



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



In the matter of:)
)
) ISCR Case No. 20-02925
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Asya Hogue, Esq.

May 31, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guidelines H (drug involvement and substance misuse) and E (personal conduct). Clearance is granted.

Statement of the Case

On April 25, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 2, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On January 3, 2021, Applicant submitted his Answer to the SOR. On March 17, 2021, Department Counsel was ready to proceed. On March 24, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On May 10, 2021, DOHA issued a notice of DCS video teleconference hearing, scheduling the hearing for June 30, 2021. The hearing was convened as scheduled. Department Counsel

submitted Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K. Applicant's exhibits were admitted without objection, but for AE K. That exhibit is a May 5, 2021 medical journal article on the subject of opioid use among individuals with spinal cord injury. Department Counsel objected to admission of AE K on the grounds that it was a publication lacking sufficient indicia of reliability. After argument by both counsel, I overruled Department Counsel's objection noting that both counsel could argue the appropriate amount of weight the article should be given. (Tr. 9-12)

I held the record open until July 9, 2021, to afford the Applicant an opportunity to submit additional evidence. Counsel timely submitted AE L, which was admitted without objection. On July 12, 2021, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 37-year-old senior principal aeronautical engineer, who has been employed by a defense contractor since January 2009. (GE 1; Tr. 12-13) He has held a secret clearance since 2009, and seeks to retain it as a requirement of his continued employment. (GE 1; Tr. 13-14)

Applicant graduated from high school in June 2003. He was awarded a bachelor of science degree in aerospace engineering in June 2008 from one of the most prestigious engineering colleges in the United States. (Tr. 14-15, 39; AE B) He has never married and has no dependents. He provides substantial financial support to his parents and youngest brother. His annual salary is about \$165,000 to \$170,000. (Tr. 15-17)

During summer 2005, between his sophomore and junior years in college, Applicant was paralyzed following an off-road ATV motorcycle accident. Since then, he has been permanently confined to a wheel chair. (SOR Answer; Tr. 18; AE I) As a result, he suffers from chronic back pain in addition to fatigue and soreness. (Tr. 18)

Applicant's pain management has improved throughout the years. (Tr. 24) When he returned to college after his accident, the on-campus medical team prescribed him "some prescription-grade" pain medications. After college, his doctors prescribed various pain medication options to include opioids. He chose not to use opioids given their addictive qualities, especially after observing many individuals in the spinal cord injury community become addicted to opioids. Rather, he chose to live with his pain and take only over-the-counter medications like Advil. (Tr. 18-19, 42-44, 46, 61; AE K)

In about 2008 or 2009, Applicant began participating in an adaptive sports program and met other wheelchair users who could relate to his situation. This program offered various activities, like basketball and cycling. Applicant credits his association with this group as being the most "influential or consequential aspect" of his recovery,

especially when it came to managing his spinal cord injury through exercise, which enabled him to reduce “a lot of the pain” in his back. (Tr. 19-21, 24-25, 44-45)

Applicant considered using marijuana to control his pain after learning of success stories from fellow members of the spinal cord injury community. He stated most of his pain came from muscle fatigue, usually in his back. He has no feeling in his legs, but does experience “a lot of muscle spasms” and found that marijuana relaxed his back muscles and spasms. See discussion, *infra*. (Tr. 21-23, 44-45)

Applicant still experiences pain, but it is not as severe as it once was and over the years he has developed a certain degree of tolerance. He initially tried over the counter medications such as ibuprofen and later marijuana. Today, he does not take anything for his pain except ibuprofen occasionally. Since April 2019, he has not used marijuana and has no intention of using it in the future. (Tr. 25, 46-47, 53)

Drug Involvement and Substance Misuse

Applicant self-reported marijuana use on his April 25, 2019 SF-86. (GE 1) He was subsequently interviewed on June 12, 2019, by an Office of Personnel Management (OPM) investigator regarding his marijuana use. (GE 3) He elaborated on his marijuana use in his January 3, 2021 SOR Answer as well as during his testimony. The following summarizes that marijuana use.

SOR ¶ 1.a alleges that Applicant used marijuana with varying frequency from about March 2004 to about April 2019. He admitted this allegation with explanations. (SOR Answer) He first used marijuana in 2004, at age 19, on two separate occasions while in college. A college friend “offered” the marijuana to him on these two occasions, both of which predate his paralysis. He did not use marijuana after these two occasions because he “did not particularly enjoy it.” (Tr. 26-28, 40, 56)

Applicant did not use marijuana again until 2011, after receiving his first medical marijuana card. He did so with “varying frequency” to address his chronic back pain and muscle spasms relating to his paralysis. (SOR Answer; Tr. 21-23, 26, 45, 56-57) His marijuana usage beginning in 2011, “would have been on average once to twice a week as needed.” He added, “But, like I said, that would be on average. But then there were would also be periods or weeks, many weeks in between where I wouldn’t have any.” There were times when he did not use marijuana for months or years at a time. (Tr. 27-28, 48-49, 54, 56; GE 3) When Applicant used marijuana, it was typically at home or, if with other individuals, it was within the wheelchair basketball community at tournaments. (Tr. 47-48, 54-55)

Applicant’s decision to completely stop using marijuana “was more of like a phasing out.” He added that a side effect of marijuana use was dehydration. As a spinal cord injury patient, he found it necessary to avoid dehydration, which could lead to bladder infections. Through exercise and a disciplined diet, he used marijuana less and was able to mitigate the need for its use. (Tr. 33-34, 49-50, 54, 57-58) He had started to reduce his marijuana use before he filled out his SF-86 in April 2019. (Tr. 54) Applicant

also knew that continued marijuana use would compound problems qualifying for a security clearance. (Tr. 52-53)

SOR ¶ 1.b alleges that Applicant purchased marijuana from about March 2004 to about April 2019. He “mostly admit(ted)” this allegation with explanations. (SOR Answer) He did not purchase marijuana in 2004, but rather a friend in college offered it to him on two separate occasions. The first time he purchased marijuana was after he received his first medical marijuana card in 2011 from a medical marijuana dispensary. He never purchased marijuana “off the streets.” (SOR Answer; Tr. 23-24, 28) Applicant’s medical marijuana card expired in 2018. He has not renewed it nor does he have any intention of doing so. (Tr. 24; AE J)

SOR ¶ 1.c alleges that Applicant used and purchased marijuana with varying frequency, from about April 2009 to about April 2019, while granted access to classified information. He admitted this allegation. See discussion under SOR ¶ 1.a *supra*. (Tr. 26-27)

Applicant purchased marijuana for pain management only at marijuana dispensaries. Applicant did not share with his employer his use of marijuana for pain management stating, “some people probably would have been okay with it . . . others . . . may have some objections to it.” Applicant did not discuss his pain management issues with management primarily because he considered it a personal issue and desired to maintain professionalism in the work place. (Tr. 29-31, 56-57)

If his clearance is renewed, Applicant stated that he would continue to abstain from all drugs in the future to include marijuana. (Tr. 35) Applicant takes his job and security “very seriously” and stated that he is not a threat to national security. He is trusted by his coworkers, management, and customers and has received promotions for his work in support of the national defense. (Tr. 34)

Applicant has not used marijuana since April 2019. (Tr. 53) He does not associate with anyone who uses marijuana. (Tr. 60) Applicant submitted a signed, sworn, statement of intent, dated June 15, 2021, to avoid any future drug use or other illegal drugs both presently and in the future, with the understanding that any drug violation will result in the. automatic revocation of clearance. (Tr. 25-26; AE H) Post-hearing, Applicant submitted a negative drug test dated June 30, 2021. (AE L)

Personal Conduct

SOR ¶ 2.a alleges that Applicant falsified his March 31, 2009 SF-86 and deliberately failed to disclose his past marijuana use when he answered “no” to the question whether he had illegally used any controlled substance in the last seven years. Applicant admitted this allegation with explanations. (SOR Answer)

Applicant stated he “regretfully” failed to disclose his 2004 two-time college marijuana use. He further explained when he completed his 2009 SF-86, he “deemed these 2 occasions as insignificant and not worthy of acknowledgement since [he]

thereafter never used marijuana through 2009.” He realizes now that failing to list his 2004 marijuana use, regardless of how insignificant it may have been, was not a judgment for him to make. (SOR Answer) When Applicant completed his 2009 SF-86, it was his first job out of college and he “felt like it was negligible enough to dismiss . . . per [his] judgement at the time.” This was also the first time he applied for a security clearance. (Tr. 31-32, 40-41)

Applicant stated that since 2009, he has matured and grown, and now strives to be a responsible citizen, human being, brother, son, and coworker. He disclosed his 2004 two-time marijuana use in the interest of honesty, peace of mind, and peace of conscience. (Tr. 32-33)

Character Evidence

Applicant submitted his work performance reviews for 2019 and 2020. Those reviews document sustained superior performance and rate him as a “top performer.” Management views him as a subject matter expert and placed him in leadership roles and positions of responsibility. Applicant is a trusted employee within his company as well as with his company’s customer base. (Tr. 37-38; AE C) Applicant informed his manager of these proceedings in early 2021 “to give him a heads up to some extent in the event that [he was] denied a clearance.” He did so to mitigate the loss to the company of him being terminated as a result of his clearance being denied. Applicant stated that his manager “certainly hopes for a positive outcome.” (Tr. 50-51) When he disclosed his past marijuana use to his manager, his manager could have started the termination process, but did not do so. (Tr. 55-56)

Applicant has received two company awards for: (1) his leadership role in company diversity in Employee Resource Groups; and (2) nomination for a company president leadership award for his efforts in securing “a major program.” Applicant also received various monetary awards in the form of bonuses for his work-related accomplishments. (Tr. 38-39; AE D)

Applicant submitted two reference letters from: (1) former college classmate, coworker, and lifelong friend, who has known Applicant for 18 years; and (2) staff engineer/co-worker, top secret clearance holder, and 35-year company employee, who has known Applicant 15 years. (Tr. 35-36; AE E) Reference (1) described how he and Applicant went to the same prestigious university and survived in a very demanding academic environment where they threw “the kitchen sink at you” and how it took everything in oneself “to stay afloat.” Reference (1) discussed how they went to work for the same defense contractor where he saw Applicant “take ownership and leadership in re-constructing and modernizing fundamental software critical to [defense contractor’s] design.” The writer noted Applicant’s attention to detail and uncompromising integrity. He discussed how Applicant overcame his spinal cord injury and did not let it hinder him in his work or attitude. (AE E),

Reference (2) has knowledge of the SOR allegations against Applicant. In the last 15 years, he has worked closely with Applicant. Reference (2) knows Applicant well

and has first-hand knowledge of his work ethic and character. He described Applicant as someone with “excellent judgment” and an employee “entrusted with increasingly responsible positions of leadership.” He added that at no time has anyone on their team or in management questioned Applicant’s ability to lead effectively and protect sensitive information. Reference (2) noted that if Applicant was unable to perform his current duties, their company would lose one of their most valuable leaders. He added the customer would also lose one of the best subject matter experts in a highly critical area. See AE E for further details.

Applicant submitted three photographs depicting him in various settings. The first one is of him in his wheel chair playing basketball, the second is of him on a hand cycle, and the third is of him with his extended family. The hand cycle photograph depicts him as an adaptive sports program member participating in a program fundraiser. Applicant credits his family with providing him with moral support and the “number one reason” he is where he is today. It was his closeness with his family that caused him to relocate nearer to them. (Tr. 36-37, 58-60; AE F) The last two photographs are of Applicant’s home that he purchased in October 2020 after saving for many years. (Tr. 37; AE G)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching 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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concern about drug involvement and substance misuse:

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 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) Any substance abuse (see above definition);
- (b) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

These proceedings were initiated after Applicant self-reported his marijuana use on his April 25, 2019 SF-86, and later during his June 12, 2019 OPM interview. These self-disclosures establish AG ¶¶ 25(a), 25(c), and 25(f). Further review is required.

AG ¶ 26 lists two 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; and

(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.

Considering the totality of the circumstances in this case, I find application of the mitigating conditions AG ¶¶ 26(a) and 26(b), 26(b)(1), 26(b)(2), and 26(b)(3) to be appropriate and mitigating.

Concerning AG ¶ 26(a), there are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the Directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows, “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20

plus years of drug use, and gave too little weight to lifestyle change and therapy. For the recency analysis, the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

Applicant's last marijuana use was in April 2019, about 26 months before his June 2021 hearing. Apart from his two-time use of marijuana use in 2004, he did not use marijuana again until 2011. From 2011 to 2019, he used marijuana with varying frequency, a period of eight years. His marijuana use during those eight years was not on a regular basis, but rather on an as needed basis; once or twice a week, and sometimes he went months without using marijuana. His reason for using marijuana was to mitigate pain and muscle spasms following his 2005 ATV accident that left him permanently paralyzed. Applicant explained that he did not want to use opioids for logical and credible reasons. Applicant's two-time experimental use of marijuana as a 19-year-old college student in 2004 occurred 17 years ago and is of limited security significance, since it predates his paralysis.

Using marijuana while holding a clearance is arguably of the most concern in this case. Applicant explained his decision to use marijuana with varying frequency came about after learning of pain mitigation success stories from members of the spinal cord injury community. Applicant was in an unenviable position of trying to cope with an unfortunate situation. As time evolved, Applicant made significant lifestyle changes through diet, exercise, and moving geographically closer to his family. He credits his family as being his primary support system. His testimony and photographs with his family corroborate that assertion.

The record contains persuasive evidence that Applicant has turned the corner on achieving drug abstinence. He recognizes the importance of being a responsible family member and employee, and that his actions can affect others. He also fully recognizes that there is no room for any drug use while holding a security clearance. Applicant's self-reflection, moving closer to his family, change in behavior, and support from his family, friends, and associates, in addition to his 26 months of sobriety, are indicative of an individual who wants to right his course. The absence of evidence of more recent or extensive drug use, and his promise not to use illegal drugs in the future, eliminates doubts about his current reliability, trustworthiness, and good judgment with respect to abstaining from illegal drug use. In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because

the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

AG ¶ 26(b) lists three ways Applicant can demonstrate his intent not to abuse illegal drugs in the future. Applicant has engaged in a significant amount of self-reflection regarding his behavior, and recognizes that such behavior is incompatible with holding a security clearance. Applicant has committed to disassociation from drug-using associates and contacts, and avoiding any environment where drugs are used. He produced a June 26, 2021 drug test stating that he was drug-free. He has not renewed his medical marijuana card, which expired in 2018, and has no intention of doing so. Lastly, he provided a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's reference letters document that he is an individual who possesses character and integrity. Applicant's work performance evaluations reflect the caliber of the contribution he is making as an employee. His performance further reflects his work behavior is not indicative of someone with a drug problem. As an employee, he is viewed as reliable, a constant learner, and an individual with integrity. At his hearing, Applicant acknowledged that future drug abuse is incompatible with his future career and family plans, and manifested a steadfast commitment to continue lifestyle changes consistent with total abstinence of involvement with all other illegal drugs.

In evaluating Applicant's credibility, I did so after assessing his demeanor, overall candor on other matters, and reputation among his superiors and peers. Given the circumstances of Applicant's background, his explanation for his actions, and his subsequent actions, I find credible his assertion that he will not use any illegal substance in the future. AG ¶¶ 26(a) and 26(b), 26(b)(1), 26(b)(2), 26(b)(3) apply. Drug involvement and substance misuse security concerns are mitigated.

Personal Conduct

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In his March 2009 SF-86, Applicant stated "no" when queried whether in the last seven years had he used any illegal drugs. AG ¶ 16(a) applies because he provided a deliberately false answer about his past marijuana use. Further review is necessary.

AG ¶ 17 provides seven conditions that could mitigate personal conduct 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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused 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;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

In ISCR Case No. 10-04641 at 5 (App. Bd. Sept. 24, 2013), the 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 [*Department of Navy v. Egan*, 484 U.S. 518 (1988), *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

My credibility assessment of Applicant discussed under Drug Involvement and Substance Abuse, *supra*, is applicable under this section. Applicant stated that he incorrectly opined that his two-time experimental college marijuana uses in 2004 was insignificant and not worth mentioning given the fact that he had not used marijuana between 2004 and 2009, when he filled out his first SF-86. He acknowledged that this was a judgment that he should not have made. He fully disclosed his marijuana use in his April 2019 SF-86, during his June 2019 OPM interview, in his January 2021 SOR Answer, and during his June 2021 hearing testimony. In addition to his explanation, I have taken into account his age at the time he completed this SF-86, that it was his first job out of college, and the length of time elapsed from the time he completed his first SF-86 in 2009 to 2021, a period of almost 13 years. He no longer uses marijuana and no longer associates with anyone who uses marijuana. See discussion *supra*. Considering the totality of the circumstances in this case, I find application of AG ¶¶ 17(a), 17(c), 17(d), and 17(e) to be appropriate and mitigating.

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.

The ultimate determination whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion under Guidelines H and E is incorporated in this whole-person section. However, further comments are warranted.

Applicant has been and is willing to maintain the conduct expected of one entrusted with a security clearance. I note that Applicant has overcome significant obstacles in arriving where he is today. After being accepted into one of the most prestigious engineering colleges in the United States, he sustained a life-changing injury between his sophomore and junior years that left him permanently paralyzed and wheel chair bound. He returned to that same college when able and graduated with a bachelor of science degree in aerospace engineering in 2008. In 2009, he began what remains a very successful career with a major defense contractor where he is employed as a senior principal aeronautical engineer.

Applicant self-reported his drug use on his most recent SF-86 knowing that such disclosure could jeopardize his clearance eligibility. He recognizes that his choice to use marijuana to mitigate his pain was contrary to DOD regulations. He did so in a state where such marijuana use was legal and commonplace, especially within the spinal cord injury community. His explanation regarding his past marijuana use is more thoroughly addressed *supra*. Applicant's last use of marijuana occurred in April 2019, 26 months ago, is demonstrative of committed sobriety. His lifestyle changes since he stopped using marijuana are significant and noteworthy.

Applicant's employer, friends, and family support him. He has a history of stable employment and a strong work ethic. This level of support and self-introspection should ensure his continued success. His elderly parents and youngest brother rely on him for financial support. Applicant demonstrated the correct attitude and commitment to remaining drug free. He has multiple indicators of a mature, stable, responsible, and trustworthy person. He was serious, candid, and credible at his hearing. He cooperated fully and provided truthful information during all phases of the security clearance process. He made a favorable impression on me during the hearing.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility is granted.

Robert Tuidier
Administrative Judge