DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-00541
	)	
Applicant for Security Clearance	)	

Appearances

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

12/26/2018

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was counseled approximately 40 times between January 2012 and March 2017 in the U.S. military for failure to comply with a lawful order and tardiness. He used marijuana with a state-issued medical marijuana card approximately five times in June 2017 and tested positive for marijuana in a drug screen in July 2017. Applicant improved his military conduct over time to conform his duty performance to expectations, and he has not had misconduct issues in his present job. He destroyed his medical marijuana card and intends to refrain from any involvement with marijuana in the future. Clearance is granted.

Statement of the Case

On April 26, 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 Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National*

Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

On May 9, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 7, 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 October 5, 2018, I scheduled a hearing for November 15, 2018.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) were admitted in evidence. An August 1, 2018 letter forwarding the proposed GEs to Applicant and a list of the GEs were marked as hearing exhibits (HEs I and II) for the record but not admitted in evidence. Three Applicant exhibits (AEs A-C) were admitted in evidence. Applicant testified, as reflected in a transcript (Tr.) received on November 27, 2018. I held the record open for three weeks after the hearing for additional evidence from Applicant. On December 5, 2018, Applicant submitted a copy of his medical marijuana card, which was admitted into evidence as AE D without objection.

Summary of SOR Allegations

The SOR alleges under Guideline H, and cross-alleges under Guideline E (SOR ¶ 2.b) that Applicant used and purchased marijuana in approximately June 2017 while he was granted access to classified information (SOR ¶ 1.a) and that Applicant tested positive for marijuana in July 2017 (SOR ¶ 1.b). Applicant is also alleged under Guideline E to have received approximately 40 corrective action memos or written reprimands between July 2011 and March 2017 for misconduct issues while he was serving on active duty in the U.S. military (SOR ¶ 2.a).

In a detailed response of May 9, 2018, Applicant admitted the use of marijuana with a legally obtained medical marijuana card and that he had failed a pre-employment drug screen administered by his current employer. Having learned that even medical marijuana use was illegal under federal law, he destroyed his marijuana card and had himself removed from the medical marijuana program. Applicant also admitted the disciplinary actions taken against him during his active duty service, with over half of them received during his first two years, for conduct that he attributes to being "a loud-mouthed know it all that didn't want to listen to anybody of authority and challenged everybody." Applicant explained that after he attained the rank of petty officer third class (E-4), his command had a serious talk with him about his performance and professionalism, and that written reprimands were few and far between thereafter. He added that such conduct had not continued in his current employment; that he had received a raise; and that he has been approached about a career development plan at work. (Answer.)

Findings of Fact

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

Applicant is a 27-year-old high school graduate with some community college credits. He was married from January 2013 to March 2016, and has a five-year-old son for whom he pays $650 per month in child support. His ex-wife has primary physical custody of their son. (GEs 1-2; Tr. 24-26.) He has worked for his current defense contractor employer as a test mechanic since July 2017 and needs to retain his security clearance to maintain his employment. (Tr. 25.)

Applicant served on active duty in the U.S. military with a Secret security clearance from July 2011 to March 2017. (GE 1.) After completing boot camp and military schooling, Applicant reported to a command in January 2012. He initially showed little appreciation for military decorum or rank and challenged his superiors about military practices and regulations. He was also late to watch on occasion. He was issued well over 20 corrective action memoranda or written reprimands during his first two years in the service. In 2014, he achieved the rank of petty officer third class. After being counseled about his lack of military professionalism and insubordinate attitude, he began to conform his behavior to that expected of his rank and military service. (GE 2; Tr. 54-55, 62-67.) His Evaluation Report and Counseling Record for his duty performance from June 2015 to June 2016 indicates that he exceeded standards in areas of military bearing/character, personal job accomplishments, and teamwork. Applicant's rating superior noted that Applicant had shown improvement over the reporting period and was now operating at the level expected in his division. He was described as knowledgeable, a team player, and driven and recommended for advancement with a rating of must promote. (AE A.)

Counseling incidents declined significantly, although by the time of his discharge, Applicant estimated that he had received approximately 40 written chits or reprimands at the command. (GE 2.) Applicant was administered non-judicial punishment once, in December 2016, when he and three others violated liberty restrictions by staying out past curfew. Applicant was punished with a reduction in rank from E-4 to E-3 (suspended), 60 days restriction (suspended), and loss of half pay for two months (enforced) for failure to obey an order and conduct that could bring discredit on the armed forces. Applicant was warned that the reduction in rank and restriction punishments would be enforced if he should receive any additional written counseling chits or reprimands. (GEs 1-2; Tr. 57, 67.)

Within a month of his non-judicial proceeding, Applicant had an argument with an information technology systems technician in his division. A week later, the technician blamed Applicant for cutting an Internet cable.[1] Applicant was issued a written counseling

[1] Applicant indicated during a December 2017 subject interview that he argued with the information technology systems technician because the technician was not permitted to be present during weapons handling, and he refused to leave until a superior intervened. (GE 2.) Applicant now asserts that he argued with the technician because his son had just been diagnosed with autism, and the technician had blocked his emails so he could not receive updates about his son. (Tr. 63-63.)

chit, even though he denied cutting the cable and never signed the chit. As a result of the reprimand, the suspended terms of his non-judicial punishment were imposed. Applicant contested the reprimand to no avail. According to Applicant, when he asked a military superior for assistance, this superior told him that he had to worry about his own career. (Tr. 62.) Because of his length of service, Applicant could not continue in the military at the rank of E-3 per regulation. In March 2017, he was honorably discharged against his desire to stay in the military. (GE 2; Tr. 24, 58-64.)

Applicant's direct superior at the time of Applicant's non-judicial punishment and discharge had served with Applicant from January 2013. He attests that early on, Applicant frequently disappeared and was delinquent in his qualifications. However, once Applicant decided to commit to his duty, his performance improved markedly, and he took immense pride in his work. Applicant proved to be a great asset to him with training junior personnel and could be counted on to give his very best until the job was done. (AE B.)

Two or three weeks after his discharge from the military, Applicant applied to work for his current employer. (Tr. 28.) As of May 2017, he had received no response to his job application. (Tr. 21, 29.) He had trouble sleeping, and expressed his concerns to a counselor who was seeing a friend. The counselor suggested that he see a local physician for medical marijuana. Applicant had used marijuana twice that he can recall and perhaps three to four times while in high school "to party," but he did not engage in any illegal drug use while in the military. (Tr. 26-27, 50-51.)The physician prescribed medical marijuana for Applicant for post-traumatic stress related to his military service.[2] (GE 2; Tr. 35, 40-41, 47.) On May 25, 2017, Applicant was certified for medical marijuana by the state for one year. He was authorized to purchase 2.5 ounces from a medical marijuana dispensary. He received his card (AE D) in the mail a few weeks later, and he purchased 3.5 grams of marijuana from a dispensary at a cost of $35. (GE 2; Tr. 41-42.) Applicant used marijuana approximately five times over the course of two or three days in his home in June 2017. (GEs 1-2; Tr. 42-43.) He did not share any of the marijuana because it would be a criminal offense. (Tr. 42.) Applicant did not then consider the implications of his medical marijuana use because it was legal under state law. (Tr. 23, 45.)

Shortly after he used marijuana, Applicant was offered a position with his employer. He realized that his use of marijuana could have negative implications. He discarded his medical marijuana card and removed himself from the medical marijuana program.[3] (Tr. 32-33.) He was called in to the worksite by his employer in July 2017 and administered a

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[2] Under pertinent state law, a patient may only register for a medical marijuana certificate if he or she is a state resident being treated for a debilitating medical condition by a state-licensed physician. Post-traumatic stress disorder is one of the specific debilitating conditions that qualifies for medical marijuana under state law.

[3] Applicant told the OPM investigator that he stopped using marijuana immediately when he received his job offer. (GE 2.) Applicant was asked on cross-examination about when he stopped using marijuana. He testified that he was "already done and out," when he was called by his employer. When asked when he first suspected that his marijuana use could be a problem, he responded that his mind set was that marijuana was legal in the state and he "didn't make the correlation between state and federal." He acknowledged that he realized it could be problematic. (Tr. 44-45.) Applicant testified that he destroyed his medical marijuana card to "take away all temptation," and so there would be no doubt that he could use marijuana again. (Tr. 32.)

pre-employment drug screen by hair sample. (GE 3; Tr. 29-30.) Suspecting that he would test positive for tetrahydrocannabinol (THC), Applicant notified the person taking his sample that he had a medical marijuana card, and he provided proof to the yard hospital by email link that he had been issued a state medical marijuana certificate. (GEs 2-3; Tr. 31-33.) On July 19, 2017, Applicant's employer filed an incident report with the DOD indicating that Applicant had tested positive for THC in his pre-employment hair drug screen, and that he had provided proof of a state medical marijuana certificate to the yard hospital. (GE 3.)

Despite failing the pre-employment drug screen, Applicant was hired by the defense contractor because his marijuana use was legal under state law. Applicant was told that he could no longer use any marijuana legally or illegally because it was a federal contractor job and marijuana is illegal under federal law. (Tr. 22, 35.)

On July 27, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to inquiries concerning the illegal use of drugs or controlled substances, Applicant indicated that he used medical marijuana with a medical marijuana card one day throughout the day in June 2017. He denied any intention to use marijuana in the future and explained:

> I had a [state] Medical Marijuana card. Legal by state ILLEGAL by federal law. Since working at [company] I have stopped use and have also destroyed the card and taken measures to remove myself from the program. (GE 1.)

In early December 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He volunteered that, when he was in the military, he had been disciplined an estimated 40 times for misconduct related to disrespecting rank and military decorum (such as asking a superior not to walk on the deck that he had just cleaned; requesting gloves before he would clean latrines; and asking a superior not to stick his finger in his face). He often challenged his superiors, for which he received counseling chits for insubordination. He was also written up multiple times for being late to watch and once for breaking a window in a guard shack. He explained that he often spoke up when he felt something was not right or he felt a superior was being demeaning toward him. Applicant addressed his non-judicial punishment and the subsequent incident involving the Internet cable that led to his discharge. He denied that he cut the cable and indicated that the technician who issued the chit admitted to an officer that he wrote the chit out of anger following his argument with Applicant. Applicant acknowledged that he had created a bad reputation among his superiors at the command, but his performance evaluations were generally good, even with all the written counseling memoranda. About his marijuana use, Applicant explained that he purchased 3.5 grams of marijuana with a medical marijuana card in June 2017 and used it "no more than five times." Later that month, he received a job offer from his defense-contractor employer, and he immediately resolved to abstain from any marijuana use in the future. He added that he failed his initial drug screen administered by the company and notified company personnel about his medical marijuana use. He indicated that, because he had a medical marijuana card, he could work for the company but would have to update his security clearance paperwork and abstain from marijuana going forward. Applicant denied any use of

marijuana since then and added that he had destroyed his medical marijuana card. Applicant explained that he would not compromise his employment eligibility by using marijuana in the future. He agreed to submit to random drug screening by his employer. (GE 2.)

In September or October 2017, Applicant volunteered for a drug screen at work that was negative for all substances tested, including marijuana. (Tr. 35-36.) Applicant understands that his employer has a drug-free policy (Tr. 28, 36), and that marijuana remains illegal under federal law. (Tr. 52.) He signed an agreement with his employer to refrain from engaging in any prohibited drug use while employed by the company. He has been tasked by his employer with talking to new hires now and then about the fact that employees have to abide by the federal prohibition of any marijuana involvement. (Tr. 53-54.) Applicant does not intend to use marijuana in the future. (Tr. 35.) He now takes melatonin to help with his sleep issues. (Tr. 39.)

Applicant has not had any incidents of misconduct or insubordination in his current job. (Tr. 72.) He was promoted after six months on the job and has applied for a supervisory position. (Tr. 68.) He only recently regained his driving privileges, which had been suspended when he was in the military because his ex-wife failed to pay a speeding ticket for him that he incurred just prior to a deployment. He had to take Uber to work at $36 a day that he paid for by working overtime. (Tr. 69-71.) Applicant's current supervisor asks that Applicant be given special consideration by the DOD with respect to keeping his clearance. Applicant has become a valuable asset to their department. He qualified to hold two positions centered on the safety and well-being of workers and needs no guidance. His supervisor considers Applicant to be an "extremely efficient, driven, competent and qualified individual." (AE C.)

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 medical marijuana approximately five times over two to three days in June 2017. He used and purchased the drug with a medical marijuana card obtained legally in his state.[4] That marijuana use caused him to fail a pre-employment drug screen

[4] Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I drug. Despite some states providing for medical marijuana use or the decriminalization or legalization of recreational use of minor amounts of the drug, marijuana remains a

administered by his employer in July 2017. Disqualifying conditions AG ¶¶ 25(a), "any substance misuse (see above definition);" 25(b), "testing positive for an illegal drug;" and 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;" apply. The Government's case for AG ¶ 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position," inferentially stems from the fact that Applicant held a Secret clearance for his military duties that had not been revoked or suspended after his discharge in March 2017.[5] His break in service was only a few months, and so his clearance was still active. He had applied to work for a defense contractor for which he needed to retain his Secret clearance eligibility. To the extent that AG ¶ 25(f) applies, it must be noted that Applicant was not in a position when he used the marijuana where he could potentially have been exposed to classified or sensitive information.

Applicant bears the burden of establishing that matters in mitigation apply. Two mitigating conditions under AG ¶ 26 have some applicability. They provide:

> (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 an individual's current reliability, trustworthiness, or good judgment; and
>
> (b) the individual acknowledges his or drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
>
> (1) disassociation from drug-using associates and contacts;
>
> (2) changing or avoiding the environment where drugs were used; and
>
> (3) providing a signed statement of intent to abstain from all illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Schedule I controlled substance under federal law. Such drugs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for using the drug under medical supervision.

[5] DoD 5220.22, the National Industrial Security Program Operating Manual, provides for reciprocity under ¶ 2-204:

> Federal agencies that grant access to classified information to their employees or their contractor employees are responsible for determining whether such employees have been previously cleared or investigated by the Federal Government. Any previously granted [Personnel Security Clearance] that is based upon a current investigation of a scope that meets or exceeds that necessary for the clearance required shall provide the basis for issuance of a new clearance without further investigation or adjudication unless significant derogatory information that was not previously adjudicated becomes known to the granting agency.

Under ¶ 2-201 of the NISPOM, investigations are current if within five years and meet the standards for the level of personnel security clearance required.

Applicant's marijuana use was infrequent and legal under state law. He apparently did not fully understand that his state laws permitting medical marijuana do not alter the federal prohibition or existing national security guidelines concerning marijuana use. Even so, the circumstances of his use are somewhat troubling because he had an application pending to work for his employer in a position needing security clearance eligibility, and he held eligibility for a Secret clearance that may well have been a consideration in the employer's decision to hire him. There is no evidence that his clearance had been revoked, even though he was unemployed and not accessing classified information. Applicant knew when he was in the military that marijuana use was prohibited and illegal under federal law if not also contrary to his security clearance eligibility. His security clearance eligibility should have given him reason to question whether he should use medical marijuana irrespective of state law and of the fact that he had not received a response from the defense contractor to his job application. AG ¶ 25(a) does not fully apply.

Regarding AG ¶ 25(b), Applicant has persuasively established that he does not intend to use any marijuana in the future. Regarding when he decided he was done with marijuana, he told an OPM investigator that, when notified of a job offer from his employer later in June 2017, he immediately stopped using medical marijuana. He testified at his hearing that he was "already done and out" before he was contacted. Suspecting that his drug screen would be positive, Applicant destroyed his medical marijuana card to "take away all temptation," and so there would be no doubt that he could use marijuana again. He indicated on his SF 86, during his subject interview, and again during his hearing that he does not intend to use marijuana again because it is illegal under federal law, and he does not want to jeopardize his job. His dedication to his work, which was confirmed by his current supervisor, reflects the importance of his job to him. He is not likely to risk his employment by using marijuana. As of his hearing, he had not used marijuana in 15 months, and so has established a pattern of abstinence under AG ¶ 25(b). Although he has not executed a statement of intention to abstain containing an acknowledgement that any future involvement or misuse would be grounds for revocation of his security clearance, he signed a statement for his employer that he would not use any marijuana while employed by the company. His drug involvement and substance misuse is mitigated under AG ¶ 25(b).

Guideline E: Personal Conduct

The concerns about personal conduct are set forth in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant volunteered during his subject interview that he had a difficult time adjusting to the military after he reported to a command in January 2012. For insubordination, disrespect of rank and military decorum, and being late to watch several times, he was written up approximately 40 times by his superiors at the command, with most of the discipline imposed during his first two years. After being counseled about his lack of military professionalism and insubordinate attitude, he began to conform his behavior to that expected of his rank and military service. He showed notable improvement over the June 2015 to June 2016 rating period to the point where he exceeded standards in areas of military bearing/character, personal job accomplishments, and teamwork. Even so, he received his only non-judicial punishment during his military service in December 2012 for violating curfew restrictions while out with other servicemen. He subsequently received another counseling chit from an information technology technician for allegedly cutting an Internet cable. Applicant denied that he cut the cable, but whether because of his poor reputation earned early at the command or because he had been warned to avoid any further infractions, it was enough for his commanding officer to impose the sanctions (restriction and reduction in rank) that had been suspended in December 2012. The record does not fully spell out with specificity the nature and dates of many of Applicant's disciplinary infractions. Even so, his admitted misconduct is enough to satisfy disqualifying condition AG ¶ 16(d), which provides:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself of an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:
>
> (2) any disruptive, violent, or other inappropriate behavior; and
>
> (3) a pattern of dishonesty or rule violations.

Concerning the Government's case for disqualification under the personal conduct guideline because of Applicant's marijuana use while he held an active security clearance and Applicant's drug screen positive for marijuana (SOR ¶ 2.b), the Appeal Board has held that security-related conduct can be considered under more than one guideline, and in an appropriate case, be given independent weight under each. *See* ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). Applicant exercised "questionable judgment" within the general security concerns set forth in AG ¶ 15 when he used and purchased marijuana in violation of the obligations of his security clearance eligibility. Separate from the risk of physiological impairment associated with the use of a mood-altering substance, which is a Guideline H concern, Applicant had an obligation as a clearance holder to comply with federal law.

Two of the mitigating conditions under AG ¶ 17 merit some consideration. They are as follows:

(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; and

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

Despite the numerous disciplinary actions, steps were not taken to separate Applicant from the military until March 2017 when he was granted an honorable discharge. This suggests that his violations were largely minor in nature, but they cannot be reasonably characterized as infrequent. Although his medical marijuana use was limited, the fact that he held security clearance eligibility and had an application pending for defense-contractor employment when he used the marijuana is an aggravating factor. His marijuana use when combined with his record of misconduct in the military supports a whole-person assessment of questionable judgment that is not adequately mitigated by AG ¶ 17(c).

For the reasons discussed under Guideline H, Applicant's marijuana use is not likely to recur. Regarding his disciplinary infractions in the military, Applicant should have understood by December 2016 what the command expected of him. He was an E-4 who had considerable responsibilities and had gone a long way toward rehabilitating his reputation in the command. He had everything to lose and nothing to gain by violating curfew. He was given yet another chance by the command with the suspension of the imposition of reduction in rank. He was on notice by his command that another counseling chit would result in the imposition of suspended punishments. Applicant thereafter argued with a technician, who filed a counseling chit alleging that Applicant cut an Internet cable. There is no evidence to rebut Applicant's assertion that he did not cut the cable. Whether or not the technician filed a false reprimand, Applicant bears some responsibility for the end of his military career. Even so, to the extent that Applicant's disciplinary infractions have some bearing on his current security worthiness, he has not displayed similar behavior in his defense-contractor employment. Applicant has demonstrated sufficient reform for mitigation under AG ¶ 17(d).

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).[6] In that regard, Applicant's youth likely played a role in his insubordination and other

[6] The factors under AG ¶ 2(d) are as follows:

misconduct in the military. He turned age 20 shortly before he reported to the command. With none of the written reprimands in evidence, the nature and seriousness of Applicant's misconduct cannot be fully determined. Even if some of the corrective actions were not merited, Applicant readily acknowledges that he was a hard-headed person who thought he knew it all. Applicant's medical marijuana use is exacerbated because it occurred while he held an active clearance, although the legality of that use under state law is circumstance that caused some confusion for him.

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). At the same time, the security clearance decision is not intended to punish applicants for past wrongdoing. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. *See* ISCR Case No. 09-02160 (App. Bd. June 21, 2010.) Applicant has exhibited reform and permanent behavioral change under AG ¶ 2(d)(7). He began by learning to comport his duty performance to that expected by his command. His military performance evaluation for June 2015 to June 2016 reflects the considerable progress he made in that regard. More recently, when he suspected that he would test positive because of medical marijuana, he removed himself from the state's medical marijuana program and destroyed his card. He has displayed reliability and dedication in his current job with no incidents of misconduct. His supervisor considers him a valuable asset to their department. There is no evidence that Applicant ever violated security either in the military or in his defense-contractor employment. He understands that any future drug involvement could cost him his employment that he clearly enjoys and wants to retain. While his repeated misconduct in the military and his June 2017 drug involvement are not condoned, I am persuaded they are not likely to reoccur.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

(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.

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski
Administrative Judge