on his studies. Sometime during the summer of 2010, he took multiple extra doses of his prescribed dosage on one occasion to see whether he experienced effects similar to what had been reported by others who used the drug recreationally without a prescription. (GEs 1, 2; Tr. 26-27.) One night in February 2015, he took one extra dose of his prescribed Adderall because he needed to complete work for his employer. (Tr. 28.)

There is no evidence that Applicant needed a security clearance while working for his employer as a student intern during the summer of 2011 or as a part-time employee while pursuing his degree from August 2011 to May 2013. Around February 2013, Applicant decided to stop his illegal drug involvement because he wanted to focus on school and obtaining a job. In June 2013, he became a full-time employee. (GE 1.)

On October 2, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP). In response to whether he had illegally used any drugs or controlled substances in the last seven years, Applicant disclosed his use and purchase of marijuana between December 2007 and February 2013. Applicant responded affirmatively to whether he intended to use the drug in the future and stated:

To clarify, I do not intend to smoke marijuana while working for [his employer omitted], especially if I am granted a security clearance. In my senior year of college I decided I needed to focus on school and getting a job, so I stopped smoking. My career is now my top priority. However, it is possible that I will someday choose to smoke marijuana again, for example, once I have retired.

Applicant answered "Yes" on his QNSP to whether he had been involved in the illegal purchase of any controlled substance in the last seven years. He disclosed that he purchased marijuana for recreational use from approximately January 2008 to January 2013. While he never bought marijuana with the intent to sell, there were some occasions where he sold some of his marijuana to friends at no profit. Applicant denied any intent to purchase marijuana in the future as long as he works for his employer and especially if granted a security clearance. Should circumstances change and he someday choose to smoke marijuana, he would purchase it, but only through legal means. Applicant denied any intent to use or purchase LSD or hallucinogenic mushrooms in the future. In response to an QNSP inquiry concerning any misuse of a prescription drug in the last seven years, Applicant listed his one-time experimentation with non-prescribed Prozac in February 2008 and his abuse of his own prescription for Adderall from January 2010 to April 2013, primarily when he was struggling to focus on his academics. (GE 1.)

On November 18, 2013, Applicant was interviewed by an authorized investigator for the OPM. Applicant indicated that he would not use any illegal drug while holding a security clearance or while possessing a security clearance. However, he admitted that he would use marijuana in the future if it is legalized and he is retired. Applicant was asked about the circumstances of his marijuana use, including who else was present when he used the drug. Applicant responded that he had used the drug in his home, but he declined to provide the names of others involved in his marijuana use and purchases, even after he was informed by the investigator that he might not be granted a security clearance if he did not provide the requested information. About his psilocybin use, Applicant stated that he used the drug four times at a friend's home, but he declined to name the friend. Similarly, Applicant would not name the acquaintance from whom he obtained the LSD that he used in October 2010. (GE 2; Tr. 25.)

In June 2014, the DOD CAF asked Applicant to provide a detailed history of his use and purchases of illegal drugs, including marijuana, and of his illegal use of a prescription drug or misuse of a prescribed drug. On July 8, 2014, Applicant provided details consistent with his QNSP admissions concerning his involvement with marijuana, LSD, hallucinogenic mushrooms, non-prescribed Prozac, and his misuse of his prescribed Adderall medication.

As for his future intent, Applicant stated, "I have absolutely no intention of using drugs while holding a security clearance or working at [employer name omitted]. Aside from that, I may choose to use marijuana at some point in the future." Applicant admitted that he still possessed some paraphernalia that he had used for smoking marijuana and a grinding tool to break it up. Applicant also responded affirmatively to whether he associates with persons who use illegal substances or frequents places where he has reason to believe drugs are being used, and he added, "I have friends who use marijuana. I visit their houses/apartments a few times a month. I also allow friends to use marijuana at my apartment, so I am technically there every day." (GE 2.)

Applicant was provided a copy of the report of his November 2013 interview with the OPM investigator for review and comment. He noted a few corrections, including that he did not use marijuana consistently at the rate of two to three times a week. He clarified that he had estimated the frequency and amounts of his marijuana use and the dates of his LSD and hallucinogenic mushroom uses. He indicated that he definitely stopped using marijuana in February 2013. About his intent regarding any future marijuana use, Applicant added, "I might use marijuana before retirement/legalization, but I more likely will afterward." (GE 2.)

Applicant enjoys his work for the defense contractor. Citing his maturation over the two plus years of his full-time employment, Applicant came to understand that he needed to stop using illegal drugs; that it was important for him to continue working for his employer so that he can contribute on projects that benefit national security. (Tr. 19, 23.) He does not intend to use marijuana in the future. (Tr. 28.) As of January 20, 2015, Applicant had disposed of or given his drug paraphernalia to others who used drugs. (Answer; Tr. 20, 25.) Applicant has not used any illegal drug since his last use of marijuana in early February 2013. He continues to maintain friendships with persons who use marijuana. He has rented an apartment with two college friends since September 2013, knowing that both friends use marijuana, including at times in their apartment. Applicant's friends use marijuana in his presence whenever and wherever they feel like it, which was around twice a week as of November 2015. (Tr. 20-21, 26, 28-30.) Applicant informed his friends that he has ceased his use of marijuana for his job and for legal reasons. (Tr. 31.) He understands that it is in his best interest to obey the law. His employer has a drug policy which Applicant believes prohibits illegal drug use by its employees. Applicant is not concerned about being in the presence of others while they are using marijuana. He does not feel that he is affected by their use. (Tr. 24, 26.) Applicant denies ever being pressured to use marijuana by his roommates. (Tr. 30.)

Applicant was screened for illegal drugs in 2011 before he started with the defense contractor as a student intern. The drug screen was negative for all substances tested because Applicant had temporarily stopped using marijuana, knowing that he was going to be tested. (Tr. 22-23.) Applicant admits that he used marijuana while working as a student intern and as a part-time, on-call employee for the defense contractor, despite knowing that illegal drug use was not condoned by his employer. (Tr. 23.) He never used it just before reporting for work. (Tr. 33-34.) Applicant testified, with no evidence to the contrary, that he no longer takes extra doses of Adderall to focus at work. (Tr. 27.)

At his hearing, Applicant indicated upfront that he would not provide the names of any of his associates who use marijuana other than to indicate that none of them works for his current defense contractor employer. He never used any illegal drug with a co-worker. (Tr. 21.) Applicant does not want to put others in an adverse position because of his decision to use illegal drugs. (Tr. 25-26.)

With one exception, Applicant's co-workers are unaware of his past drug involvement. Applicant confided in one individual at work, who advised him how to explain his situation when he completed his QNSP. (Tr. 31-32.) It is unclear what his parents know about his drug involvement after high school.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential,

rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for drug involvement is articulated in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

Under AG ¶ 24(a), drugs are defined as “mood and behavior altering substances,” and include:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
- (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” Disqualifying condition AG ¶ 25(a), “any drug abuse,” applies because Applicant used marijuana from December 2007 to February 7, 2013. He experimented with LSD once around October 2010 and with a non-prescribed antidepressant (likely Prozac) once in approximately February 2008. He took psychedelic mushrooms four times between September 2010 and January 2012. Moreover, he abused his own prescription for Adderall twice a month from January 2010 to April 2013 to help focus on his studies, and once in the summer of 2010 to experience the effect of multiple doses. At his hearing, it was revealed that he took an extra dose of his Adderall one evening in February 2015 so that he could complete a task for his employer.

Disqualifying condition AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” is also established. Applicant purchased marijuana a few times a month from January 2008 to January 2013, psilocybin three times between September 2010 and January 2012, LSD once in 2010, and Prozac without a prescription in 2008. Applicant did not sell any marijuana for profit, but he was compensated for the marijuana that he provided to his friends. Applicant’s father found drug paraphernalia belonging to Applicant when Applicant was still in high school. As of July 2014, Applicant possessed marijuana

paraphernalia for smoking as well as a grinding tool used on illegal drugs. While he testified credibly that he has disposed of or given away his drug paraphernalia to others who use illegal drugs, he continued to possess drug paraphernalia while working as a full-time employee for a defense contractor.

Concerning the allegation that Applicant may use marijuana in the future, AG ¶ 25(h), “expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use,” must be considered. While Applicant has unequivocally denied any intent to use LSD, psilocybin, or a non-prescribed drug in the future, he responded affirmatively on his QNSP to whether he intended to smoke marijuana in the future, albeit with some clarification. He denied any intent to smoke marijuana while working for his employer especially should he be granted a security clearance. In July 2014, Applicant reiterated that he had no intent of using drugs while holding a security clearance or working for his employer, but he admitted that he may choose to use marijuana in the future, possibly before retirement/legalization but more likely afterward. In response to the SOR, Applicant indicated in January 2015 that he may use marijuana again if it becomes legal and after he retires. At his November 2015 hearing, Applicant testified that he does not intend to use marijuana in the future. (Tr. 28.) Applicant’s ongoing association with friends (including his roommates) who smoke marijuana could be taken as evidence that he is not clearly committed to discontinuing drug use, but he has not used any marijuana since February 7, 2013. His abstention is consistent with his intent not to use marijuana.

Applicant’s uses and purchases of LSD, of a non-prescribed antidepressant, and of psilocybin were neither recent nor frequent. AG ¶ 26(a) provides for mitigation where drug involvement was so long ago, so infrequent, or so aberrational that it does not cast doubt on a person’s current reliability, trustworthiness, or judgment:

(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.

Applicant’s abuses of marijuana and of Adderall are contrasted by their frequency and recency. Applicant used marijuana with varying frequency, which he estimates averaged twice a week. He intentionally exceeded his prescribed dose of Adderall twice a month on average in college, and he took an extra dose of Adderall as recently as February 2015. AG ¶ 26(a) cannot reasonably apply in mitigation of this drug involvement.

Applicant’s un rebutted testimony is that he not used any illegal drug since he last used marijuana on February 7, 2013, and that he no longer intentionally exceeds his dose of Adderall. Under AG ¶ 20(b), “a demonstrated intent not to abuse any drugs in the future” may be shown by the following:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has not used or purchased LSD, psychedelic mushrooms, or a controlled antidepressant like Prozac without a valid prescription in the last three years. It is unclear whether Applicant has disassociated himself from the persons that were involved in his abuse of those drugs, but there is no evidence that he continues to socialize with any person who abuses those drugs. Neither AG ¶ 26(b)(1) nor AG ¶ 26(b)(2) mitigates Applicant's marijuana use, however. He has resided with two college friends in an apartment since September 2013. His roommates and other friends continue to smoke marijuana, including in his presence twice a week. Applicant cannot be held responsible for his roommates' marijuana use, but he risks his own abstinence on a regular basis. As for his abuse of prescribed Adderall, AG ¶¶ 26(b)(1) and 26(b)(2) have little impact, given Applicant decided to take excessive doses of his own medication. He misused his Adderall in February 2015, after he was on notice from the DOD that his misuse of the prescription was of concern to the DOD. A lengthier period of abstinence is warranted before I can confidently conclude that he will not again abuse his prescription for Adderall or use marijuana. The drug involvement concerns are not fully mitigated.

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

The security 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance 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, and cooperation with medical or psychological evaluation; 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.

The DOHA Appeal Board has held that security-related conduct can be alleged 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's illegal drug involvement, which was cross-alleged under Guideline E (SOR ¶ 2.a) has negative implications for his judgment and reliability under AG ¶ 15. However, given that his drug activity is more appropriately addressed under Guideline H, the primary concern related to his drug activity under Guideline E is that he continued to use illegal drugs while employed first as a student intern and then as a part-time employee of the defense contractor (SOR ¶ 2.c). Applicant abstained from illegal drugs intentionally during the hiring process so that he could pass a drug screen. He resumed his marijuana use knowing that it was not condoned, if not prohibited outright, by his employer. His disregard for the drug laws raises concerns about his judgment under AG ¶ 16(d), which provides as follows:

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

(3) a pattern of dishonesty or rule violations.

A separate Guideline E concern is also raised in that Applicant refused to name the persons with whom he used drugs and from whom he bought drugs. Applicant would not provide the information to the OPM investigator or at his hearing, even after being advised that it could adversely impact his security clearance eligibility. The Government has a legitimate expectation that persons seeking classified access will provide full and frank responses to reasonable inquiries. The nature of the inquiry was lawful in that persons with knowledge of Applicant's drug use could be sources of verification or of discrepant information that could warrant expanding an investigation. Under Guideline E, a refusal to respond to a lawful inquiry would normally result in an unfavorable determination. However, Applicant's motive does not appear to have been to conceal salient details from the DOD about his drug involvement. His accounts of his own drug activity have been credible and consistent. He did not engage in conduct that would implicate AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative." He did not want other persons to be adversely affected by the consequences of his conduct. His desire to avoid trouble for his friends does not justify his refusal to provide requested information, although his failure to provide the information is not viewed as serious as had he refused to discuss his own drug use or provided inconsistent accounts of his drug involvement.

Disqualifying condition AG ¶ 16(e) is pertinent because only one co-worker is aware that Applicant used illegal drugs. AG ¶ 16(e) provides:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant testified that his parents know about his drug use. His father found some drug paraphernalia that belonged to Applicant and his sister when Applicant was still in high school. While it is unclear what his parents know about his use in college, there is no evidence that Applicant has tried to conceal the information from his parents.

There is also a reasonable basis to apply disqualifying condition AG ¶ 16(g), "association with persons involved in criminal activity." Applicant admitted at his hearing that some friends, including his two roommates, are marijuana users who continue to smoke the drug in his presence approximately twice a week. Marijuana use remains illegal under federal law.

Applicant's candid disclosures to the DOD about his own drug activity mitigate the vulnerability concerns under AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." He has informed at least one co-worker about his drug involvement, and given the extent of his disclosures, he is not seen as likely to conceal or deny his drug involvement if it became known at work.

None of the other mitigating conditions in AG ¶ 17 are fully established. Applicant's refusal to provide information requested by the OPM investigator is not mitigated under AG ¶ 17(b), especially where he indicated upfront at his security clearance hearing that he would not name the persons involved in his drug use. AG ¶ 17(b) provides:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant's disregard for the drug laws was neither "so minor" nor "so infrequent" to implicate 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." Applicant's cessation of drug use is some evidence in reform under AG ¶ 17(d):

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

At the same time, it is difficult to conclude that he is not likely to again engage in conduct that would be in violation of federal law should he relapse into marijuana use. He was around marijuana twice a week as of November 2015, and he sees no problem with his friends and roommates using marijuana in his presence whenever they want. AG ¶ 17(g), “association with persons involved in criminal activity 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,” cannot apply under the circumstances. Personal conduct concerns persist.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>1</sup> Applicant’s illegal drug involvement during high school and college is explained in part by his youth and the college environment. His consistent accounts about his drug activity allow me to accept as credible his abstinence from marijuana since February 2013 and last misuse of his Adderall prescription in February 2015. His candor about his own drug involvement minimizes but does not completely overcome the security concerns raised by his refusal to provide the names of other persons who used drugs with him or sold drugs to him. Applicant has not shown the sound judgment required of classified access when he continues to be around friends when they are using drugs; when he still will not divulge the information requested by the OPM investigator, knowing that it could cost him a clearance; when he possessed drug paraphernalia long after his reported last use of marijuana; and when he knowingly took an extra dose of Adderall in 2015.

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 (9<sup>th</sup> Cir. 1990.). For the reasons noted above, based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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<sup>1</sup>The factors under AG ¶ 2(a) are as follows:

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

Paragraph 1, Guideline H:           AGAINST APPLICANT

Subparagraphs 1.a-1.c:           Against Applicant

Subparagraphs 1.d-1.h:           For Applicant

Subparagraph 1.i:                Against Applicant

Subparagraph 1.j:                Against Applicant

Subparagraph 1.k:                For Applicant

Subparagraph 1.l:                Against Applicant

Paragraph 2, Guideline E:           AGAINST APPLICANT

Subparagraphs 2.a-2.c:           Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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Elizabeth M. Matchinski  
Administrative Judge