



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-00414  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel  
For Applicant: *Pro se*

12/02/2020

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct), E (Personal Conduct), and H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 12, 2018. On April 24, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J, cross-alleged under E. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document, denied the allegations, and requested a hearing before an administrative judge. Department Counsel was ready to

proceed on June 25, 2020, and the case was assigned to me on July 16, 2020. On July 31, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 7, 2020. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on October 19, 2020.

### **Amendment of SOR**

Applicant admitted during cross-examination that he had used marijuana daily since his discharge from the Navy in June 2017, and that he had not disclosed his marijuana use in his SCA. (Tr. 42-47.) Department Counsel moved to amend the SOR to conform to the evidence by adding an allegation of marijuana use under Guideline J (Criminal Conduct). I denied Department Counsel's motion. (Tr. 47.)

On November 4, 2020, after reviewing the transcript and the documentary evidence submitted at the hearing, I reconsidered my denial of Department Counsel's motion to amend the SOR. I reopened the record, granted Department Counsel's motion, and made additional amendments of the SOR on my own motion. The SOR has been amended as follows:

*Add subparagraph 1.b under Guideline J as follows: "You illegally used marijuana daily from June 2017 to October 2020."*

*Add subparagraph 2.b under Guideline E as follows: "When you submitted your Electronic Questionnaires for Investigations Processing (e-QIP) on April 12, 2018, you answered 'No' to the question in Section 23, asking if you had illegally used any drugs or controlled substances in the last seven years, and you did not disclose your daily marijuana use from June 2017 to October 2020."*

*Add paragraph 3, alleging conduct under Guideline H (Drug Involvement and Substance Misuse), and add subparagraph 3.a as follows: "You used marijuana daily from June 2017 to October 2020."*

I kept the record open until November 30, 2020, to permit Applicant and Department Counsel to object to the above amendments to the SOR, submit additional evidence, and submit additional argument regarding the amended SOR. I also gave Applicant the opportunity to request that the hearing be reopened to enable him to provide further testimony in person. Copies of my order were sent to Applicant and Department Counsel. Neither party objected to the amendments or offered any additional evidence or argument. Applicant did not request that the hearing be reopened. (Hearing Exhibits I and II.)

## Findings of Fact

Applicant is a 26-year-old pipefitter employed by a defense contractor since December 2017. Applicant's mother and stepfather served on active duty in the military and are now retired. (GX 7 at 1; Tr. 29-30.) While his parents were assigned overseas, Applicant graduated from a high school on a military installation in June 2012. After graduating from high school, he worked for his uncle's business as an appliance installer. He attended college full time from June 2012 to June 2013, and was a part-time student for a few months in 2013 and 2016 but did not receive a degree. (GX 7 at 2.) He served on active duty in the U.S. Navy from April 2015 to June 2017 and received an other than honorable (OTH) administrative discharge. He held a security clearance in the Navy. (GX 1 at 13-18.)

Applicant married in July 2015 and divorced in April 2018. He has a six-year-old child from this marriage. He now lives with his fiancée, who has three children from a previous relationship, and they had a child together in September 2020. (Tr. 27-28).

On October 5, 2015, a female sailor notified the Fleet and Family Services Center at the base where she was assigned that she had been sexually assaulted by Applicant. On October 6, 2015, The Fleet and Family Services Center notified the base Naval Criminal Investigation Service (NCIS) office that the female sailor had reported a sexual assault and that a sexual assault forensic examination had been performed at the base hospital. An NCIS investigator interviewed the female sailor on the same day, and she told the investigator that Applicant had sexually assaulted her by oral-vaginal and penile-vaginal intercourse while she verbally protested and physically struggled to make him stop. She showed the NCIS text messages between Applicant and her supporting her complaint, including one in which Applicant told the female sailor, "[Y]ou make it seem like I raped you." The NCIS Report of Investigation (ROI) states that Applicant was interrogated and admitted sexually assaulting her but denied attempting to have penile-vaginal intercourse. The ROI reflects that a crime laboratory identified Applicant's semen on the crotch area of the female sailor's underwear. (GX 6 at 6.) The ROI also reflects that, on October 21, 2015, the female sailor told an investigator that she realized that Applicant did not sexually assault her "as reported," because, "although she did not know it at the time, she actually wanted [Applicant] to engage in the described sexual activity with her." (GX 6-7.)

The ROI does not include a written statement from Applicant, a written statement from the female sailor, or the laboratory reports identifying Applicant's semen on the female sailor's underwear. However, in November 2018, Applicant was interviewed by a security investigator regarding the SCA he had submitted in April 2018. The interview included questioning about the NCIS ROI. Applicant denied sexually assaulting the female sailor. (GX 7 at 7.) He told the security investigator that he and the sailor had been casually dating for one or two months. He was still married at the time but did not tell the female sailor that he was married. On October 2, 2015, the female sailor suggested that they get a hotel room for the weekend, because they had been unable to do so on the previous weekend to celebrate Applicant's birthday. Applicant picked up the female sailor

at her barracks on the evening of October 3. They were both in “A” school, residing in barracks, and required to have a “buddy” whenever they left the base. Applicant signed the female sailor out as her “buddy.” They arrived at the hotel late at night. Applicant consumed six or seven strong alcoholic drinks and was intoxicated.

Applicant told the investigator that they began kissing with the lights off. He removed her underwear with her help, and he began giving her oral sex. When the female sailor complained that he was being too rough, he stopped the sexual activity and went to sleep. The next morning, the female sailor told Applicant that she did not like his rough behavior with her. Applicant apologized and told her that he did not intend to be rough. According to Applicant, they stayed at the hotel, “hanging out and joking, until the morning of Sunday, October 5, when Applicant took the female sailor back to her barracks. (GX 7 at 6.)

On October 6, 2015, Applicant was given a “protective order,” requiring him to stay away from the female sailor. During the security interview in November 2018, he told the security investigator that he admitted to the NCIS that he had sexually assaulted her, because the NCIS investigator told him that witnesses at the hotel had heard the female sailor screaming, and the NCIS had retrieved text messages from the female sailor’s cellphone that were consistent with her accusations. He also told the security investigator that, while the protective order was in effect, the female sailor contacted him by telephone a couple of times, told him that “she was going to make the situation right,” and said that she felt bad about what she had said about him. (GX 7 at 7.) At the hearing, Applicant admitted calling the female sailor once, in violation of the protective order, but he testified that all other communication was indirect through mutual friends. (Tr. 24, 37-38.)

At the hearing, Applicant testified that while he was performing oral sex on the female sailor, she told him that she was uncomfortable, and he stopped and went to sleep. He testified that he apologized on the next morning for being “a tad bit aggressive.” They “hung out” in the hotel room all day, except for shopping for food and snacks. He testified that they cuddled and watched television, and that he was with the female sailor when she talked to her family on FaceTime. (Tr. 40.) On Monday morning, he was surprised when he was required to report to the NCIS for questioning. (Tr. 21-23.)

At the hearing, Applicant initially denied that he attempted to have penile-vaginal intercourse with the female sailor. He could not explain why his semen was found on her underwear. (Tr. 34-35.) He then admitted that it was possible that he attempted to have penile sex with her, but he did not remember it because he was intoxicated. (Tr. 35.) Upon further questioning, he testified that he remembered trying to have penile sex, but she said “No” and he stopped. (Tr. 54.) He initially testified that he remembered being questioned by NCIS investigators, and that the questioning was recorded, but upon further questioning, he testified that he did not remember the interrogation and did not know if he admitted having penile-vaginal sex with the female sailor. (Tr. 36-37, 52.)

Between October 2015 and June 2017, Applicant’s commanding officer and executive officer were reassigned, and their replacements had no knowledge of the facts

of the case except for the information in the files. (GX 7 at 7.) On a date not reflected in the record, Applicant was charged with sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920. (GX 3.) Sexual assault is a felony, triable by court-martial, and punishable by dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years. Manual for Courts-Martial (2016 ed.), Part IV, ¶ 45.e.(2). The charges, which included an allegation of forcible anal intercourse, were referred to an investigating officer in accordance Article 32, UCMJ, 10 U.S.C. § 832 (the military equivalent of a grand jury). The female sailor declined to testify. The investigating officer recommended dismissal of the charges. On January 18, 2017, the command staff judge advocate recommended against prosecution. (GX 4.) NCIS closed its report on June 19, 2017.

On February 16, 2017, Applicant appeared before his commanding officer, a Navy captain, and admitted that he was guilty of adultery. His commanding officer imposed nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815, for adultery, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Applicant's punishment was reduction in pay grade, forfeiture of \$1,732 of his pay, and restriction to quarters for 60 days. (GX 4.)

After Applicant received nonjudicial punishment, his command initiated administrative separation for serious misconduct. Applicant waived his right to a hearing before a board of officers and was discharged on June 23, 2017, with an OTH discharge. The Sexual Assault Disposition Report lists the basis for Applicant's discharge as "commission of a serious offense" and lists the offense that was the basis for separation as a "sexual assault offense." (GX 2; GX 4 at 3.) At the hearing, in this case, Applicant testified that he did not request a hearing to contest the allegation of serious misconduct because his lawyer advised him not to talk to anyone about the incident, and he assumed that the advice applied to an administrative discharge board. (Tr. 57-58.) In his closing statement, he explained that when he went to captain's mast instead of a court-martial, he was thankful for not facing 30 years in the brig and registering as a sex offender, and he focused on moving on with his life, not realizing that he might need a security clearance for future jobs. (Tr. 64-65.)

At the hearing, Applicant testified that he started drinking alcohol heavily after he was accused of sexual assault. He realized that he was drinking too much, and that he stopped drinking after he was discharged from the Navy in June 2017. Department Counsel then asked him, "Do you do anything else, any marijuana, anything like that?" He responded that he had been smoking marijuana daily from the date of his discharge from the Navy until the day before the hearing. He explained that he used marijuana to control his anxiety and depression because he was unable to obtain anxiety medications from the Veterans' Administration. (Tr. 42-47.) The record does not reflect whether Department Counsel had a factual basis for questioning Applicant about marijuana use or whether Applicant's disclosure of his marijuana use was an unexpected answer to a general exploratory question.

When Applicant submitted his SCA in April 2018, he listed his military service in Section 13A (Employment Activities) and stated that he "left by mutual agreement

following charges or allegations of misconduct” and described the allegation as adultery. (GX 1 at 16.) In Section 15 (Military History), he disclosed his OTH discharge and stated that the reason for the discharge was, “I committed adultery.” In the same section, he disclosed his nonjudicial punishment for adultery. (GX 1 at 19-20.) He answered “No” to a question in Section 22, asking if he had ever been charged with a felony offense, including an offense under the UCMJ. He also answered “No” to a question in Section 23, asking if he had illegally used any drugs or controlled substances during the last seven years. At the hearing, he was not questioned about his negative answer in Section 23, but he admitted his failure to disclose his marijuana use. He did not offer any explanation for his failure to disclose his marijuana use, either at the hearing or during the additional time the record was held open after the hearing.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from

being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline J, Criminal Conduct**

The SOR alleges that Applicant was administratively separated from the U.S. Navy in June 2017 with an OTH discharge for commission of a serious offense, specifically sexual assault. The concern under this guideline is set out 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.”

The evidence of a sexual assault in this case is sparse, but it is “more than a scintilla” and sufficient to shift the burden to Applicant to rebut, explain, extenuate, or mitigate the facts. See *v. Washington Metro. Area Transit Auth.*, *supra*. “Once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991).

Applicant categorically denied committing a sexual assault during his security interview in November 2018. However, his later testimony at the hearing was vague, contradictory, and uncertain. He could not explain why his semen was on the female sailor’s underwear. During his testimony, he first claimed that he did not attempt penile-vaginal intercourse, then claimed that he could not remember if he attempted penile-vaginal intercourse, and then admitted that he attempted penile-vaginal intercourse but desisted when she said “no.” He initially testified that he remembered being questioned by NCIS investigators and that the questioning was recorded, but he later testified that he

did not remember the interrogation and did not know if he admitted having penile-vaginal sex with the female sailor.

The female sailor's statement to the NCIS on October 21, 2015 is an investigator's interpretation of what she said. Although the ROI recites that the female sailor provided a sworn statement, there is no statement from her in the record. The statement attributed to her in the NCIS ROI is ambiguous. It could have been a recantation of her claim that she was sexually assaulted, or it could have been an admission that she expected to have sexual activity with Applicant when she went to the hotel with him, but she objected to and resisted the rough and aggressive sexual activity when it occurred.

I conclude that the evidence as a whole is "more than a scintilla." It is sufficient to raise the following disqualifying conditions under this guideline:

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

AG ¶ 31(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(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.

AG ¶ 32(a) is partially established. The alleged sexual assault occurred more than five years ago, but it did not occur under unusual circumstances. Applicant's OTH discharge was more than two years ago. However, his equivocal and contradictory testimony at the hearing, his lack of candor in his SCA, and his daily use of marijuana while his SCA was pending adjudication cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 32(c) is not established. The NCIS ROI is sufficient to establish the sexual assault. Applicant's contradictory testimony at the hearing was insufficient to overcome

the evidence against him. He had an opportunity to challenge the characterization of his discharge, but instead he chose to waive his right to a hearing before an administrative board.

AG ¶ 32(d) is not established. Applicant presented no evidence regarding his employment record, and he has continued his criminal activity by his daily use of marijuana and falsification of his security clearance.

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

The SOR, as amended, alleges that Applicant falsified his SCA, and it also cross-alleges the Guideline J allegations under this guideline: The concern under Guideline E is set out 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. . . .

An omission from an SCA, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

At the time Applicant submitted his SCA, he had served in the Navy for more than two years and had previously been granted a security clearance. He grew up in a military environment, had graduated from high school, attended college for a year, and worked in the private sector for more than two years before enlisting in the Navy. He would have known from his life in a military environment and his Navy service that marijuana use was unacceptable conduct. His daily marijuana use began almost two years before he submitted his SCA. In addition to failing to disclose his marijuana use, he consistently understated the basis for his OTH in Sections 13A, 15, 22, and 23 of his SCA, as adultery, a relatively minor offense, even though he knew that it was based on an allegation of sexual assault, a serious offense.

Although Applicant's lack of candor in Sections 13A, 15, 22, and 23 of his SCA, regarding the basis for his OTH discharge, is not alleged in the SOR, I have considered it for the limited purpose of determining his state of mind when he failed to disclose his marijuana use, to evaluate his credibility, to consider whether he has demonstrated successful rehabilitation, and as part of my whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Based on Applicant's lack of candor throughout his SCA and his inconsistent testimony at the hearing, I conclude that his failure to disclose

his daily marijuana use was deliberate. Thus, I conclude that the following disqualifying conditions under this guideline are established:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(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; and

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(a) is not established. Applicant made no effort to correct his SCA until he was cross-examined at the hearing.

AG ¶ 17(c) is not established. Sexual assault in violation of Article 120, UCMJ, is a felony. Applicant was punished for a lesser offense because the female sailor declined to testify in a court-martial. Deliberate falsification of an SCA is a serious offense that "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

AG ¶ 17(d) is not fully established. Applicant admitted his marijuana use at the hearing, and attributed it to his inability to obtain medications for his stress and anxiety.

However, he submitted no evidence or counseling or other treatment for his habitual marijuana use.

AG ¶ 17(f) is not established. Although the evidence of the sexual assault is sparse, it is sufficient, for the reasons set out above in the discussion of Guideline E, to qualify as “substantial evidence” of a sexual assault within the meaning of the Directive. Applicant admitted daily use of marijuana at the hearing.

### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline is set out 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.

Appendix B to the Adjudicative Guidelines prohibits granting or renewing a security clearance to “an unlawful user of a controlled substance.” Applicant’s admissions during the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions are potentially relevant:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(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.

Neither of the above mitigating conditions are established. Applicant has possessed and used marijuana daily since his discharge from the Navy in June 2017 and continuing to the day before his hearing.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I have incorporated my comments under Guidelines E, J, and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines E, J, and H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his criminal conduct, personal conduct, and drug use.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge