



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



In the matter of:)
)
) ISCR Case No. 20-03117
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey T. Kent, Esq., Department Counsel
For Applicant: *Pro se*

04/08/2022

Decision

HARVEY, Mark, Administrative Judge:

The statement of reasons (SOR) alleges and Applicant admitted that he possessed and used marijuana and tetrahydrocannabinol (THC)-infused cannabidiol (CBD) gummies on hundreds of occasions from 2010 to March 2019. He failed to disclose accurate and complete information about his marijuana and/or THC-infused CBD involvement on his September 7, 2010, and March 17, 2019 Questionnaires for National Security Positions (SF 86) or security clearance applications (SCAs). Security concerns arising under Guidelines H (drug involvement and substance misuse) and E (personal conduct) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 7, 2010, and March 17, 2019 Applicant completed and signed SCAs. (Government Exhibit (GE) 1, GE 2). On June 18, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H and E. (HE 2) On July 4, 2021, Applicant provided a response to the SOR and requested a hearing. (HE 3) On August 16, 2021, Department Counsel was ready to proceed.

On January 5, 2022, the case was assigned to me. On January 26, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 24, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered three exhibits into evidence, and Applicant offered one exhibit. (Transcript (Tr.) 14-16; GE 1-GE 3; Applicant Exhibit (AE) A) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 15-16) On March 3, 2022, DOHA received a transcript of the hearing. The record was held open until March 7, 2022, to enable Applicant to provide documentation. (Tr. 23, 52) No post-hearing documentation was received.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.e, and he denied the allegations in SOR ¶¶ 2.a through 2.f. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 42-year-old research scientist who is working for a defense contractor. (Tr. 6; GE 1) In 1998, he graduated from high school. (Tr. 6, 26) In 2004, he received a bachelor's degree in sociology; in 2005, he received a bachelor's degree in natural resource management; and in 2010, he was awarded a master's degree in forestry. (Tr. 6-7) He has not served in the military. (GE 1 at 21) In 2017, he married, and he has a two-year-old son. (Tr. 7-8)

Drug Involvement and Substance Misuse

SOR ¶¶ 1.a, 1.c, and 1.d allege, and Applicant admitted that he purchased and used marijuana and/or THC-infused CBD edibles with varying frequency from about August 2010 to about March 2019. This includes marijuana use while a federal government employee from August 2010 to August 2012.

Applicant used marijuana from about 1997 until 2020. (Tr. 18, 21) When he was in college, he smoked marijuana on about a weekly basis. (Tr. 18-19) He usually purchased the marijuana he used. (Tr. 19) In August 2010, he began his federal government employment. (Tr. 20) In 2020, he reduced his marijuana use to about once a month. (Tr.

21) There was no evidence presented of the sensitivity of his federal government employment.

Applicant did not possess or use marijuana from early 2010 until around 2011 because of his federal government employment. (Tr. 22, 24) He learned there was no drug testing at his federal government employment, and he decided to resume his marijuana possession and use. (Tr. 23) He worked for a university from September 2012 to February of 2016. (Tr. 23) At his hearing, he claimed that in late 2011 or early 2012, he stopped using marijuana again because he was looking for new employment, and he did not possess and use marijuana until late 2015 or early 2016. (Tr. 23-26)

In July 2017, Applicant started his current employment, and since early 2018, he has been eating THC-infused CBD edibles, which he purchased from marijuana dispensaries. (Tr. 27) His most recent use of a THC-infused CBD was in August or September 2020. (Tr. 33-34, 43; SOR response at 2) He is aware that the THC content of the CBD gummies he consumes exceeds the Department of Agriculture authorized level for hemp products of .3 percent. (Tr. 28-29, 49) As such, his possession and consumption of his THC-infused CBD gummies violated federal restrictions. See Joint Base San Antonio website, *CBD in the DOD*, https://www.jbsa.mil/Portals/102/CBD_PA%20Visual%20Aid.pdf.

SOR ¶ 1.e alleges and Applicant admitted that he used a prescription opioid without a prescription in August 2019. He used his spouse's prescription opioid twice when he had a painful molar and a painful knee. (Tr. 35)

As to his history of illegal drug use, Applicant said in a written statement submitted at his hearing:

Simply put, since my professional career started in 2006, I have never allowed drug use to be a limiting factor in my employability or professional advancement. If I'm unable to use due to my employment status or (as of late) if I cannot acquire recreational CBD or THC products from a state-sanctioned dispensary, I simply refrain from using. (AE A)

As for his future use of illegal drugs, Applicant said:

So I'm [an] adult now with a kid and a mortgage. I don't need to use CBD products or anything really, and I haven't. Once again, it's not a big deal. And if it's going to affect my employment, I can't risk even 5 percent of my job and my son and my mortgage and everything. I'm risk averse and I can't. (Tr. 48)

Personal Conduct

SOR ¶¶ 2.a through 2.d allege Applicant failed to fully disclose on his March 17, 2019 SCA the information in SOR ¶¶ 1.a through 1.e concerning his marijuana possession and use, his consumption of THC-infused CBD gummies, and his abuse of a

prescription opioid. He indicated on his SCA that he used marijuana; however, he limited his marijuana use to states where marijuana use was legal. In fact, he resided in and possessed marijuana in several states where possession of marijuana was not legalized under state law at the time he possessed it.

At his hearing, Applicant said his objective when he completed his 2019 SCA was to disclose he was limiting his marijuana use to places where it was legal under state law. (Tr. 36-37) He said “if [he] could get it legally at low risk, [he] will, and [he] will use edible typically high CBD, low THC. (Tr. 37) He said he did not have “vivid memories of using regularly.” (Tr. 40) When he answered the question on his SCA about drug use, he may have been downplaying his drug use. (Tr. 46) He conceded that sometimes he used marijuana outside these “limited parameters.” (SOR response at 2)

Applicant disclosed for the first time during his August 26, 2019 Office of Personnel Management (OPM) interview that he used his spouse’s opioid prescription twice to treat his painful tooth and knee. He indicated he wanted to be fully transparent about his opioid use. (Tr. 35-37; GE 3)

SOR ¶ 2.e alleges Applicant failed to disclose on his September 7, 2010 SCA the information in SOR ¶¶ 1.a, 1.b, and 1.c about his marijuana and/or THC-infused CBD use. In 2010, Applicant was applying for federal government employment. He said he intentionally answered no to the questions about marijuana possession and use during the previous seven years because he “wanted to ensure [he] received the job” and he wanted to “ensure [his] employability.” (Tr. 22; AE A at 1) However, in his SOR response, he claimed the omission of his marijuana involvement was unintentional and an oversight. (SOR response at 3)

SOR ¶ 2.f cross alleges the drug involvement in SOR ¶ 1.b while he was a federal government employee as a personal conduct security concern.

During his August 26, 2019 OPM interview, Applicant said he smoked marijuana three or four times a week when he was in college from 1998 to 2003. (GE 1 at 12-13; GE 3 at 7) He used marijuana once a week from 2008 to 2010 while he was attending the university where he received his master’s degree. (GE 1 at 13; GE 3 at 7) From 2012 to 2015, while employed at another university, he used marijuana on a weekly basis, mostly at home. (GE 1 at 14; GE 3 at 7) From 2016 to 2017, he used marijuana two or three times a week. (GE 1 at 9-10; GE 3 at 7)

From 2017 to 2019, Applicant used marijuana once or twice a week. (GE 1 at 9; GE 3 at 7) He reduced the frequency of his marijuana use from 2017 to 2019 because the state where he was residing had not legalized the purchase of marijuana. (GE 3 at 7) From 2017 to 2019, he purchased marijuana in the state where he lived from 2016 to 2017 because marijuana sales were legalized in that state. (*Id.*)

Applicant’s descriptions of his history of marijuana use during his OPM interview indicated significantly more extensive marijuana use than he described at his hearing. (Tr. 29-30) At his hearing, he explained that at his OPM interview, he was trying to show

that he was candid and open, and he was not as careful about accuracy as during his subsequent statement in response to the SOR and at his hearing. (Tr. 29-33)

Applicant's employer positively described his contributions in four letters. (AE A at 8-11) He received bonuses from 2018 to 2020. (*Id.*)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; "(c) illegal possession of a controlled substance. . . ."; and "(f) any illegal drug use while granted access to classified information or holding a sensitive position." The record establishes AG ¶¶ 25(a) and 25(c). It is unclear if Applicant's federal government employment in SOR ¶ 1.b constituted "a sensitive position"; therefore, AG ¶ 25(f) is not established. Additional information is contained in the mitigation section, *infra*.

AG ¶ 26 lists four conditions that could mitigate security concerns:

(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;

(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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

None of the mitigating conditions fully apply; however, Applicant provided some important mitigating information. He has made some positive lifestyle changes: moved to a different state; married; has a son; and made a commitment to not use marijuana in the future. He voluntarily disclosed his marijuana possession and use during his OPM interview.

The evidence against mitigation is more persuasive at this time. In ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018), the applicant had a history of marijuana use, and the Appeal Board said:

A clearance adjudication is aimed at determining if an applicant has the requisite judgment and reliability to abide by rules designed to protect classified information. . . . [Security concerns arise if] there is doubt as to whether he [or she] will follow the regulatory requirements for handling classified information, which might, in the event, appear burdensome. Access to national secrets entails a fiduciary duty to the U.S. A person who enters into such a fiduciary relationship is charged with abiding by legal and regulatory guidance regardless of whether he or she believes that guidance to be wise.

Possession of a Schedule I controlled substance is a federal criminal offense. Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance. See Drug Enforcement Administration listing at http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

The Director of National Intelligence (DNI) Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual’s judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

See ISCR Case No. ISCR Case No. 20-01772 (App. Bd. Sept. 14, 2021) (noting continued relevance of October 15, 2014 DNI Memorandum in the application of Guideline H for marijuana cases).

During his August 26, 2019 OPM interview, Applicant said he smoked marijuana three or four times a week when he was in college from 1998 to 2003. He used marijuana once a week from 2008 to 2010 while he was attending the university where he received his master’s degree. From 2012 to 2015, while employed at another university, he used marijuana on a weekly basis, mostly at home. From 2016 to 2017, he used marijuana two or three times a week.

Applicant’s marijuana use before August 2010 and after March 2019 was not alleged in the SOR. Applicant’s description of the frequency of his marijuana use at his hearing was substantially less than he described during his OPM interview. I find his OPM

interview to be the most credible description of the frequency and duration of his marijuana use, and that he intentionally minimized the extent of his marijuana use at his hearing. The DOHA Appeal Board listed four circumstances in which conduct not alleged in an SOR may be considered as follows: “(a) in assessing an applicant’s credibility; (b) in evaluating an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept.” ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (citing ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). The non-SOR allegations will not be considered except for the four purposes described in ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022).

Applicant used THC-infused CBD in August or September 2020, which was after he completed his March 17, 2019 SCA. “An applicant who uses marijuana after having been placed on notice of its security significance, such as using after having completed a clearance application, may be lacking in the qualities expected of those with access to national secrets.” ISCR Case No. 17-03191 at 3 (App. Bd. Mar. 26, 2019) (citing ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019) (“An applicant’s misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability”)).

Applicant consumed THC-infused CBD gummies as recently as August or September 2020. He did not describe any drug-abuse counseling or treatment. At his hearing in February 2022, he indicated he does not plan or intend to use CBD and/or marijuana in the future; however, I have lingering concerns about his future marijuana possession and use. Guideline H security concerns are not mitigated at this time.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 lists conditions that could raise a security concern and may be disqualifying including:

(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.

Applicant intentionally failed to disclose his illegal marijuana possession and use on his September 7, 2010 SCA because he wanted to improve his chances of obtaining employment. In his SCA response, he said he intentionally failed to disclose this information on his SCA to improve his employment opportunities. AG ¶ 16(a) applies to SOR ¶ 2.e. His claim on his SCA response that he inadvertently failed to disclose his marijuana possession and use on this SCA is not credible.

Applicant made a misleading and factually incorrect statement on his March 17, 2019 SCA about limiting his marijuana involvement to states where marijuana possession was legalized.

“Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant’s mens rea in light of the entirety of the record evidence. *See, e.g.*, ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant’s intent or state of mind may not always be based on an applicant’s statements, but rather may rely on circumstantial evidence. *Id.*

Applicant’s most accurate statement about his marijuana involvement was during his OPM interview. He described hundreds of possessions and uses of marijuana to the OPM investigator. The record evidence establishes AG ¶ 16(a) in relation to SOR ¶ 2.b. SOR ¶¶ 2.a and 2.c are essentially duplications of the allegation in SOR ¶ 2.b, and I find for Applicant for SOR ¶¶ 2.a and 2.c, and against him for SOR ¶ 2.b.

SOR ¶ 2.d alleges Applicant failed to list his use of his spouse’s opioid medication to address pain from his molar and knee on two occasions on his March 17, 2019 SCA. I find for Applicant for SOR ¶ 2.d because Applicant did not think of his prescription abuse at the time he was completing his SCA. It is reasonable for him to overlook his misuse of a prescription drug on two occasions because he was focused on addressing his extensive history of marijuana use when he completed his 2019 SCA.

AG ¶ 16 has three disqualifying conditions that are relevant in this case to assessment of SOR ¶ 2.f. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) read:

(c) credible adverse information in several adjudicative issue 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 person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for 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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

AG ¶¶ 16(c) and 16(d)(3) do not apply to the allegation in SOR ¶ 2.f. As indicated in the previous section, Guideline H is the most appropriate guideline for Applicant's marijuana possession and use. The Guideline H discussion indicates sufficient evidence for an adverse determination. Personal conduct security concerns are refuted with respect to SOR ¶ 2.f.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions fully apply to Applicant's failure to disclose his marijuana possession and use on his September 7, 2010 SCA and to his failure to fully disclose his marijuana and THC-infused CBD possession and use on his March 17, 2019 SCA. His false statements on his SCAs and his failure to fully describe his marijuana involvement at his hearing continue to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not 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 the applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline H and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 42-year-old research scientist who is working for a defense contractor. In 2004, he received a bachelor's degree in sociology; in 2005, he received a bachelor's degree in natural resource management; and in 2010, he was awarded a master's degree in forestry. In 2017, he married, and he has a two-year-old son.

Applicant's most accurate description of his marijuana history was to an OPM investigator. He did not provide accurate and complete information about his marijuana possession and use on his SCAs and at his hearing. An honest and candid self-report of drug abuse is an important indication that, if granted security clearance eligibility, the individual would disclose any threats to national security, even if the disclosure involves an issue that might damage his or her own career or personal reputation. Moreover, the mitigating weight of Applicant's disclosures is undermined by his THC-infused CBD consumption as recently as August or September 2020 after submission of his March 17, 2019 SCA. He indicated he did not plan or intend to use marijuana or THC-infused CBD

in the future; however, his lack of credibility in his hearing statement undermines his promises to comply with drug-related federal law in the future.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person.

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:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraphs 2.c and 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge