DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 17-03663
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2018

_____

Decision

_____

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana approximately once every three weeks with friends from 2008 to 2014. He was cited for possession of drug paraphernalia in January 2016 and for possession of marijuana in August 2016, but claims neither the paraphernalia nor the marijuana belonged to him. In February 2017, he was arrested for evading responsibility in an accident causing damage. Applicant has yet to show adequate reform. Clearance is denied.

Statement of the Case

On November 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline J, criminal conduct. The SOR explained why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On January 19, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 20, 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 February 27, 2018, I scheduled a hearing for March 22, 2018. With the agreement of the parties, I rescheduled the hearing for March 20, 2018.

I convened the hearing as rescheduled. Three Government exhibits (GEs 1-3) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. A February 14, 2018 letter forwarding discovery of the then proposed GEs to Applicant, a March 9, 2018 email to Applicant, and a list of the GEs were incorporated in the record as hearing exhibits I, II, and III respectively, but not admitted as evidence. Applicant and three witnesses testified, as reflected in a transcript (Tr.) received on March 28, 2018.

I held the record open initially for three weeks for post-hearing submissions from Applicant. On April 2, 2018, Applicant submitted letters from an Employee Assistance Program (EAP) counselor (AE C) and from the coordinator for an anger management program (AE D), which were received in evidence without any objections. On April 6, 2018, Applicant submitted a revised letter from the EAP counselor (AE E), which was admitted in evidence.

On July 11, 2018, Applicant submitted an email indicating that he had just had a court date and that "everything is good." I informed Applicant that, in light of his correspondence regarding the incident alleged in SOR ¶ 2.b, I would consider reopening the record for any court record or other document showing the current status of the case. Applicant responded that he had no further documents to submit.

Findings of Fact

The SOR alleges under Guideline H and cross-alleges under Guideline J (SOR ¶ 2.a) that Applicant used marijuana from approximately 2008 through 2014 (SOR ¶ 1.a), and that he was arrested and charged with possession of drug paraphernalia in January 2016 (SOR ¶ 1.b) and possession of marijuana in August 2016 (SOR ¶ 1.c). Applicant was also alleged under Guideline J to have been arrested and charged with evading responsibility with damage or injury in March 2017 (SOR ¶ 2.b). When Applicant answered the SOR, he admitted that he had used marijuana as a teenager "at a few parties from peer pressure." He denied that he was arrested in 2016, and explained that he was issued citations in each instance. He pleaded not guilty because the drug paraphernalia and marijuana did not belong to him. He admitted that he had been arrested and charged with evading responsibility in March 2017 "because of a hostile girlfriend and [him] trying to leave the situation before things escalated." He indicated that he had paid restitution and was in counseling. (Answer.)

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

Applicant is a 22-year-old high school graduate with technical school training in auto body work, collision, and repair obtained from August 2013 to December 2015. He has yet to earn a certificate or degree. He needs to complete one credit to raise his grade point average to the 2.0 needed to graduate. (Tr. 49.) He is unmarried but has a two-year-old daughter, for whom he pays child support of $119 a week. (GEs 1-2; Tr. 23.) He has never held a security clearance. He has been offered employment by a defense contractor that is contingent on him being granted a security clearance. (Tr. 51.)

While attending technical school, Applicant worked part time in retail and then for a movie theater. He worked at a restaurant from July 2015 until January 2016, when he resigned for a full-time auto body technician position. He left that job in June 2016 because he did not think he was treated fairly, and he returned to work for the restaurant. (GE 1.)

As part of his application to work for a defense contractor, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on July 8, 2016. He disclosed that he had been arrested in January 2016 for having drug paraphernalia in his vehicle, but that the charge was dismissed in April 2016. He listed no other arrests and responded negatively to the illegal drug inquiries including the following:

> **In the last seven (7) years,** have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance? (GE 1.)

On July 13, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his January 2016 arrest, Applicant stated that he was in route home from work when he was stopped for a headlight violation. The officer conducted a search of his vehicle and found a marijuana grinder and bowl. Applicant denied that the paraphernalia belonged to him, but the police issued him a citation for $100 with an option to appear in court.[1] In February 2016, Applicant was advised that the charge would be dropped if he completed 20 hours of community service, which he finished in April 2016. He expressed his belief that the charge was dismissed

[1] Under Section 21a-267(d) of his state's general laws, use or possession of less than a half-ounce of marijuana is an infraction:

> (d) No person shall (1) use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal, or to ingest, inhale or otherwise introduce into the human body, less than one-half ounce of a cannabis-type substance, or (2) deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal, or to ingest, inhale or otherwise introduce into the human body, less than one-half ounce of a cannabis-type substance. Any person who violates any provision of this subsection shall have committed an infraction.

when he provided proof to the court of the community service. He stated that the paraphernalia had been left in his vehicle by a friend. Applicant then disclosed that he was ticketed in August 2016 for possession of marijuana and a seatbelt violation. He explained that he was stopped in route home from work, and the police found a small bag of marijuana in his vehicle. Applicant believed that a friend left the drug in his car, and he told the officer that the drug did not belong to him. He was issued a citation with a $175 fine for marijuana possession and $65 for seatbelt violation. He requested a court appearance, and indicates that, in October 2016, he was told that the charge would be dropped on payment of a $100 "charitable contribution." He expressed his belief that the charges were dropped after he paid the $100.[2] (GE 2.)

Applicant then revealed that, in February 2017, he was arrested for misdemeanor evading responsibility.[3] He was leaving a friend's home when his girlfriend pulled up beside him in her vehicle. He had called her names on the telephone earlier, and she challenged him to a fight. Applicant refused to exit his vehicle and, while leaving, he "accidently swiped the side of [his girlfriend's] car." He did not stop, and later that evening, the police arrested him for evading responsibility. At a court appearance on July 11, 2017, Applicant was advised that a nolle prosequi would be entered in a year if he completed an anger management class.[4] Applicant admitted that he had yet to look into acceptable anger management classes, but he expressed his intention to attend the classes within the year. He denied any intention to engage in criminal behavior in the future because he wanted to get a good job and be a good role model for his daughter. (GE 2.)

Applicant also acknowledged to the OPM investigator that he should have answered "yes" on his SF 86 to the inquiry concerning any illegal drug use in the last seven years. He then detailed that he used marijuana from 2008 to 2014 about once every three weeks with his then friends. He took a few puffs off joints passed to him and did not purchase the drug. Applicant used the marijuana to fit in with his friends. He never purchased the drug himself. Applicant denied that his marijuana use ever caused him a problem because the 2016 citations occurred after he had ceased using marijuana. Applicant added that after he was cited for marijuana possession in August 2016, he stopped associating with the friends involved in his drug use. Applicant stated that he had no intention of using marijuana in the future. He explained that he failed to report his marijuana use on his SF 86 because he did not think that marijuana was still illegal.[5] (GE 2.)

---

[2] No citations or court records for either incidents were made available for my review.

[3] The March 2017 date alleged in the SOR was the date of his first court appearance.

[4] A nolle prosequi or nolle is a formal entry on the record by a prosecutor by which he or she declares that there will be no further prosecution.

[5] Effective July 1, 2011, the state changed the penalty for possessing less than one-half ounce of marijuana from a potential term of imprisonment and large fine to a fine for a first and subsequent offense. *See* § 21a-279a, which provides the penalty for illegal possession of small amounts of a cannabis-type substance:

> (a) Any person who possesses or has under his control less than one-half ounce of a cannabis-type substance, as defined in section 21a-240, except as authorized in this chapter,

Available information about the February 2017 evading responsibility charge indicates that Applicant was granted accelerated rehabilitation in June 2017 with an evaluation for anger management and substance abuse. He had "just made" an appointment for his accelerated rehabilitation program and was planning to make an appointment for his anger management and substance abuse counseling as of September 11, 2017. (GE 3.)

DOHA gave Applicant an opportunity to review and make any corrections to the OPM investigator's summary report of his July 13, 2017 interview. On November 8, 2017, Applicant adopted the investigator's report as accurate with one addition. He indicated that he had started his anger management classes and counseling "in the past months." (GE 2.

Applicant attended substance abuse counseling through the defense contractor's Employee Assistance Program (EAP) on September 14, 2017, September 22, 2017, October 5, 2017, and March 29, 2017. His next session was scheduled for April 12, 2018. (AE E.) He had no explanation for why the judge ordered him to complete substance abuse counseling, but he suspected it was for alcohol. He testified that he was in a "downward spiral with [his] relationship, so [he] would just drink." (Tr. 78.) He also participated in group sessions of a men's anger management program focusing on defining and understanding domestic violence and abusive versus respectful communication. He started on September 30, 2017, three weeks into a nine-week program, and attended five sessions before it ended on November 11, 2017. (AE D; Tr. 82.) While the EAP counselor and the program coordinator for the anger management program confirmed his attendance, neither provider commented about his progress.

Applicant continues to deny that the drug paraphernalia and marijuana found in his vehicle in January 2016 and August 2016 belonged to him. He was not arrested but rather was ticketed. He paid his fine and completed his community service. He testified that he completed the anger management program required for evading responsibility, even though he attended only five of the nine sessions. He testified that there was no required number of substance abuse counseling sessions, but that he had attended six sessions. (Tr. 45-47.) When asked about a previous admission during his OPM interview that he had used marijuana from 2008 to 2014 about every three weeks, Applicant indicated that he "just gave an average time" for the dates. He expressed disbelief that he had told the investigator he used marijuana about every three weeks, and that there must have been some miscommunication. When asked for his present recollection about the frequency of

---

shall (1) for a first offense, be fined one hundred fifty dollars, and (2) for a subsequent offense, be fined not less than two hundred dollars or more than five hundred dollars.

(b) The law enforcement officer issuing a complaint for a violation of subsection (a) of this section shall seize the cannabis-type substance and cause such substance to be destroyed as contraband in accordance with law.

(c) Any person who, at separate times, has twice entered a plea of nolo contendere to, or been found guilty after trial of, a violation of subsection (a) of this section shall, upon a subsequent plea of nolo contendere to, or finding of guilty of, a violation of said subsection, be referred for participation in a drug education program at such person's own expense.

his marijuana use, Applicant responded, "I've tried it. I went to a few parties, tried it, and that was it." When asked for the number of times that he had used it, Applicant stated that he used it twice between 2008 and 2014 at a party. (Tr. 51-54.) About the glaring discrepancy between his present account of two-time marijuana use and the adopted report of interview (GE 2) containing his admission to using marijuana once every three weeks, Applicant again asserted that it was a miscommunication between him and the investigator. (Tr. 55.) Applicant stated that he last associated with persons that use marijuana "about a year ago." He denied any intention of using marijuana in the future. Applicant apparently passed a drug screen by hair analysis in 2017 for the job offer with the defense contractor. (Tr. 56-58.)

About his possession of drug paraphernalia in January 2016, Applicant testified that the police officer found the drug paraphernalia in the right cup holder between the driver's and passenger's seats. Despite its obvious location, Applicant asserts he did not notice it in his vehicle. Applicant's explanation was that it must have been placed there by a friend who had been in his car previously. He testified that he made no inquiries of his friends to determine to whom it may have belonged because he did not want to argue "over a group of friends." He also stated that only two people could have left the paraphernalia in his vehicle, and he told neither of them about it. Applicant indicated that the friends had been in his vehicle probably a week before the incident. (Tr. 59-64.)

Regarding the August 2016 citation for possession of marijuana, Applicant could not explain what prompted the officer to search his vehicle. When asked whether the officer smelled marijuana or suspected that he was using it, Applicant answered, "Not to my knowledge, no. They didn't say that." About where the officer found the marijuana, he responded, "I believe it was on me, in my pocket." He saw the marijuana on his passenger seat, and when he got pulled over, he just put it in his pocket. He recalled that he had his friends in his car the day before he was pulled over by the police. He again did not confront those friends about the marijuana because he is "not a confrontational person." (Tr. 65-71.) As to why he continued to associate with known marijuana users after his daughter was born and after he completed his SF 86, Applicant indicated that it took him some time to realize that his friends were not there for him as he was for them. He would have done anything for his friends, no matter what. (Tr. 72-73.)

Concerning his arrest for evading responsibility, Applicant admits that he had tweeted things he should not have said to his girlfriend. He called her names and hit her car, but she did try to cause a fight. He denies that he caused any damage to her vehicle. (Tr. 74-76.)

Applicant had been employed as a painter for about a month as of his hearing. He enjoys the work, but it is "iffy" with the hours. (Tr. 50-51.) He is struggling to pay his bills. (Tr. 84.) He expressed regret for everything that he had done in the past. (Tr. 84.)

Character References

Applicant's girlfriend testified that he has become more responsible over the three years of their relationship. She has seen "a lot of improvement in his behavior" over the past year. Over time, he changed his friends and become "a way better father." She has custody of their daughter, but Applicant keeps their daughter overnight for her so that she can work. She told Applicant that she would not allow their daughter to be around his friends who were a negative influence on him. She and Applicant are currently working on their relationship and spend weekends together. Regarding the 2017 incident, they were not seeing each other at that time (had broken off their relationship) and were being "very, very mean to each other." She was angry after arguing with him earlier in the day, and she blocked his car. He tried to avoid the situation and hit her vehicle. Because he left the scene, she called the police. (Tr. 20-26.)

Applicant's father has almost 30 years of employment with a clearance with the defense contractor that is sponsoring Applicant's application for a security clearance. Applicant's father testified that there were some trying times when Applicant's girlfriend was pregnant in that Applicant was "kind of flop-flopping around." (Tr. 30.) Applicant has become more responsible. Regarding his son's arrest for evading responsibility, Applicant's father testified that it was wrong for Applicant to leave the scene, but he understands that Applicant was trying to get away for his safety. He described Applicant as more of a follower than a leader. (Tr. 28-35.)

Applicant's aunt, who has been a nurse in the mental health and substance abuse field for ten years, attested to Applicant's desire to work for the defense contractor. She is aware that, "a few years back [Applicant] was hanging around with the wrong kids trying to find his way in life." She was surprised to learn that Applicant "tried marijuana, got ticketed, and his girlfriend had him arrested for hitting her car when she completely blocked him in." However, Applicant realized that he had much to lose if he continued down that path, and he changed his friends. She has noticed a maturity in Applicant since the incident involving his girlfriend and does not consider him to be a threat to national security. (AE A.)

The mother of Applicant's girlfriend testified that Applicant had her daughter did not have a good relationship in the beginning, but that Applicant has come to be "a great dad and a good boyfriend." She blames her daughter for the 2017 incident that led to Applicant's arrest. Regarding Applicant's drug charges, she had heard there was one arrest, but she found it hard to believe of him. She never saw Applicant using illegal drugs, but when she first met him, he associated with "known potheads." She has not seen any of those individuals in over a year. (Tr. 38-41.)

The grandmother of Applicant's girlfriend has known Applicant for the past three years and sees him when he visits his daughter and girlfriend, who live on the floor above her. (AE B; Tr. 41.) Applicant immediately took parental responsibility without any resentment and has been "an excellent and loving father." To her knowledge, Applicant has a good work ethic. She has not seen him smoke marijuana and asks that he be given the chance to move forward by obtaining the job with a defense contractor, which would

eventually provide him the income needed to marry his girlfriend and support a family. (AE B.)

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.

Although Applicant now claims that he used marijuana only two times, he told an OPM investigator that he used marijuana every three weeks with friends from 2008 to 2014. He had an opportunity to correct the report of interview containing that account of his drug use, and he adopted the summary as accurate with an update that he was going to counseling. Applicant now asserts that there must have been a miscommunication between him and the interviewer, but he did not elaborate about what he could have said that would explain such a significant discrepancy. Both Applicant's girlfriend and her mother testified that Applicant's friends at the time were involved with marijuana. His girlfriend's mother described the friends as "known potheads.' Applicant's account of having used marijuana approximately three times a week with his friends to fit in is more credible than that he used marijuana only twice. AG ¶ 25(a), "any substance misuse," applies.

There is no evidence that Applicant ever purchased any marijuana. However, he had physical possession of marijuana when he took puffs from joints passed to him by his friends. Moreover, he had drug paraphernalia in his vehicle when he was stopped for a headlight violation in January 2016, and he had a bag of marijuana in his possession when he was pulled over for a seatbelt violation in August 2016. AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," is also established.

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 denies any marijuana use since 2014. There are no "bright line" rules for determining when conduct is recent for purposes of mitigation. The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4,

2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."[6] It is difficult to believe that neither the drug paraphernalia that was in the cup holder in January 2016 nor the marijuana that was on the passenger seat of his vehicle in August 2016 belonged to him. Even assuming that Applicant last used marijuana in 2014, it cannot be viewed in isolation from the more recent drug paraphernalia and marijuana possession infractions. AG ¶ 26(a) does not apply.

AG ¶ 26(b) provides for mitigation 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.

AG ¶ 26(b) has some applicability in that he stopped associating with his drug-using friends in approximately March 2017, and he intends no future illegal drug involvement. His girlfriend and her mother testified that he has become a more responsible parent to his daughter over the last year. That behavior is consistent with a drug-free lifestyle. Yet, AG ¶ 26(b) requires a truthful acknowledgement of drug involvement. Applicant showed little reform in that regard by now maintaining that he used marijuana only twice between 2008 and 2014. His recantation of his previous admission to having used marijuana three times a month raises doubt about whether he has been fully forthright with the Government about his marijuana use, especially where he had marijuana in his possession in August 2016. His serious minimization of his marijuana use at his hearing also makes it difficult to accept his denials that the marijuana and drug paraphernalia in his vehicle in 2016 did not belong to him. Under the circumstances, he has not established a sufficient pattern of abstinence to safely conclude that his drug involvement is not likely to recur.

Although Applicant has had some court-ordered substance abuse counseling, he testified that it was for alcohol. He did not present evidence of a favorable prognosis that is required under AG ¶ 26(d), which provides:

> (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without

[6] *See* ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Guideline J: Criminal Conduct

The security concern about criminal conduct is articulated in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Under state law, Applicant's possession of drug paraphernalia in January 2016 and possession of marijuana in August 2016 are infractions. Use of a small quantity of marijuana is punishable only by a fine. While the state may have decriminalized the use and possession of less than a half-ounce, it is still against the law. Furthermore, marijuana is a Schedule I controlled drug under federal law pursuant to Title 21, Section 812(c) of the United States Code, and use of marijuana is illegal. The evidence shows that Applicant was granted accelerated rehabilitation in June or July 2017 for misdemeanor evading responsibility. He left the scene after he struck his girlfriend's vehicle in February 2017. Two disqualifying conditions under AG ¶ 31 apply because of his illegal drug involvement and misdemeanor evading responsibility:

> (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
>
> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The aforesaid illegal conduct is too recent for mitigation under AG ¶ 32(a), which provides:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 32(d) warrants some consideration because Applicant attended five sessions of a men's anger management group and had EAP substance abuse counseling required of his accelerated rehabilitation for the 2017 evading responsibility offense. AG ¶ 32(d) provides:

> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution,

compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant did not avail himself of the opportunity to provide court documents showing that he had fully satisfied the conditions of his accelerated rehabilitation. The program coordinator for the anger management program indicates that Applicant attended five sessions of a nine-session program. The EAP counselor provided an update on April 5, 2018, which shows that Applicant returned to counseling in late March 2018 after no sessions since October 5, 2017. There is no clear indication that his participation in the anger management program and EAP counseling fully satisfied the requirement of his accelerated rehabilitation. If he sufficiently satisfied the requirements for the charge to be dismissed in July 2018, it would not fully mitigate the security concerns raised by relatively recent criminal behavior.

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).[7] In making the overall commonsense determination required under AG ¶ 2(c), Applicant was only 20 years old when his daughter was born. Youth and immaturity were certainly factors in his continued association with his marijuana-using friends after her birth and in Applicant's illegal possession of drug paraphernalia and marijuana in 2016. He possessed marijuana as recently as August 2016, after he completed his SF 86.

The persons who know Applicant best attested credibly that he has become a good father to his daughter over the past year. However, Applicant has not fully persuaded me that he can be counted on to exercise sound judgment required of a security clearance holder. He has shown himself willing to misrepresent his drug involvement to obtain the clearance needed for employment to support his daughter. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). The Government must be able to rely on those persons 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 his eligibility for a security clearance.

[7] 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 J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against 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