



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 18-01438
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana between June 2002 and August 2017, including after he had been granted a Department of Defense (DOD) security clearance in May 2009 and after he had denied any intention of using marijuana in the future. A longer period of abstention is required to conclude that his marijuana use is safely in the past. Clearance is denied.

Statement of the Case

On May 30, 2018, 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 E, personal conduct, which 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 June 15, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 1, 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 August 6, 2018, I scheduled a hearing for September 17, 2018.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) and ten Applicant exhibits (AEs A-J) were admitted into evidence without objection. A July 18, 2018 letter forwarding discovery of the then proposed GEs to Applicant was incorporated in the record as a hearing exhibit (HE I), but not admitted as evidence. Applicant testified, as reflected in a transcript (Tr.) received on September 27, 2018.

Findings of Fact

Applicant is alleged under Guideline H (SOR ¶ 1.a) and cross-alleged under Guideline E (SOR ¶ 2.a) to have used marijuana with varying frequency from approximately June 2002 to August 2017, to include a period while holding a DOD security clearance granted to him on May 13, 2009. Applicant is also alleged under Guideline H (SOR ¶ 1.b) to have failed to commit to discontinue his use of marijuana despite stating on April 29, 2009, and on January 24, 2017, that he did not intend to use marijuana in the future. After considering his response to the SOR (AE I), other exhibits, and the hearing transcript, I make the following findings of fact.

Applicant is a 32-year-old principle systems engineer. He has a bachelor's degree in aeronautical engineering awarded in May 2009. He has been married since February 2016, and purchased his current residence in approximately March 2014. Applicant holds a DOD secret security clearance, which was granted to him in May 2009 for his duties with a previous defense-contractor employer (company X). He has worked for his current defense-contractor employer since August 2016. (GE 2.)

Applicant began using marijuana as a sophomore in high school because of peer pressure in approximately June 2002. He continued to use marijuana with varying frequency, on average three times a month in high school and then in college from August 2005 to January 2009. His use peaked between August 2006 and May 2008 during his sophomore and junior years of college. (GE 1.) During the summer of 2008, Applicant had an internship with company X. During his last semester of college, he was offered permanent employment with the defense contractor. On March 24, 2009, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for that employment. In response to an inquiry concerning any illegal use of a controlled substance in the last seven years, Applicant disclosed that he had used marijuana several times a month between June 2002 and January 2009. He estimated that he used marijuana 234 times total during that period and indicated that he ceased his use of marijuana when he began his search for post-college employment. Applicant also disclosed that he had used approximately two grams of a hallucinogen before a concert in

July 2007 and that he had tried cocaine twice over the course of one weekend in January 2004. (GE 3.)

On April 21, 2009, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his drug use. He explained that his marijuana use peaked in college because he wanted to impress upper classmen. He indicated that he smoked marijuana from a glass pipe passed around with three former friends from his fraternity, who had since graduated and moved away. He named the three friends.¹ Applicant indicated that he purchased marijuana on occasion and sold marijuana to friends in his fraternity if he had some available. His drug involvement did not adversely affect his academic studies, as he maintained a grade point average of 3.4 or higher. Applicant stated that he did not use marijuana during his final examinations or during his summer internship with company X. He had passed a drug screen for that internship. Applicant denied any future intention of using marijuana because he did not want marijuana to interfere with his career ambitions. As for his use of a hallucinogen in July 2007, Applicant obtained hallucinogenic mushrooms from a friend prior to a concert. He experienced effects of nausea, disorientation, and edginess. About his disclosed cocaine use, Applicant explained that he tried cocaine two times with friends on December 31, 2003, when the drug was offered to him. He disliked the effects of both the hallucinogen and cocaine and expressed no intention to use either drug in the future. (GE 1.) Applicant was granted a DOD secret clearance in May 2009. (GE 2.)

Applicant graduated from college in May 2009, and he started working for company X in July 2009. In December 2009, he resumed using marijuana on an infrequent basis, approximately three to four times a year, at social gatherings with two close fraternity brothers from college (friends #1 and #2). (GE 2.) He described his lifestyle as “work-centric.” He had relocated to a new state for work where he did not know anyone, but when he had the opportunity to return home or see friends, “these get-togethers had a celebratory, cut loose type of nature.” (Tr. 42.) Applicant moved to his current area in March 2014 and worked remotely for company X through July 2016, when he left the job for his current employment. (GE 2.) Applicant used marijuana in March 2016 with friend #2, who then resided in a distant state and had flown in to serve as his best man. Applicant believed it would be some time before he would see friend #2 again, and it felt like a special occasion. (Tr. 43.)

On January 24, 2017, Applicant completed and certified to the accuracy of a SF 86 to renew his security clearance eligibility. In response to an inquiry concerning any illegal use of drugs or controlled substances in the last seven years, Applicant disclosed that he had used marijuana recreationally during social gatherings, approximately three to four times per year from December 2009 to March 2016. He admitted that he had used marijuana while possessing a security clearance. He responded “No” to whether he intended to use the drug in the future and stated:

¹ Applicant discrepantly testified that two other friends (friends #1 and #2) were the persons with whom he primarily used marijuana in college. (Tr. 73.)

My use of marijuana during the past 7 years was an extension of habits developed during college, and occurred with college acquaintances. I consider it a “phase” from which I have grown out of. My last use was almost 1 year ago, and I have no intentions of revisiting this behavior. (GE 2.)

After abstaining from marijuana since March 2016, Applicant used the drug with friends #1 and #2 in August 2017. Applicant, his wife, and friend #1 traveled to see friend #2, who lived at that time in a state in the path of a solar eclipse. Applicant and friends #1 and #2 were in a mood to celebrate, which apparently “led to a momentary dropping of [Applicant’s] guard.” (Tr. 43-44.) Applicant spent about \$40 for the marijuana that he used. (GE 1; Tr. 74.)

On February 28, 2018, Applicant was interviewed by an OPM investigator. About his marijuana use three to four times yearly from December 2009 to March 2016, he admitted that he used the drug with friends #1 and #2 while possessing a security clearance and knowing that his employer at the time (company X) had policies prohibiting illegal drug use. He was aware that if he had been caught, he would have been subject to possible disciplinary action. He indicated that his friends provided him the drug, and that he typically used three or four joints at a time on the weekends with them. While he did not always use marijuana when associating with them, marijuana use was a common activity with them. Applicant volunteered that he used marijuana after March 2016 on one occasion. In August 2017, he and friends #1 and #2 shared two or three grams of marijuana, which he indicated was purchased legally by his friends, but then transported across state lines and used illegally.² Applicant acknowledged the conflict between using an illegal drug and holding a security clearance. He expressed some concern should his current employer find out about his use of marijuana, but he indicated that he would inform his employer about his drug use if someone threatened blackmail. When asked about his future intentions, Applicant responded that he could not say that he would not use marijuana again because smoking the drug with these two friends is something they do together and have done so for a decade. (GE 1.)

On March 2, 2018, Applicant was re-contacted by the investigator about why he had indicated on his SF 86 that he had no intention to use marijuana again, given he had used marijuana approximately seven months later and was unable to commit to no future use as of his February 2018 interview. Applicant explained that he had no plan to use marijuana again as of his January 2017 SF 86 and that marijuana was not an active part of his lifestyle. He acknowledged that he might use marijuana in the future, but he had no concrete plan to use marijuana again. (GE 1.) At his hearing, he clarified that he did not

² Applicant admitted at his hearing that he purchased some marijuana on that occasion as well and transported it across state lines for use in a state where marijuana is illegal. As to why he would take the risk, Applicant indicated that he was curious about the experience of legally purchasing marijuana. He acknowledged knowing that it was a crime to bring a controlled substance across state lines, but added:

I can’t defend the action. I can only state at the time it did not trip a mental threshold for me. And I attribute that in part to the quantity that we had. Again, it was very minimal in nature. I guess I would describe it as a minor offense that I did not necessarily—that did not necessarily influence me against participating in the experience. (Tr. 74-76.)

mean to suggest that he would use marijuana. Rather, he “conservatively postulate[d] that a hypothetical scenario could exist.” (Tr. 70.)

Applicant listed his college friends #1 and #2 as references on his January 2017 SF 86. (GE 1.) An OPM investigator interviewed Applicant’s college friend #2 on March 22, 2018, as part of Applicant’s background investigation. Friend #2 indicated that he and Applicant engaged in recreational use of marijuana together in college from 2006 to 2009. After graduation, they had in-person contact annually and smoked a joint together on those occasions. Friend #2 indicated that Applicant was aware that using marijuana had ramifications for his job and security clearance, but that Applicant was not going to use marijuana in the future. Friend #2 added that they were both growing older and the desire to smoke marijuana did not exist. (AE J.) Applicant recalls telling his friends in September 2017 that he did not intend to use any marijuana in the future. (Tr. 79.)

In response to the SOR, Applicant executed a statement on June 14, 2018, affirming his commitment to abstain from all drug involvement and substance misuse in the future with an acknowledgement that any future drug involvement or misuse would be grounds for immediate revocation of his security clearance eligibility. Citing his candor about his illegal drug involvement, he indicated that he has “come to better appreciate the perceptions and expectations of others as [he has] matured.” He added that his interest in marijuana and the frequency of his use has diminished over time, and he expressed confidence in his ability to refrain from any future illegal drug use. Concerning his previous reluctance to commit to discontinuing future drug use, Applicant explained that it “was grounded in [his] desire to be truthful and open about a hypothetical future that could put [him] in a position where [he] may be perceived as dishonest.” He added that he had no reservations about his ability to abstain from using marijuana. (AE I.)

At his hearing, Applicant reiterated that he had no intention of using marijuana in the future and that he was confident in his ability to adhere to this commitment. (Tr. 33.) He acknowledged that he had “not expertly executed prior commitments” to abstain from marijuana, but that his signed statement agreeing to revocation of his security clearance for any future drug use is something that he takes very seriously. (Tr. 69.) He expressed a willingness to submit to random drug screening. (Tr. 35.) Regarding actions taken to change or avoid environments conducive to drug use, Applicant asserted that his use since college “has been restricted to close friends and family members whom [he] trust[s] explicitly.” (Tr. 40.) He testified that it would be “extremely difficult” for him to fully disassociate himself from friends #1 and #2, but they no longer use marijuana together. (Tr. 51-53.)

Applicant’s spouse does not use marijuana. Applicant has known of her disapproval of his marijuana use, which he submits has been another motivating factor in his decision to stop using the drug. (Tr. 78.)

Applicant is active in some community activities. He served as a robot design judge in his state’s high school championship held in December 2017. (AE D.) In July 2018, he

was selected for and participated in a 5K race to benefit a charitable cause that benefits veterans, military service members, and their families. (AE E; Tr. 60.)

Applicant's close fraternity friends #1 and #2 from college provided character references for him. Friend #1 owns a small electric contracting and consulting business. They lived together in college from spring 2007 to spring 2009 and remained close after college. They have telephone contact once a month and take backpacking trips or other outings together at least twice a year. Friend #1 holds Applicant in high esteem and "considers his words to have great value." Applicant can be counted on to provide well thought-out advice. In his experience, Applicant is a person who does what he says he will do. Applicant informed friend #1 that it is inappropriate for him to continue to use marijuana, and friend #1 indicates that he is fully supportive of him in that regard. He believes Applicant is an asset to national security, dedicated to his work, and "a man of honor and trustworthiness." (AE H.)

Friend #2 has known Applicant since the fall of 2006 in college and considers him to be one of his closest and most trusted friends. They have kept in regular contact since college, approximately twice monthly by telephone and almost weekly by text messaging. Applicant and friend #2 now live in relatively close proximity, and they engage in outdoor recreational activities or home-improvement projects together several times a year. Applicant has always been honest with friend #2, who has grown to appreciate Applicant's "sage feedback." Friend #2 would trust Applicant with his daughter's well-being. Applicant has displayed passion about his work for a defense contractor and has informed friend #2 about his intention to abstain from recreational marijuana use. Friend #2 is supportive of the decision and is confident Applicant will adhere to his convictions. He regards Applicant as an asset to national security because of the values, ethics, and passion Applicant has exhibited over the course of their 12-year friendship. (AE G.)

Applicant is passionate about his work. Four months into his current job, Applicant's job performance was rated as high in some aspects, good in others, and exceptional in providing support. Regarding the company's code of conduct and compliance with ethical principles, Applicant had demonstrated to his rating manager that he could be "trusted to do what is right." (AE C.) He had a very successful first year with his current employer. He was singled out for his "great performance so far" and his outstanding support. His manager and others recognized him as someone with "great growth potential as both an individual contributor and as a leader." Applicant's efforts in completing qualification testing led to his employer receiving several million dollars in progress payments during the 2017 calendar year. He consistently displayed company-ethics principles in all of his interactions with co-workers and was accountable for his actions at work. (AE B.)

Applicant's work supervisor since April 2018 first became acquainted with him in December 2016. They have worked on the same project since January 2018. One of his many tasks requires a high level of attention to detail, and he is able to convey information clearly and concisely. She considers Applicant to be one of her highest performers and an asset to national security. He is sought after by multiple teams because of his ability to work well with any group. He completes his work on time and has been willing to work

extended hours to solve complex problems. (AE F.) At his mid-year performance review in August 2018, she described Applicant as an “excellent example of a model systems engineering employee.” (AE A.)

Applicant asserts that he told his current supervisor that he was being investigated for marijuana use. (Tr. 49.) No other co-workers are aware of his drug use, although he now indicates that he would acknowledge his drug use if asked. He does not intend to volunteer the information unless the circumstances warrant it. He is not ashamed of his marijuana involvement, but “there are obvious professional consequences of that reputation growing beyond what is necessary.” (Tr. 62.) Applicant did not inform his facility security officer (FSO) about his drug use while holding a security clearance because it has not impacted his ability to serve in his professional capacity. He used marijuana only one time during his present employment. (Tr. 63.) When asked whether he felt that his breach of his employer’s drug policy should have been disclosed to his FSO at his previous and current defense-contractor employments, Applicant responded that he had never denied his use and would have informed his security officer in the case of an arrest. (Tr. 64.) Applicant acknowledged that he had received training at work about substance abuse, but he did not consider his behavior as abuse. Marijuana never served as a crutch for him, and he was not dependent on the drug. (Tr. 80.)

Policies

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

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

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant used marijuana with varying frequency, approximately 234 times total, from June 2002 to January 2009. After telling an OPM investigator in April 2009 that he did not intend to use marijuana in the future, he was granted a DOD secret clearance in May 2009. While working for a defense contractor and possessing a security clearance, he resumed using marijuana in December 2009. Thereafter, he used marijuana three to four times a year with two college friends until March 2016. Applicant indicated in January 2017 that he did not intend to use marijuana in the future, but he used it with the same two friends in August 2017. When interviewed in February 2018 for his latest background investigation, he could not commit to discontinuing his marijuana use because smoking the drug with these two friends is something they do together and have done so for a decade. Disqualifying conditions AG ¶ 25(a), “any substance misuse (see above definition),” AG ¶ 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position,” and AG ¶ 25(g), “expressed intent to continue drug involvement and

substance misuse, or failure to clearly and convincingly commit to discontinue such use,” apply. Applicant admitted during an April 2009 personal subject interview that he purchased and sold marijuana on occasion to friends while in college. Whereas his illegal purchases and sales of marijuana were not alleged in the SOR, they cannot be considered for disqualifying purposes. AG ¶ 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” applies in that he had possession of marijuana when he used it, however.

AG ¶ 26(a) provides for mitigation when the drug involvement and substance misuse “happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Applicant’s marijuana use was part of his recreational lifestyle in college and, by his own admission, something that he and friends #1 and #2 did together while socializing from December 2009 to March 2016 and again in August 2017. It was too recurrent for mitigation under AG ¶ 26(a).

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.

In June 2018, Applicant executed a statement of intent to abstain from all drug use in the future, which is required for mitigation under AG ¶ 26(b)(3). His candor about his drug involvement allows me to accept as credible his statement of intent to completely abstain from marijuana in the future and his claim of no marijuana use since August 2017. Even so, I cannot ignore that he has not abided by his previous assertions that he did not intend to use marijuana in the future. In April 2009, he told an OPM investigator that his marijuana use would not carry over after he graduated from college because he did not want marijuana to affect his career. On his January 2017 SF 86, he indicated that his use of marijuana was “a phase” that he had outgrown, and that he had no intentions of revisiting that behavior. Applicant continues to associate with friends #1 and #2 from college with whom he used marijuana from December 2009 to March 2016 and again in August 2017. As recently as February 2018, Applicant could not say that he would not use marijuana again with friends #1 and #2. While acknowledging the reduced frequency of his marijuana use since college, a “trend” away from marijuana which he submits has instilled

confidence in his ability to abstain, Applicant was well aware that marijuana use was prohibited of defense contractor employees holding a security clearance. Both friends #1 and #2 indicate that Applicant has told them that he intends to abstain from recreational marijuana use, and they expressed their support of that decision. However, under the circumstances, a longer period of abstention is required before I can conclude with confidence that his marijuana use is behind him and will not reoccur. The drug involvement security concerns are not fully mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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 (SOR ¶ 2.a), 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 repeatedly used marijuana while holding a secret clearance. 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 the DOD's and his employer's policies prohibiting illegal drug use. AG ¶ 16(d) 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:

(3) a pattern of dishonesty or rule violations.

Applicant was granted a DOD secret clearance in May 2009 after he had indicated that his marijuana use would not continue after college. He knew when he resumed his marijuana use in December 2009 that it was illegal as well as contrary to his obligations as a clearance holder employed by a defense contractor. It is no justification that he used marijuana only three to four times a year while working for his previous employer and only

one time in his present job. He admitted to an OPM investigator in February 2018 that he was aware that his marijuana use in August 2017 was contrary to his employer's policies and that he could face disciplinary action if his employer learned about his marijuana use. Nothing about the circumstances of his recreational marijuana use mitigates or justifies his deliberate noncompliance with the DOD's and defense-contractor employers' policies. Curiosity about legal purchase and his celebratory mood do not adequately mitigate the poor judgment he exhibited in August 2017 when he and his friends illegally transported marijuana across state lines and then illegally used it.

Applicant exhibited some reform under AG ¶ 17(d) by admitting his marijuana use while holding a DOD clearance and by resolving not to use any illegal drug in the future. AG ¶ 17(d) provides:

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

However, Applicant had expressed an intention in April 2009 to put his marijuana use behind him. The Government relied on that intention and granted him a clearance. He betrayed the Government's trust each time that he used marijuana thereafter, rationalizing that it was not serious because it was limited in frequency and only with persons he trusted. After several years of putting his self-interest ahead of his obligations as a clearance holder, he contends that he now can be counted on to abide by his commitment because of his signed statement to abstain, which he takes especially seriously. His January 2017 SF 86 denial of any future intention to use marijuana was under the advisement of Title 18, Section 1001, of the United States Code, which makes punishable as a felony offense any false statement. Assuming he did not then intend any future marijuana use, he was on notice that future marijuana use was incompatible with his security clearance. Applicant's failure to give due consideration to his obligations as a cleared individual continues to reflect adversely on his judgment and reliability. The personal conduct security concerns are not fully mitigated.

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).³ In making the overall commonsense determination required under AG ¶ 2(c),

³ 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

Applicant's contributions to his employer weigh in his favor. Applicant's supervisor considers him to be one of her highest performers and an asset to national security. Dedicated to his work, he is sought after by multiple teams because of his ability to work well with any group. He completes his work on time and has been willing to work extended hours to solve complex problems. However, neither his work contributions nor his candid disclosures about his marijuana use, including his admissions in 2018 that he could not rule out future marijuana use with his friends, entitle him to maintain his security clearance. The Government can reasonably expect persons granted a security clearance to comply with their obligations. Applicant was entrusted with a security clearance based on certain criteria and conditions, including that he abide by the drug laws and remain abstinent from illegal drugs while maintaining his security clearance. Applicant was also obligated to report any transgressions as soon as practicable. See ISCR Case No. 11-12165 (App. Bd. Jan. 29, 2014). Applicant has yet to advise any security personnel about his marijuana use because he regards his drug use as minimal, and it did not affect his work.

Security clearance decisions are not intended to punish applicants for past transgressions. Yet it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). 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 continue his eligibility for a security clearance.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge