



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-01679
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s use of marijuana in November 2017, in disregard of his clearance requirements and federal law, and his arrest on drunk driving and drug charges while entering a military base are not yet adequately mitigated. Clearance is denied.

Statement of the Case

On July 3, 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), Guideline E (personal conduct), and Guideline J (criminal 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 August 2, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel indicated that the Government was ready to proceed to a hearing on March 12, 2019. 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, and on March 18, 2019, I scheduled a hearing for April 10, 2019.

At the hearing, three Government exhibits (GEs 1-3) and one Applicant exhibit (AE A) were admitted into evidence. Applicant testified, as reflected in a transcript (Tr.) received on April 30, 2019. I held the record open for two weeks after his hearing for additional evidentiary submissions from Applicant. Nothing was received by the April 30, 2019 deadline, and so I closed the record on that date.

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 in at least November 2017 after he had been granted a DOD secret security clearance in July 2006. Applicant is alleged under Guideline H (SOR ¶ 1.b) and cross-alleged under Guideline E (SOR ¶ 2.a) and Guideline J (SOR ¶ 3.a) to have been arrested in November 2017 and charged with simple possession of marijuana, driving under the influence (DUI), and possession of drug paraphernalia on a U.S. military base. Also under Guideline E, Applicant allegedly “failed to outline the full extent” of his November 2017 criminal conduct when he was interviewed by an authorized investigator on February 21, 2018, and March 28, 2018 (SOR ¶ 2.b).

When Applicant answered the SOR allegations, he admitted the illegal drug use as alleged in SOR ¶ 1.a and the arrest and charges as alleged in SOR ¶ 1.b, but he denied that the conduct raised personal conduct and criminal conduct security concerns. He also denied that he intentionally misrepresented his criminal conduct during his subject interviews on February 21, 2018, and March 28, 2018.

After considering his response to the SOR, the exhibits, and the hearing transcript, I make the following findings of fact:

Applicant is a 39-year-old high school graduate. He and his spouse began cohabiting in July 2014 and married in May 2017. Applicant has a 15-year-old son from a previous relationship. Applicant has worked for a defense contractor since July 2006 and has held a secret clearance throughout his employment. (GEs 1-2; Tr. 26.)

To renew his security clearance eligibility, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on May 2, 2016. Then an operations supervisor with his employer, Applicant disclosed a trip to the Caribbean in February 2016, but no issues of any significant security concern. (GE 1.)

In January 2017, Applicant began experiencing physical symptoms that were medically attributed to excessive anxiety. He was prescribed an anti-anxiety medication, but he did not like its affects so he stopped using it. He continued to experience anxiety, and his father suggested that he try marijuana. Applicant accepted an offer of marijuana “against better judgment.” (Tr. 43.) His father gave him some marijuana, a grinder, and a glass pipe.¹ Applicant used the marijuana on at least one occasion, which he indicates occurred in early November 2017. He smoked it alone in his yard at home. He claims he did not like the way marijuana made him feel, but he did not discard the drug or paraphernalia. He stored the marijuana and paraphernalia in the center console of his truck. (Tr. 23-24, 28-31.) Applicant denies any other use of marijuana beyond that single occasion, and any intention to use marijuana in the future. (GE 3; Tr. 29, 31-32.) Applicant understood at the time that any marijuana involvement is illegal under federal law. (Tr. 32, 43.)

On November 17, 2017, Applicant drank excessively while socializing with friends after work. His route home passed a military base, and he “unwittingly, unknowingly” followed the vehicle in front of him onto the military base. He had a pass that allowed him access for his work, but he had no reason to access the base at that time. Gate personnel suspected that he had been drinking and asked him to pull over. He apparently failed a field sobriety test and his blood alcohol level tested at .168% and .163%. Applicant was arrested for DUI and his vehicle was searched. Marijuana and a glass pipe with marijuana were found in his vehicle. (GE 3; Tr. 24.) He was released to his spouse’s custody, and claims to have known only about a DUI charge at the time. (Tr. 33-34.) He was issued a violation statement that he asserts “looked like a speeding ticket and it was barely legible.” (Tr. 34.) Applicant was charged with violating state and federal laws for DUI and possession of drug paraphernalia (glass pipe and marijuana grinder), and violating federal law for simple possession of marijuana. (GE 3.) In late February 2018 or early March 2018, Applicant was notified of a court date, which is when he submits he learned about the marijuana possession and drug paraphernalia charges. (Tr. 34-35.) On March 27, 2018, prosecution in U.S. District Court was deferred pending the establishment of a satisfactory pretrial diversion program for Applicant. Should no pretrial program be devised, or Applicant reject the program or fail to comply with the program, the prosecution would pursue the charges against him in court. The prosecution agreed to move for a dismissal of the pending charges should Applicant successfully complete the program devised with no admission of guilt by Applicant. (GEs 2-3.) As of April 2019, Applicant had been interviewed by a probation officer, and his house had been inspected, but he had yet to be offered a diversion program. (Tr. 25, 36-37, 44-45.)

On February 21, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked whether he had ever been charged with an alcohol-related offense, Applicant responded negatively. After being confronted about an underage drinking incident in March 2000, Applicant admitted the incident and that he was placed on six months of probation and ordered to attend alcohol

¹ When asked whether his father is a marijuana user, Applicant responded, “apparently.” (Tr. 42.) He denied knowing before his father provided him the drug that his father had any marijuana in his possession. (Tr. 42-43.)

education classes. Applicant then volunteered that he had been cited for DUI by the military police in November 2017. He stated that he had two beers while out drinking with friends, and that in route home, he entered the base erroneously due to road construction. Military police had him pull over because he did not have his identification ready. He recalled performing field sobriety tests but claimed to have no recall how well he did. Applicant acknowledged that he had taken a breathalyzer test at the police station, although he denied any recall of the results. He admitted receiving a citation for DUI, which he now asserts was “barely legible” (Tr. 21), and that he had received notification in December 2017 that his driving privileges on the base were suspended. He indicated that he made a mistake and that he no longer went out drinking with friends. (GE 2.)

On March 28, 2018, Applicant was re-interviewed by the OPM investigator to follow-up about developed information that he had been arrested for simple possession of marijuana, which he had not previously disclosed. When read the police record inquiry concerning whether he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him in the last seven years, Applicant volunteered that he had disclosed during his previous subject interview that he had been arrested for DUI. Then asked whether there were any other charges, Applicant volunteered that he had been charged with simple possession of marijuana. Concerning why this charge had not been previously disclosed, Applicant explained that he did not remember the charge until he received a notice to appear in court and that notice was received after his first interview. When asked for an explanation of the circumstances of his arrest, Applicant asserted that his attorney advised him not to discuss the case while disposition is pending. (GE 2.)

The DOD CAF sent Applicant drug interrogatories on April 26, 2018, and he responded on May 25, 2018. In response to the final disposition of the charges, Applicant provided the court records showing that he had agreed to a deferral of prosecution and participation in a pre-trial diversion program. Upon completion, the charges against him will be dismissed. In answer to whether he had ever illegally used any controlled substance, Applicant stated, “I am embarrassed and ashamed to admit to the use of marijuana. I only used once on or around the first week in November 2017.” Applicant denied that he was currently using any controlled substance or that he associates with persons who use illegal substances or frequent places where marijuana is being used. He took the opportunity to add the following information:

When I initially filed my 10 year red badge paperwork in 2016 all of my answers were truthful. However I was to [sic] embarrassed to admit the truth when asked these questions by inspector [name omitted]. I made a mistake that will never happen again. I love my Country and my job and hope the mistakes that I’ve made will not jeopardize my ability to hold a clearance. (GE 3.)

Applicant testified that in February 2018 that he and the investigator went through his answers to the questions on the SF 86, and that he answered “to the best of [his] knowledge.” (Tr. 21.) He later admitted there were some discrepancies in some of the statements that he had made because he was embarrassed. (Tr. 24.) He maintained that

he did not know about the drug charges before his February 27, 2018 interview, however. (Tr. 33-34, 39.) He knew about the drug charges when he retained legal counsel on March 23, 2018. (Tr. 41.) When asked about his statement during his February interview that he had consumed two beers before his arrest, Applicant responded, "I thought when I made that statement that that was accurate when I said it." As to his current understanding, Applicant expressed uncertainty as to its accuracy based on his blood alcohol content. He admitted that he could have "potentially" had more to drink. (Tr. 27-28.) He acknowledged that he had not told the OPM investigator that he had used marijuana because he was embarrassed. (Tr. 40.) Applicant admitted that he still battles with anxiety. (Tr. 23.) He provided no information about whether he had found a viable alternative to marijuana to address his condition.

A co-worker of Applicant's for the past 15 years has interacted with Applicant both in subordinate and supervisory roles. For the past six months, Applicant has worked for him in managing training for their department. Applicant has been innovative and current on ways to develop and educate employees. He has proven himself to be "professional, helpful, dedicated, extremely experienced, and a key resource" to their department and employer. (AE A.)

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.

The evidence establishes that Applicant used marijuana on one occasion during the first week of November 2017. Despite his claims that he did not like the drug’s effect on him, he stored some marijuana in his truck along with some drug paraphernalia (a grinder and a glass pipe) until November 17, 2018, when his vehicle was searched by military police incident to his DUI arrest. Applicant held a secret clearance when he used marijuana and possessed the marijuana and drug paraphernalia. Disqualifying conditions AG ¶¶ 25(a), “any substance misuse (see above definition);” 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;” and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position,” apply.

AG ¶ 26(a) provides for mitigation when the drug involvement and substance misuse “happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Applicant submits that he used marijuana only one

time. His ongoing possession of marijuana and drug paraphernalia suggests that he may have intended to use marijuana again, but there is no evidence that he used it more than once or that he currently has any marijuana in his possession. Even so, Applicant's possession of marijuana and drug paraphernalia in violation of federal law and security clearance requirements for at least two weeks in November 2017 cannot reasonably be characterized as isolated, although it was infrequent in that it was limited to November 2017.

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.

Applicant obtained his marijuana and drug paraphernalia from his father, who apparently never used marijuana in Applicant's presence. Yet, AG ¶ 26(b)(1) is difficult to satisfy without persuasive evidence that Applicant's father is no longer involved with illegal drugs. AG ¶ 26(b)(2) does not apply because Applicant used marijuana in his own yard. Regarding AG ¶ 26(b)(3), Applicant indicated in response to DOD CAF interrogatories in May 2018, and at his hearing in April 2019, that he does not intend to use any marijuana in the future. His statement in that regard does not include an acknowledgement of revocation of any security clearance eligibility for any violation, but he clearly understands the consequences for any future illegal drug use. At the same time, his credibility is somewhat suspect for the reasons noted under Guideline E, and drug charges are still pending resolution. In that regard, Applicant would likely face prosecution in the event of any illegal drug involvement. He lacks a track record of abstinence without a threat of criminal prosecution. He used marijuana to self-medicate for anxiety. As of April 2019, he was still battling with anxiety. With no evidence that he has a viable alternative in place to deal with his anxiety, the risk of future marijuana use cannot be ruled out. The drug involvement and substance misuse security concerns are not yet 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The Government also established a case for disqualification under the personal conduct guideline because of Applicant's illegal drug involvement while possessing a DOD secret clearance, and because of his arrest on a military base on DUI and drug charges (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). 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 defense-contractor employee with a clearance to comply with federal law and DOD policy prohibiting illegal drug use. Applicant exercised "questionable judgment" within the general security concerns set forth in AG ¶ 15 in several aspects. He used marijuana in knowing violation of federal law and of the obligations of his security clearance. He operated a vehicle while intoxicated, as evidenced by his blood alcohol level exceeding .16%. He drove onto federal property drunk and with marijuana and drug paraphernalia in his possession.

Applicant's drunk driving and illegal drug involvement, when viewed together, raise considerable judgment concerns and reflect an unwillingness to comply with rules and regulations, as contemplated in disqualifying condition AG ¶ 16(c), which provides:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

The Government alleged a separate basis for disqualification based on Applicant's failure "to outline the full extent" of his criminal conduct in November 2017 during his

subject interviews. The evidence shows that Applicant was asked during his February 2018 interview whether he had been charged with an alcohol-related offense, and he responded negatively. He later volunteered that he had been charged with DUI on a military base in November 2017, but only after he was confronted by the investigator about his underage possession of alcohol offense in 2000. Applicant told the investigator that he had consumed only two beers before his DUI, and he did not inform the investigator about the drug charges. When re-interviewed in March 2018, one day after his court appearance on the November 2017 charges, he initially disclosed only the DUI. He had to be asked about any additional offenses before he disclosed that he had also been charged with simple possession of marijuana. He claimed he had not recalled the drug charges during his prior interview. He then refused to detail the circumstances, claiming that his attorney told him not to discuss the charges because they were still pending. It is noted that Applicant did not reveal that he had ever used any marijuana during either interview with the investigator. In response to DOD CAF drug interrogatories, Applicant admitted that he was “to [sic] embarrassed to tell the truth when asked those questions” by the OPM investigator.

Applicant now claims that he was unaware of the drug charges before he was notified of his court appearance sometime after his February 2018 interview. Even if true, he has admitted that he concealed his marijuana use from the investigator during both interviews. The evidence proves initial concealment of his DUI, minimization of his alcohol consumption, and lack of candor about his drug involvement to the OPM investigator. Disqualifying condition AG ¶ 16(b) applies, as follows:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Moreover, there is a basis to apply AG ¶ 15(b) concerning refusal to provide full, frank, and truthful answers to lawful questions of investigators. Applicant would not discuss the circumstances of his November 2017 arrest when asked to do so during his March 28, 2018 interview with the OPM investigator.

Applicant’s unwillingness to be fully forthcoming during his subject interviews precludes favorable consideration of mitigating condition AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” His refusal to discuss his arrest during his March 2018 interview warrants some consideration of AG ¶ 17(b) if he acted in good faith on the advice of his attorney. AG ¶ 17(b) states:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a personal with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being aware of the

requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant presented no corroboration from his attorney that he had been advised not to discuss his arrest with government investigators. Moreover, AG ¶ 17(b) would not mitigate his February 2018 misrepresentations and omissions because Applicant did not retain the attorney until March 2018.

Misrepresentations of relevant and material facts concerning issues that could potentially impact the security investigation and adjudication process are considered serious. Applicant's marijuana use and his arrest were recent as of his interviews. While his use of marijuana was infrequent, it is aggravated because he held a security clearance, and he knowingly disregarded federal law. AG ¶ 17(c) is not established. It provides:

(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.

AG ¶ 17(d) has some applicability in that his marijuana use and DUI were infrequent. AG ¶ 17(d) states:

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

Applicant acknowledges that he made a serious mistake by using marijuana and driving drunk. There is no evidence that he is currently using marijuana or that he drives after drinking alcohol. He reportedly used marijuana to self-medicate for his anxiety. He is still battling with anxiety, but there is no clear indication of a viable treatment option that would make relapse unlikely. He showed a lack of reform when he testified at his hearing that he answered the questions of the investigator to the best of his knowledge. When confronted about his interview account that he had consumed only two beers before his arrest for DUI, he testified that he believed his statement was accurate at the time. By the time of his February interview, he had time to reflect on his arrest, including on breathalyzer results of .168% and .163%. When confronted with that obvious indication of intoxication, he admitted that he "potentially" had consumed more than two beers. Applicant has yet to show that his representations are completely reliable. The personal conduct security concerns are not fully mitigated.

Guideline J: Criminal Conduct

The security concern about criminal conduct is set forth 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.

Applicant's arrest on DUI, marijuana possession, and drug paraphernalia possession charges establishes disqualifying condition AG ¶ 31(b), which states:

(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, persecuted, or convicted.

Prosecution of the November 2017 criminal charges is currently deferred, but the facts show that Applicant operated his truck onto a U.S. military base with a blood alcohol level more than adequate to prove that he was intoxicated. Marijuana and drug paraphernalia were found in his truck, and Applicant admits that he kept marijuana and drug paraphernalia in his center console. His case is pending an appropriate pre-trial diversion program, which is not the equivalent of probation that would trigger AG ¶ 31(c), "individual is currently on parole or probation." At the same time, it would be premature to apply either AG ¶ 32(a) or AG ¶ 32(d) in mitigation when there has been no resolution to the criminal charges. Those mitigating conditions provide:

(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; and

(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 has a good employment record. However, it would be premature at this time to conclude that the criminal conduct security concerns are 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).² By using marijuana in knowing disregard of federal law, Applicant cast serious doubt

² 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

about whether he can be counted on to comply with the requirements for handling classified information.

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
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge

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.