



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



In the matter of:)
)
) ISCR Case No. 22-02585
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Joseph Goff, Jr., Esq.

06/28/2023

Decision

HARVEY, Mark, Administrative Judge:

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 April 9, 2022, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On December 22, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; 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 January 17, 2023, Applicant provided a response to the SOR and requested a hearing. (HE 3) On February 6, 2023, Department Counsel was ready to proceed.

On February 17, 2023, the case was assigned to me. On February 27, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 11, 2023. (HE 1) The hearing was held as scheduled.

Department Counsel offered two exhibits into evidence; Applicant offered 16 exhibits into evidence; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 11-15; GE 1-GE 2; Applicant Exhibit (AE) A-AE P) On May 1, 2023, DOHA received a transcript of the hearing.

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, and he denied the remainder of the SOR allegations. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is 24 years old, and he is enrolled in a graduate program to enable him to earn a master's degree in electrical engineering. (Tr. 18) In 2021, he received a bachelor's degree in computer engineering. (Tr. 22-24) He works for a defense contractor as a testing and design engineer. (Tr. 18-19) He is not married, and he does not have any children. (Tr. 21) He received an award and a scholarship because of his academic accomplishments, and he maintained a high-grade point average (GPA). (Tr. 21-22; AE C; AE D) He has never served in the military. (Tr. 65) His resume provides additional details about his professional and technical experiences. (AE B)

Drug Involvement and Substance Misuse and Personal Conduct

SOR ¶ 1.a alleges Applicant used marijuana with varying frequency from about September 2017 to about October 2021. SOR ¶¶ 1.b and 2.a allege he intends to use marijuana in the future.

Applicant occasionally used marijuana from 2017 to October 2021. (Tr. 24; HE 3) In 2020, he purchased marijuana on one occasion for recreational use. (Tr. 26) Sometimes he used marijuana once a week, and sometimes he did not use marijuana for several months. (Tr. 27, 45) When he used marijuana in 2020 and 2021, which was during the pandemic, he was alone at home. (Tr. 27) He was aware that his marijuana involvement was illegal under federal law. (Tr. 26, 28) He did not use marijuana or any other illegal drugs while working for a DOD contractor. (Tr. 28-29) He had one test for illegal drugs in 2022, and he did not test positive. (Tr. 29) In his SOR response, Applicant said he had no intention of using marijuana again. (HE 3)

Applicant said he chose to end his marijuana use because of its effects on his health. (Tr. 30) He said marijuana use caused him to feel anxious, and he was worried about someone walking past his door and smelling marijuana smoke. (Tr. 30, 40) A secondary reason for ending his marijuana use was his applications for employment and concern about passing pre-employment drug tests. (Tr. 53-54; GE 2)

Applicant provided 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. (AE A) See AG ¶ 26(b)(3), *infra*.

On March 27, 2023, Applicant received a drug-use evaluation. (AE P) The evaluation states:

He began experimenting with marijuana in 2017 using it in a recreational setting if his friends had it. In 2019, he . . . would occasionally go to the dispensary to use for anxiety and relaxation. He denied his THC use has ever crossed over into a problem and he has never had a problem with stopping the use of the drug. He denied any other type of illicit drug use. (AE P at 1)

In his evaluation, Applicant “denied ever having a problem with alcohol or marijuana. He has no plans to use the drug now or in the future. There is no recommendation for treatment at this time.” (AE P at 2)

Personal Conduct

SOR ¶ 2.b alleges Applicant minimized the extent of his marijuana use on his April 9, 2022 SCA when he said that he used marijuana “[a]pproximately 10 times total” during the previous seven years. (GE 1). SOR ¶ 2.c alleges he said on his SCA that he did not intend to use marijuana in the future “due to paranoia and lack of feeling in control of personal actions.” (*Id.*)

A May 17, 2022 Office of Personnel Management (OPM) summary of personal subject interview (PSI), indicates Applicant told the investigator:

Subject first smoked marijuana in or about Sep 2017. He smoked the drug with friends. He did not smoke marijuana again until 2019. From 2019 to about Oct 2021, Subject smoked marijuana 36 to 40 times, discrepant. He advised that he listed 10 times on his security clearance paperwork because he wanted to minimize the amount of his usage. Subject stated his decision to falsify his security clearance paperwork pertaining to his marijuana use [was] deliberate and willful.

From 2019 to Oct 2021, Subject would purchase his marijuana from dispensaries in [a state] where recreational usage is legal. Subject stated he stopped smoking marijuana in or about Oct 2021 because he was applying for jobs and was concern[ed] he would not pass a drug test.

Subject was asked about his future intent regarding marijuana usage, and he advised it is highly probable that he'll use marijuana in the future. Subject was asked if he would smoke marijuana in the future knowing that it violates federal law; he advised yes. However, he initially stated that he would not smoke marijuana while holding a clearance. Shortly thereafter, he transitioned his answer that there was a reasonable chance he would smoke marijuana while holding a security clearance even if it violated policy and federal law.

Subject was asked what [other] federal law he feels he does not have to comply with. He advised this is the only federal law he does not comply with. Subject was asked if it showed poor judgement that he violated and is willing to violate federal law; he advised yes that it does show poor judgement. Subject was asked if a person that exercises poor judgement should hold a security clearance. He stated no. He was asked if he should be granted a security clearance and he advised yes. He stated after further reflection, he has decided not to use marijuana in the future as long as it violates federal law or violates security clearance rules.

Subject denied any other illegal drug use. (GE 2)

Applicant had an opportunity to submit corrections to the summary of the OPM interview, and he failed to make corrections because of "a lack of due diligence." (Tr. 37, 52) At his hearing, he said he told the OPM investigator he used marijuana 36 to 40 times based on use every two weeks over a 19-month period from 2020 to 2021. (Tr. 45-46) As to the number of his marijuana uses, he said "I do not believe it's an inaccurate number, but I am not sure of the exact number." (Tr. 48, 62-63) He estimated the true number of marijuana uses to be in the mid-20s or more generally between 10 and 40 times. (Tr. 49, 63) He acknowledged he may have underreported his marijuana use on his SCA, and he may have given the OPM investigator an inaccurate number of marijuana uses due to being "flustered" and out of a desire to be cooperative and to agree with the investigator. (Tr. 50, 59) He denied that he deliberately underreported his marijuana uses on his SCA, and he insisted "[a]t the time [he] filled it out [he] believed it was, approximately 10." (Tr. 60-61)

As to his future intentions about marijuana use, Applicant told the OPM investigator "to his knowledge" he did not intend to use marijuana in the future. (Tr. 33-34) The investigator interpreted the words "to his knowledge" to be an equivocal denial of his intention not to use marijuana, and the investigator pressured Applicant on this issue. (Tr. 33-35) Applicant attempted to convey to the OPM investigator that he did not intend to use marijuana in the future; however, he "tripped over [him]self and said, in kind of thinking [he] said no at the time, or the only other answer in this situation, is yes." (Tr. 57) He was "kind of scrambl[ing] to pick up the pieces in a sense." (Tr. 58) He was flustered and did not "know exactly why [he] said that" there was a good chance he would use marijuana in the future. (Tr. 58)

Applicant said the OPM investigator questioning caused him to become “flustered” and he felt pressured. (HE 3) The OPM investigator used “napkin math” to increase the number of estimated marijuana uses to 36 to 40 times, and during the interview, Applicant agreed with the estimate. (Tr. 31; HE 3; GE 2) He did not have a precise number of marijuana uses. (Tr. 31) He denied that he said he “willfully and deliberately falsified [his] application to minimize [his] marijuana usage.” (Tr. 31; HE 3) He denied that he intended to use marijuana in the future. (Tr. 36, 38)

Character Evidence

Three coworkers, including his manager, and two friends from his university praised his good character and/or contributions to his employer. (Tr. 41-43; AE K-AE O) The general sense of their statements and his academic records is that he is exceptionally intelligent, diligent, skilled, talented, dedicated, responsible, and professional employee.

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 “(g) express intent to continue drug involvement and substance misuse.” The record establishes AG ¶¶ 25(a), 25(c), and 25(g).

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).

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 Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications as follows:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a “whole-person concept.” This requires adjudicators to carefully weigh a number of variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (Dec. 21, 2021) at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

Applicant used marijuana 36 to 40 times. He knew his marijuana possession or use or both was prohibited by federal law. His decision to repeatedly possess and use marijuana is an indication he lacks the qualities expected of those with access to national secrets. He told the OPM investigator that he intended to use marijuana in the future; however, he said he would not use marijuana while holding a security clearance or while possession or use of marijuana was prohibited by federal law.

Applicant provided some important mitigating information. He voluntarily disclosed his marijuana possession and use during the security clearance process. He disclosed his marijuana use on his SCA, to an OPM investigator, in his SOR response, and during his hearing. He provided a signed statement of intent to abstain from all drug involvement and substance misuse, and he acknowledged that any future involvement or misuse is grounds for revocation of national security eligibility.

At his hearing, Applicant said he ended his marijuana use in October 2021, and he did not intend to use marijuana use in the future. However, Applicant made inconsistent statements about his future intentions concerning marijuana use and his number of

marijuana uses. See ISCR Case No. 22-00657 at 3-5 (App. Bd. Apr. 18, 2023) (discussing impact of false statements on SCAs in assessment of credibility of Applicant's statements about current and future marijuana use). I am not convinced his marijuana possession and use "happened under such circumstances that it is unlikely to recur [and] does not cast doubt on [his] current reliability, trustworthiness, [and] good judgment. I am uncertain about his history and future marijuana use. Guideline H security concerns are not mitigated.

Personal Conduct

AG ¶ 15 describes the security concern about personal conduct as follows:

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 includes disqualifying 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) applies and will be addressed in the mitigating section, *infra*.

AG ¶ 17 provides conditions that could mitigate security concerns as follows:

(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.

The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a *prima facie* case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). SOR ¶ 2.a alleges Applicant intended to use marijuana in the future. SOR ¶ 2.b alleges Applicant minimized the extent of his marijuana use on his April 9, 2022 SCA when he said that he used marijuana "[a]pproximately 10 times total" during the previous seven years. SOR ¶ 2.c alleges he said on his SCA that he did not intend to use marijuana in the future "due to paranoia and lack of feeling in control of personal actions." (*Id.*)

Applicant failed to honestly and candidly disclose negative information on his April 9, 2022 SCA. He intentionally understated the extent of his marijuana use on his April 9, 2022 SCA. He is exceptionally intelligent, and he was evasive at his hearing about the extent of his marijuana use during the seven years prior to completion of his SCA. I conclude the best estimate of his marijuana use was 36 to 40 times. He calculated the number of marijuana uses, and he was attempting to be honest with the OPM investigator. He told the OPM investigator that he minimized or understated the number of occasions he used marijuana on his SCA.

Applicant denied at his hearing that he knowingly and intentionally fabricated his SCA with intent to deceive. I do not find his denials in this regard to be credible. His false denials of his true state of mind when he completed his SCA show a lack of rehabilitation

and weigh against mitigation of the personal conduct security concerns. None of the mitigating conditions fully apply. 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 Guidelines H and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 24 years old, and he is enrolled in a graduate program to enable him to earn a master's degree in electrical engineering. In 2021, he received a bachelor's degree in computer engineering. He works for a defense contractor as a testing and design engineer. He received an award and a scholarship because of his academic accomplishments, and he maintained a high-level GPA. His resume provides additional details about his professional and technical experiences. Five-character witnesses praised Applicant's good character and/or contributions to his employer. The general sense of their statements and his academic records is that he is an exceptionally intelligent, diligent, skilled, talented, dedicated, responsible, and professional employee. The character evidence provides important support for his access to classified information.

Applicant discussed his history of involvement with marijuana on his SCA, during his OPM personal subject interview, in his SOR response, and at his hearing. He did not test positive on a urinalysis test, and he does not have any drug-related arrests. He promised not to use marijuana in the future.

The evidence against grant of a security clearance is more persuasive at this time. Applicant said he used marijuana about 10 times in the previous seven years on his April 9, 2022 SCA. He told an OPM investigator that he used marijuana 36 to 40 times in the previous seven years, and he admitted to the OPM investigator that he intentionally understated the number of times he used marijuana on his SCA. In response to DOHA

interrogatories, he certified the accuracy of his OPM interview. At his hearing, he claimed that the information about using marijuana 10 times on his SCA was not a deliberate falsification or made with intent to deceive. He said he honestly believed he only used marijuana 10 times when he was completing his SCA. I find that he deliberately understated or minimized the number of occasions he used marijuana on his SCA. He was not a credible witness at his hearing.

An honest and candid self-report of marijuana use 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. However, to receive full credit, the self-report must be candid and honest.

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. Applicant failed to mitigate drug involvement and substance misuse and personal conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against 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 Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge