



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 21-00672
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
and  
Daniel O’Reilley, Esq., Department Counsel

For Applicant: *Pro se*

03/23/2023

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**Decision**

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MARINE, Gina L., Administrative Judge:

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

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP), dated February 8, 2019, to upgrade his security clearance. On June 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and J. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On July 11, 2021, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The Government was ready to proceed on January 25, 2022. The case was assigned to me on August 22, 2022. On September 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled for September 28, 2022. I convened the hearing as scheduled via video conference.

I admitted Government Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through D, without objection. I admitted GE 7 over Applicant's objection. I appended the Government's exhibit list to the record as Hearing Exhibit (HE) I. Applicant and one witness testified. I left the record open until October 12, 2022. Applicant timely provided additional documents which I admitted as AE E through H, without objection. DOHA received the transcript (Tr.) on October 6, 2022.

### **Procedural Matter**

The record includes three eQIPs dated October 7, 2011, March 12, 2017, February 8, 2019. The 2011 eQIP was submitted during a period when Applicant previously held a secret clearance. He was granted a secret clearance in June 2018 in connection with the 2017 eQIP. He submitted the 2019 eQIP to upgrade his clearance, as noted above. (GE 1, 4, 6; Tr. at 45-46, 50-51)

### **Findings of Fact**

Applicant, age 41, is unmarried without children. He received his high school diploma in 1999. He received a network information systems certification in 2000. He attended college from 2003 through 2005 and in 2014 without earning a degree. He previously held a secret clearance while employed by defense contractors from August 2002 until it was deactivated in May 2012, due to a loss of jurisdiction involving a layoff in April 2012. He remained unemployed until November 2013. He has been employed in the same information technology position by two different defense contractors since June 2018. The secret clearance he was granted in June 2018 was sponsored by a prior employer for whom he did not end up working. (GE 1; GE 2 at 8; GE 4; GE 5 at 2; GE 6; AE G; Tr. at 17, 46, 47-48, 50-52, 120-121)

The SOR alleged security concerns about Applicant's marijuana use and marijuana-related criminal charges under Guideline H, and then cross-alleged the same concerns under Guideline J. In his Answer, Applicant admitted, in part, and denied, in part, the Guideline H allegations. He did not respond to the Guideline J allegation in his Answer, which I construed as a denial. Based on Applicant's admissions, his testimony, and the evidentiary record, I make the following findings of fact.

Applicant smoked marijuana in joint form, with varying frequency, from 1990 through 2012. He consumed marijuana in an edible form one time in 2013 while unemployed. He was criminally charged with possession of marijuana in 2008, 2009, May 2011, December 2011, and 2018. He was convicted of all but the 2008 charge. Applicant proffered inconsistent information at various times during his testimony and throughout

the security clearance process concerning the facts and circumstances underlying his marijuana use and the criminal charges. (GE 1, 2, 4, 5, 6; Tr.)

### 2008 Charge

In September 2008, while driving home from a gun shooting range, a police officer pulled Applicant's vehicle over for a missing license plate. After smelling marijuana emanating from the vehicle, the police officer initiated a search of the vehicle. During the search, the officer found a handgun under the passenger's seat. The handgun, which was registered to Applicant, was loaded. Applicant forgot to unload it and place it in the trunk after leaving the range. The officer also found marijuana inside a bookbag located on the back seat. Applicant was arrested and held in custody for three to four hours before being released. (GE 1; GE 2 at 4, 13; GE 4; GE 5 at 3-4; GE 6)

Applicant was initially charged with (1) felony possession of marijuana with intent to distribute, (2) misdemeanor possession of marijuana, and (3) misdemeanor transporting a handgun in a vehicle. At some point, charge (3) was amended to misdemeanor transporting, wearing, or carrying a handgun. Charge (1) was *nolle prosequi* in October 2008. In March 2009, charge (2) was *nolle prosequi* and he was found guilty of charge (3), as amended. In October 2009, he was sentenced to serve an unspecified number of days in jail over five consecutive weekends and supervised probation for one year. Applicant asserted that his sentence was shortened to three weekends and that his probation was also shortened by about six months. (AE A at 1-3; AE B; GE 2 at 4, 13; GE 3; GE 5 at 4; Answer; Tr. at 56, 59, 122)

In his 2011 eQIP, Applicant stated, "I have learned my lesson," in response to questions about this offense. In his 2017 and 2019 eQIPs, he repeated:

I was young and immature. This was a mistake and I have learned my lesson. I recognize my failures and shortcomings's [*sic*]. This does not define who I am as a person or professional. I have goals and want to be successful. (GE 1, 4, 6)

At the hearing, Applicant asserted that the marijuana found in his vehicle "was somebody's else's." He also maintained that he had not used marijuana on the day he was arrested. (Tr. at 151)

### 2009 Charge

In March 2009, while Applicant was driving home from work, a police officer pulled his vehicle over for an inoperable taillight. After smelling the odor of marijuana emanating from the vehicle, the officer initiated a search of the vehicle. During the search, the officer found what Applicant described as a marijuana joint in the ashtray. Applicant was not arrested, but he was issued a summons to appear in court. (GE 1, GE 2 at 4; GE 4; GE 5 at 4; GE 6)

Applicant was charged with misdemeanor possession of marijuana. A court record indicates that he pled guilty at a July 1, 2009 court appearance, during which he received a deferred disposition to July 6, 2010, pending his completion of a drug treatment program, 100 hours of community service, and payment of a \$250 fine. He voluntarily performed an additional seven hours of community service for a total of 107 hours in January 2010. He completed the drug program in February 2010. (GE 3; Answer; AE A at 5-6, 13-14; AE B)

Applicant described the drug program as an outpatient class where he was subjected to urinalysis testing. He attended group classes once or twice per week where he was educated about drugs and the pitfalls of drug use. He completed the program in a manner sufficient to satisfy his obligation to the court. Although he did not stop using marijuana immediately following his completion from the program, he asserted that he began having better judgment and becoming more reliable based on what he learned from the program. About two to three months later, he stopped using marijuana because he wanted to better his life. (GE 2 at 4; Tr. at 65)

In his 2011 eQIP, Applicant stated, "I was immature and having fun, I have learned my lesson," in response to questions about this offense. In his 2017 and 2019 eQIPs, he repeated, "I am drug free and more mature." At the hearing, he asserted that the marijuana belonged to a "coworker of mine." (Tr. at 151; GE 1, 4, 6) He also maintained that he had not used marijuana on the day he was arrested. (Tr. at 66).

#### May 2011 Charge

In May 2011, Applicant smoked marijuana, in an amount he described as half a joint, while sitting alone and listening to the radio inside his parked vehicle in a park. At some point, he fell asleep and was awakened by park police officers pulling on his vehicle's door handles. In response, Applicant rolled down the window of his vehicle to speak with the officers. After observing Applicant put something in his mouth believed to be drugs, one of the officers tried to open Applicant's mouth. In response, he bit the officer's finger. He was arrested and held in custody for two to three hours before being released. (GE 1; GE 2 at 3, 12-13; GE 4; GE 5 at 3; GE 6; Tr. at 68, 69)

Applicant was charged with (1) misdemeanor assault on a police officer, (2) misdemeanor possession of marijuana, and (3) misdemeanor possession of marijuana paraphernalia. In July 2011, he pled guilty to charge (2) for which he was sentenced to serve one day in jail and fined \$50. The disposition of charges (1) and (3) was not indicated in the documentary evidence. However, he asserted that the officer agreed to drop charge (1) on the basis that there had been a miscommunication and misunderstanding of his rights. During a January 2018 security clearance interview (SI), Applicant admitted that the officers found marijuana in the vehicle. However, during subsequent SIs in March and October 2019 and in his Answer, he maintained that the officers did not find any marijuana. Applicant did not address charge (3). (GE 1, GE 2 at 3, 13; GE 3, 4; GE 5 at 3; GE 6; Answer; AE A at 7; Tr. at 72; AE B)

Applicant asserted that he served his sentence by spending a few hours in a holding cell on the day of his conviction. (GE 2 at 3; Tr. at 69) He maintained that he did not bite the officer's finger on purpose. (Tr. at 69) In his 2011 eQIP, Applicant stated, "This lifestyle is behind me and I have grown up," in response to questions about this offense. In his 2017 and 2019 eQIPs, repeated:

I have been drug free for 5 years and much more mature; I understand and learned from my failures, shortcomings, and bad experiences. This occurrence does not define who I am as a person or professional. (GE 1, 4, 6)

At the hearing, after initially denying that he smoked marijuana the day he was arrested, Applicant admitted that he had, in fact, smoked marijuana that day. However, he denied that he was either smoking marijuana or in possession of marijuana in the vehicle at the time of his arrest. He explained:

Okay, so they never caught me with possession of marijuana, but then when I went to the holding cell, they asked me to make a statement, and basically I made this statement, you know, saying that I had marijuana, and they said if I made that statement, that they was [sic] going to make everything go away or they was [sic] going to drop all charges. So, the only reason why I agreed to possession of marijuana, because they said they was [sic] going to drop the assault charges and the possession of marijuana charges. (Tr. at 70, 73, 77, 94-95, 153)

Later during his testimony, Applicant claimed that the police report indicating that the smell of marijuana was emanating from Applicant's person was incorrect because, contrary to his previous admission during an October 2019 SI, he had not smoked marijuana in the vehicle. In response to a question about where he smoked the marijuana, he asserted "[i]t was after work so after work outside." He denied that a marijuana smell was emanating from his person by the time the officers approached him because he had smoked the marijuana "probably like three hours, four hours" prior. (Tr. at 84, 153-155; GE 2 at 3)

### December 2011 Charge

In December 2011, a police officer pulled Applicant's vehicle over after observing him make an illegal U-turn at a red light. Due to smelling the odor of marijuana emanating from the vehicle, the officer initiated a search of the vehicle. Applicant was arrested after the officer found a small bag of marijuana in the vehicle, in an amount Applicant described as equivalent to a joint. (GE 2 at 3-4, 12; GE 5 at 4; Tr. at 77)

Applicant was charged with misdemeanor possession of marijuana. In October 2012, he pled guilty, was sentenced to one day in jail, six months unsupervised probation, and fined \$45. (AE A at 4; AE B; Tr. at 74)

In his 2017 eQIP, in response to questions about this offense, Applicant stated:

I paid a court fine for this charge and case is close [sic]. I have been drug free for 5 years and much more mature. I have learned my lesson from my failures and shortcomings. This was my last and final charge. That part of my life is behind me and doesn't exist, I have moved on and have goals to be successful. (GE 3, 4)

In his 2019 eQIP, he stated:

I paid a court fine for this charge and case is close [sic]. I have been drug free for 5 years and much more mature. I have learned my lesson from my failures and shortcomings. That part of my life is behind me and doesn't exist, I have moved on and have goals to be successful. (GE 1)

At the hearing, Applicant asserted that the marijuana found in his vehicle did not belong to him, and he denied that he smoked marijuana that day. He attributed the officer's smell of marijuana to odor emanating from the bag of marijuana found in the vehicle. When asked to whom the marijuana belonged, he answered "I mean, I don't recall who was the person." Then, he explained that he had occasionally given rides to a coworker "like once a week or once every two weeks." He believed that the marijuana may have belonged to his coworker. When asked for the coworker's name, he replied, "I don't recall or remember." He later stated that the marijuana belonged to his cousin. He maintained that he told his lawyer, but not the arresting officer or the court, that the marijuana did not belong to him. He stated that arresting officer did not ask whether the marijuana belonged to him. (Tr. at 77, 80-81, 94, 156)

### 2018 Charge

In April 2018, while on a routine patrol, a police officer observed Applicant driving without wearing his seatbelt. When the officer pulled his vehicle over for a traffic stop, Applicant immediately jumped out of the vehicle and began to reach back into the vehicle out of the officer's line of sight. The officer then ordered Applicant to step away from the vehicle and to take his hands out of his pockets. During a pat down, the officer detected a strong odor of marijuana emanating from Applicant's person, at which time Applicant admitted to the officer that he had just smoked marijuana. The officer also detected the odor of burnt marijuana emanating from inside the vehicle. During a search of the vehicle, the officer located a grocery bag inside an open backpack containing a clear Ziplock bag of marijuana. Also located inside the backpack was a small container of marijuana, a digital scale, \$113 in cash, and two empty clear plastic baggies. The marijuana had a total weight of 22.1 grams and a street value of \$440. Because the officer deemed the presence of these items to be indicators of possession of marijuana with the intent to distribute it, he arrested Applicant and transported him to be charged. (GE 7)

Applicant was charged with (1) misdemeanor possession of 10 or more grams of marijuana and (2) felony possession of marijuana with intent to distribute. Charge (2) was *nolle prosequi* in May 2018. In October 2018, Applicant pled *nolo contendere* to charge

(1). He was sentenced to one day in jail, with a credit of one day, and fined \$45. (GE 3; AE A at 8-12; Tr. at 88-89)

During an October 2019 SI, Applicant explained that he had been driving alone in his vehicle on his way home from work. He asserted that the backpack, which was located on the back seat of the vehicle, belonged to a coworker. He also asserted that the coworker had been in the vehicle prior to Applicant's encounter with the police because Applicant had given the coworker a ride from work to a bus stop. (GE 2 at 12; Answer)

At the hearing, Applicant reiterated that the backpack did not belong to him. He maintained that he was wearing his seatbelt at the time he was pulled over. He denied that, when he exited the vehicle, he either tried to retrieve something from the vehicle or reach back into the vehicle. He acknowledged that he "jumped out of the vehicle," but maintained that he only retrieved his identification from his person, not from inside of the vehicle. He also denied that he smelled of marijuana at the time of his arrest or that he had smoked marijuana that day. He opined that perhaps the officer was smelling the marijuana emanating from the backpack. He did not recall telling the officer that he had just smoked marijuana. He asserted that the police report was incorrect as to the controverted facts. (Tr. at 83-85, 97, 136-137)

Applicant testified that the backpack belonged to a coworker who accidentally left it in the vehicle after Applicant dropped off the coworker "earlier that day, from work." He estimated that he dropped the coworker off at about 4:00 p.m. or 5:00 p.m. and that he was pulled over at about 6:00 p.m. or 7:00 p.m. He maintained that he did not know the backpack was in the vehicle until it was discovered by the officer. When asked for the coworker's name, he stated "First name was [Person A]. I don't remember his last name." He gave Person A rides "probably once a month, but it was like one of those special occasions, it doesn't happen regularly." He asserted that he no longer maintains contact with Person A. (Tr. at 85-86, 157)

Later during the hearing, Applicant disclosed that, at some point, during his interaction with the officer outside of the vehicle, the officer told him that he smelled marijuana emanating from the vehicle. Applicant explained that he "opened up the car" after the officer warned that if he did not do so, he was "going to break the car window." He also explained that he worked with Person A daily for about six months, had given him rides about once a month from their worksite to a transit station, and had observed him smoke marijuana at their worksite prior to starting work "a couple of times." Later in his testimony, he admitted that he observed him "about once a week". (Tr. at 134-135, 136, 139-141)

During his April 2019 and October 2019 SIs, Applicant acknowledged that he had not disclosed his criminal charges to anyone besides his lawyer because he did not want to stress anybody. However, he asserted that he felt that he could not be coerced or blackmailed. He maintained that he had not had any involvement with drugs since 2013 or with law enforcement since 2018. (GE 2 at 9, 13)

## Marijuana Use, Frequency, and Future Intent

In his 2011 eQIP, Applicant admitted that he used marijuana while possessing a security clearance. He described the nature and frequency of his marijuana use as “[s]tress, special occasions, twice a month.” He explained:

I was raised in a house where [sic] marijuana was used. I didn’t know any better as a kid. I have matured and learned [sic] the long term effects of marijuana use.

He professed his intent not to use marijuana in the future and declared:

I want to be successful in life and marijuana would hinder [sic] me in accomplishing my goals. The long term effects of marijuana causes [sic] health problems and I can’t accomplish my goals if I’m not healthy or living.  
(GE 6)

In his 2017 eQIP, Applicant admitted that he used marijuana while possessing a security clearance. He described the nature and frequency of his marijuana use as “[r]elieving stress, smoked once every six months.” He explained:

I was raised in a house where [sic] marijuana was used. I didn’t know any better as a kid. I have matured and have goals that I want to accomplish. I want to be successful, provide for myself, and take care of my family.

He professed his intent not to use marijuana in the future and asserted:

I want to be successful. I have goals and plans that I need to accomplish and marijuana would not help [me] accomplish those goals.

Again, I want to be successful and there is no success in doing drugs or [sic] under the influence. I have learned my lesson from prior experience and wrong doings. I’m ready for a positive change in my life and for my family. I have been drug free for 5 years and much more mature to know, right from wrong; and understand the outcome regarding drug use.

During his 2018 SI, Applicant reiterated his intent not to use marijuana in the future. (GE 4; GE 5 at 4)

In his 2019 eQIP, Applicant admitted that he smoked marijuana while possessing a security clearance but denied that he possessed a clearance when he consumed marijuana in edible form in 2013. He described the nature and frequency of his marijuana use as “[r]elieving stress, smoked once every six months.” He asserted that he consumed the edible only one time on a “special occasion.” He professed his intent not to smoke marijuana in the future and repeated verbatim the reasons he provided in his 2017 eQIP. He also professed his intent not to consume marijuana in edible form. At the hearing, Applicant stated that he obtained the edible from an individual he described as “a friend,



or an acquaintance . . . associate.” When asked to provide the individual’s name, he stated, “I just know him on the street as [Person B].” He explained that Person B was “actually cooking edibles, or making edibles.” He maintained that he no longer maintains contact with Person B. (GE 4; Tr. at 98, 99-100)

During his March 2019 SI, Applicant characterized his marijuana use as occasional and estimated the frequency of his use to be around once a year. He stated, generally, that he whenever he was in possession of marijuana, the quantity was one joint maximum or about four grams total. He also stated that he was always alone when he used marijuana and during each occasion that he was involved with law enforcement. He could not recall how he obtained the marijuana that he used. He asserted that he was not dependent on marijuana. He disclosed that he had been expelled for possession of marijuana during his 10th grade of high school. He was able to return to school and earned his high school diploma as indicated above. He reported that, while unemployed in 2013, he tested positive for marijuana use during a preemployment drug test and was not hired by that employer. (GE 2 at 1, 3-5)

In his Answer, Applicant characterized the frequency of his marijuana use as “I may have consumed marijuana 2 times out of a year between 1990 and 2012 when I didn’t have a clearance or [sic] employed with a government agency.” He reiterated that drug use is incompatible with his personal and professional goals and that he learned his lesson from “prior experience and wrong doings.” He asserted:

I have changed my life for myself and my family. I have been drug free for 9 years and much more mature to know, right from wrong; and understand the negative outcome regarding drug use.

At the hearing, Applicant admitted that, whenever he smoked marijuana, he did so either by himself or, at times, with his uncle, a frequent marijuana user. He maintained that he never exchanged money for any of the marijuana he used because his uncle supplied it to him. His uncle passed away from cancer in 2015. He attributed his uncle’s passing with helping inform his evolved understanding of the dangers that marijuana use posed to his health and professional goals. In response to a question about the frequency of Applicant’s marijuana use, he stated “It probably was like once a year.” When asked to explain the discrepancy between the twice a year he estimated in his Answer, he stated:

Because I don't think it was consecutively, it's not consecutively every year. I mean maybe it was like, you know, one year I probably did it twice. Another year I probably did it once. So it wasn't a pattern as you could say . . . I may have did [sic] it one time in one year, and two times in another year . . . .

He also testified, “And so I may have partaked [sic], you know, a couple of times or I may have partaked [sic] once a year or so like I said before on special occasions.” (Tr. at 89-91, 99, 102-103, 130-131, 149, 150-151)

When questioned more specifically about his use of marijuana in 2009, 2011, 2017, and 2018, Applicant testified that he had not smoked at all in 2009, including on

the day he was arrested in March, and that he only used marijuana one time in 2011, the day he was arrested in May 2011. He denied using marijuana at any other time in 2011, including the day he was arrested in December 2011. He denied using marijuana at all in either 2017 or 2018. He asserted that his last consumption of marijuana was the edible he ate in 2013. (Tr. at 66, 79, 82, 94-95, 97, 99, 100)

Applicant had the following exchange with Department Counsel (DC) about his marijuana use while in possession of a security clearance,

DC: Now, in your responses, sir, you also stated you didn't consume any marijuana when you had a clearance, right?

Applicant: Correct.

DC: You stated that you had a clearance between 2008 and 2011?

Applicant: Correct, 2008 to, hold on, say that again?

DC: You had a clearance between 2008 and 2011?

Applicant: Okay, yes.

DC: Right? And, you've admitted to smoking during that time period, as well. Right? You indicated in your SOR response I admit, when you were asked about smoking between 1990 and 2011? I mean 2012, sorry.

Applicant: So, your question again is?

DC: Sure. So you had a clearance between 2008 and 2011, right?

Applicant: Correct, correct.

DC: All right, and you've stated in your SOR response, you never smoked or used marijuana while you held a clearance?

Applicant: I did, yes.

DC: Okay. And, but you've also admitted to smoking between 1990 and December 2012?

Applicant: Correct, correct.

DC: So you did smoke when you, while you held an active clearance?

Applicant: I may have, yes, I may, yes, I did probably once. (Tr. at 100-101)

During his testimony, Applicant reiterated that he had no intent to use marijuana or other drugs in the future. He denied that he continued to associate with any individuals who use marijuana or other drugs. When asked about the last time he associated with such individuals, he responded. "Probably like 2014 or '15, when my uncle was alive." He asserted that he had not given a ride in his vehicle to "people, coworkers, [or] friends" since 2018. He acknowledged that he still encounters individuals who use marijuana and other drugs in his "environment," but asserted that he is able to distance himself when marijuana or other drugs are being used around him. (Tr. at 102-103, 114)

When asked to explain how this time would be different than his previous promises to steer clear of marijuana use and involvement with law enforcement, Applicant testified that he intended to "be more selfish" and avoid environments and persons involving drugs. He stated that he had no intent to give rides in his vehicle to anyone in the future. He understood that drug use is incompatible with maintaining a security clearance. (Tr. at 102, 145-147, 167)

Applicant testified that he reported his criminal charges to “most employers I did let them know, yes.” He maintained that he never suffered any negative consequences with his employment or lost his clearance due to his criminal charges. He acknowledged that his employers provided him with security clearance training, including informing him “not to partake any criminal or illegal activities.” However, he also asserted:

I wasn't really instructed how to conduct myself. Well, like you said, I thought the clearance mainly had to do with the job. So I didn't think it had to do with your outside life, normal life, after work. So that was ignorance on my part, not taking the clearance into consideration of on [sic] the job and how to conduct yourself, you know, when you're not working. But I'm more knowledgeable now. And I understand, you know, how to conduct myself, you know, either on the job or off the job and period just having a clearance. So I understand the severity of having a clearance, yes. (Tr. at 95, 158-159)

### Whole Person

Applicant has resided with his grandmother all his life. When his grandfather passed away “in 2012 or 2009,” he became her primary caregiver. He took time off from work to take care of her when she was sick. His mother passed away when he was five years old. He has never met his father and does not know whether he is living or deceased. He was raised in a hostile environment where marijuana was frequently used and where he did not have access to positive role models. He explained, “So, of course, I didn't see any negative aspects of it because everybody was functional.” Eventually, he realized that he had to separate himself from that environment if he wanted to get ahead in life, which led him to seek a “good job,” and get a clearance. (Answer; GE 5 at 1; GE 1 at 17-19, 27; Tr. at 129-133, 149).

Applicant volunteered for a Hurricane Katrina relief project from 2006 through 2008. He has volunteered for a Christmas in April program. Since 2010, he has regularly volunteered to take on projects for his church. An individual from the program where Applicant performed the community service hours in connection with his March 2009 charge wrote a letter on his behalf lauding Applicant's exceptional character and performance as a volunteer. The individual also stated, “I believe that this experience will have an endless impression on [Applicant] and will teach him to follow the correct path.” (AE G; AE A at 15)

Applicant proffered documents showing the various accolades he received about his exemplary work performance. He also provided, two letters, both from September 2022, from individuals who praised his character and work performance. One of those references, a friend and former coworker, stated, “I have never witnessed [Applicant] with drugs or associated with any criminal activity.” Applicant acknowledged that none of his references knew about his criminal arrests and convictions or his marijuana use. At some point, he received a five-year service award for delivering outstanding customer service while employed by a defense contractor for whom he was employed between 2002 and 2011. (AE D, F, G, H; Tr. at 103)

Applicant's next-door neighbor testified on Applicant's behalf at the hearing. The neighbor considers him to be "like a son." The neighbor has known him since at least 2012, having met through Applicant's grandmother. He and the neighbor interact "close to every day." The neighbor has observed him taking care of his grandmother and their home. The witness stated, "He helps her out a lot."

I've never known him to do anything wrong or hang out with the wrong characters out there. Every time I seen [sic] him he's working. He helps everybody in the neighborhood. I think -- I think a lot of him. And I think he'd be pretty good with whatever he do [sic] in life. He doesn't do anything wrong that I know of or ever seen him do. (Tr. at 7-14)

The neighbor had not been aware of Applicant's history of marijuana use or criminal charges prior to the Government presenting him with that information upon cross-examination. After being presented by that information, the neighbor reiterated his support for Applicant. (Tr. at 7-14)

At the end of the hearing, Applicant asserted that each occasion of his involvement with law enforcement resulted from profiling. He explained, "I mean, all the times I got pulled over is, as you can say, I feel like I was being profiled or they was [sic] looking for something and then that escalated to another thing." (Tr. at 165)

### **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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*Egan* 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. (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. (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 [or her] 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* at 531; AG ¶ 2(b))

## Analysis

### 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.

Applicant’s use and possession of marijuana and marijuana-related criminal charges establish the following disqualifying conditions set forth in AG ¶ 25 under this guideline:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) 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.

Having considered all the factors set forth in AG ¶ 26 that could mitigate the concern under this guideline, I find the following warrant further discussion:

- (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; 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.

Applicant's marijuana use spanned 23 years, from 1990 through at least 2013, including at times when he possessed a security clearance. His involvement with marijuana extended through his most recent criminal charge in 2018. These facts alone underscore a pattern of questionable judgment that casts doubt on his ability or willingness to comply with laws, rules, and regulations. The inconsistencies over details about his marijuana use at various stages of the security clearance process damaged his credibility and further undermined mitigation.

I question the frequency of the marijuana use that Applicant self-reported, particularly given his selective admissions to marijuana use at times that happened to coincide with his involvement with law enforcement. He may very well have been profiled during the various traffic stops as he asserted. However, in each instance, he was found to be in violation of a law for which he was ultimately convicted. Moreover, I was unpersuaded by his arguments claiming that police records did not accurately reflect his version of events.

Given the environment in which Applicant was raised and still lives, it is reasonable to assume that he will continue to encounter drug use and drug users. During the hearing, Applicant appeared resolute regarding his intent not to resume using marijuana and his efforts to disassociate himself, to the extent possible, from those actively using drugs in his presence. However, his lack of candor and failure to fully accept responsibility for his marijuana involvement throughout the security clearance process raises doubts about his commitment to abstinence. Moreover, his failure to provide a signed statement of intent to abstain from all drug involvement and substance misuse cuts against mitigation. Having had an opportunity to evaluate Applicant's demeanor and credibility at hearing, I have substantial doubts about his reliability, trustworthiness, and judgment. Neither AG ¶ 26(a), 26(b), nor 26(d) were established.

### **Guideline J: Criminal Conduct**

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.

Applicant's marijuana-related criminal charges establish the following disqualifying conditions set forth in AG ¶ 31 under this guideline:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

Having considered all the factors set forth in AG ¶ 32 that could mitigate the concern under this guideline, I find the following warrant further discussion:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant was convicted of misdemeanor possession of marijuana charges in 2009, May 2011, and December 2011, and 2018. The fact it was *nolle prosequi* does not

preclude consideration of the facts and circumstances underlying the 2008 misdemeanor possession of marijuana charge. Incorporating my analysis under Guideline H, and given lingering concerns about his credibility, there has not been a passage of time sufficient to conclude that his criminal conduct is unlikely to recur. Neither AG ¶ 32(a) nor 32(d) were established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, 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 H and J in my whole-person analysis and considered the factors in AG ¶ 2(d). After having an opportunity to observe Applicant's demeanor during the hearing and considering his inconsistent statements within the record, I did not find his testimony credible. After weighing the disqualifying and mitigating conditions under Guidelines H and J, and evaluating all the evidence in the context of the whole person, I conclude that Applicant did not mitigate the drug involvement and criminal conduct security concerns. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:           AGAINST APPLICANT

    Subparagraphs 1.a – 1.f:   Against Applicant

Paragraph 2, Guideline J:         AGAINST APPLICANT

    Subparagraph 2.a:           Against Applicant



### **Conclusion**

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

Gina L. Marine  
Administrative Judge