



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



In the matter of:)
)
) ISCR Case No. 22-01392
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

June 23, 2023

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 November 3, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 5, 2022, the Department of Defense 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 September 6, 2022, Applicant submitted his Answer to the SOR. On September 29, 2022, Department Counsel was ready to proceed. On October 11, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On November 7, 2022, DOHA issued a notice of Microsoft Teams video teleconference hearing, scheduling the hearing for December 8, 2022. The hearing was convened as

scheduled. Department Counsel submitted Government Exhibits (GE) 1 through 3, which I received into evidence. Applicant testified and did not offer any evidence at his hearing. I held the record open until January 31, 2023, to afford the parties an opportunity to submit additional evidence. Applicant timely submitted Applicant Exhibits A through M. Applicant submitted information in AE L and AE M regarding the legality of hemp derived Delta-8 THC. In response, Department Counsel submitted GE 4 and GE 5. I received all post-hearing submissions into evidence. The Delta-8 THC issue is discussed further *infra*. On December 15, 2022, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 37-year-old senior control systems engineer, who has been employed by a defense contractor since June 2006. He has held a Secret security clearance since November 2016 and seeks to retain it as a requirement of his continued employment. (GE 1; Tr. 10-12)

Applicant graduated from high school in 1993. He was awarded a Bachelor of Science degree in electrical engineering in June 2007, a master's degree in electrical engineering in May 2009, and a Ph.D. in electrical engineering June 2013. (GE 1; Tr. 12-15) He married in February 2002, and has a 20-year-old daughter, an 18-year-old daughter, and a 15-year-old son. Applicant's wife is employed in the marketing and graphic design department at a major university. (GE 1; Tr. 15-16)

Drug Involvement and Substance Misuse

Applicant self-reported marijuana use on his November 3, 2021 SF-86. (GE 1) He was subsequently interviewed on January 4, 2022, by an Office of Personnel Management (OPM) investigator regarding his marijuana use. (GE 3) He elaborated on his marijuana use in his September 6, 2022 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 January 1995 to about September 2021. He admitted this allegation with explanations. (SOR Answer) He smoked marijuana occasionally in his early 20s, but in 2002 he started a family and pursued a Ph.D. in electrical engineering that took him 13 years to complete. Applicant did not use marijuana again until mid-2017 when it was legalized in his state of residence. (SOR Answer)

During his hearing, Applicant stated that he first used marijuana "shortly after high school" and did not use it in a consistent pattern. While Applicant was attending a community college before transferring to a university where he was awarded his bachelor's degree, he estimated he used marijuana "a small handful of times . . . not very often." (Tr. 21-23) When he transferred to a university setting, he "was just hanging out with a bunch of Engineers." Applicant was married the entire time he was in a

university setting pursuing his Ph.D. Neither he nor his wife used marijuana during this timeframe. Marijuana became readily available in Applicant's state of residence after it was legalized in 2016, and his wife's girlfriends "started smoking it or they would have like gummy edibles or whatever. It just sort of started surfacing through different social networks." It was "sometime, middle to the end of 2017," that his wife came home with a vape pen, "like an e-cigarette." (Tr. 23-24, 31)

SOR ¶ 1.b alleges that Applicant used marijuana with varying frequency from about 2016 to September 2021 while granted access to classified information. He admitted this allegation with explanations. (SOR Answer) He added, "to date I have never been in possession of or had access to classified information." (SOR Answer)

When Applicant's wife came home with an electronic cigarette in 2017, she told him that it was a hemp-derived version called Delta-8 THC and was legal in all states. Applicant researched whether his wife's claim, as well as the same claim of a friend he played hockey with, was accurate and found the laws to be conflicting. He used the ambiguity of the laws to justify his infrequent use of these products and began to use them sporadically because, as a writer, its use would help him to write. He reiterated and acknowledged that was a "big mistake" and stated he would not make that same mistake again. He only used these products with his wife or by himself. Applicant fully admitted that he got it wrong. (Tr. 19-20, 24-25, 32, 39)

Applicant told the investigator during his January 4, 2022 OPM interview that he planned to continue "to use this stuff" because he had convinced himself "that it wasn't a big deal." Applicant acknowledged this response was "very wrong" and is "very remorseful" for making that statement. He "mis-understood the severity of the choice and how the Federal Government would see this." He credibly expressed that he was sorry and stated that "it won't happen again." (Tr. 20) Applicant said that he last used Delta-8 THC shortly after his OPM interview, stating that he was "thick-headed" not realizing the "magnitude of this." Shortly after his OPM interview, and "maybe eight months" ago, Applicant stopped using marijuana completely. In his post-hearing statement, he clarified that he had not used any marijuana products over the past year. He added that it was not hard for him to stop using marijuana nor does he miss using it. (Tr. 25-27, 30; AE C)

Applicant underwent a pre-employment drug test when he was initially hired as an intern. He stated that his employer provides training but does not recall any specific training on his company's drug policy. He realizes Federal law "trumps" state law. He has not undergone any random drug screenings since he began his employment in 2006. (Tr. 27-28) When Applicant completed his November 3, 2021 SF-86, he stated that he wrote songs and occasionally used marijuana to generate new ideas. He added that if marijuana use became an impediment to obtaining his clearance, he would refrain from further use as he was not "very attached to it." He testified that he provided that response because he was mistaken regarding the state of the law and acknowledged that he "could have made a better choice . . . and stopped right then." (Tr. 20-21; GE 2)

Applicant stated that his wife no longer uses marijuana. She is very aware of the problems that continued marijuana use will cause for his career and their collective livelihood. She understands the requirement for Applicant to refrain from any drug use and is very supportive of his total abstinence. Apart from a fellow hockey team player who sometimes uses a vape pen, Applicant does not find himself in any situations where marijuana is used. He is not tempted to use marijuana on the rare occasion his hockey teammate uses marijuana. (Tr. 30-31)

Applicant “wholeheartedly” understands the Government’s zero tolerance policy with regard to drug use, even if a drug is legal in one’s state of residence under state law but not Federal law. (Tr. 32-33, 39-40) Applicant submitted a signed statement of intent, dated January 29, 2023, to abstain from all hemp derived products regardless of their legal status at state and Federal levels. He added that he has not consumed any of these products for the past year and is fully committed to maintaining abstinence. (Tr. 33-34; AE C) Similarly, Applicant’s wife submitted a signed statement, dated January 29, 2023, expressing her committed support of her husband’s decision to abstain from all hemp products. She added that she discontinued her use of all such products. (Tr. 33-34; AE B)

Post-hearing, Applicant submitted an email referencing research he conducted on the legality of consuming hemp derived Delta-8 THC. He stated that based on his research it was his belief that Delta-8 THC is legal Federally as well as in his state of residence. With that in mind, he asserted that he did not violate his employer’s zero drug tolerance policy as his employer’s policy only pertains to the consumption of illegal drugs. Regardless, Applicant stated that he would abstain either way. (AE L) Applicant submitted a second email with citations and further discussion supporting his position. (AE M) [Note – DOD policy does not permit the use Delta 8 THC. See discussion under Analysis section *infra*.]

In response and in summary, Department Counsel stated that Applicant made no reference to using Delta-8 THC when he completed his November 3, 2021 SF-86 nor in his January 4, 2022 OPM interview. She noted that Applicant specifically referred to “marijuana” and “THC” adding that he expressed an intent to continue using it, even when he was not certain whether it was permissible to do so while holding a security clearance. She concluded that even if Applicant were to establish that he currently has a reasonable basis to believe that the product he was using was legal and Farm Bill-compliant, his use occurred while he had doubts about its legality and reflected adversely on his judgment. (GE 4; GE 5)

Personal Conduct

SOR ¶ 2.a alleges that Applicant falsified his April 22, 2016 SF-86 by deliberately failing to disclose his past marijuana use as set forth in SOR ¶ 1 when he answered “no” to the question whether he had illegally used any controlled substance in the last seven years. Applicant denied this allegation with explanations. (SOR Answer) He stated when he completed his April 22, 2016 SF-86, he answered “no” because he had not smoked marijuana for “approximately 14 years.” (SOR Answer) During his hearing,

Applicant reiterated that he did not use marijuana again until 2017 after it was legalized in his state of residence. (Tr. 28-29)

Character Evidence

During his hearing, Applicant made a statement expressing his patriotism, love of country, and motivation for going forward. His family on both sides has been in the United States “since before the Mayflower.” He has built his entire career being of service to the United States. He is very proud of being able to solve problems “that nobody else could” on a Navy platform. He continues to work on programs that impact the client’s wellbeing and would like to make more contributions, if allowed. He viewed the outcome of this decision not only as being important to him and his family, but to the country as well. (Tr. 20)

Applicant submitted a reference letter from his functional manager (FM), who has known Applicant for the past five years, first as his technical lead and later as his functional manager. [FM described Applicant’s projects, past and present. Identifying these projects would in all likelihood provide information leading to the identify of projects and parties concerned. Suffice it to say, the projects involved are of critical importance and vital to the national defense.] Applicant has a proven track record of working on highly sophisticated platforms and is the “only member of [FM’s] team that has both capability and drive to address these efforts in the short time-frames that are available on these programs.” Applicant is assigned to multiple programs as a subject matter expert. In this role besides learning the needed control technology and applying his technical skills, Applicant serves as a sounding board and mentor to junior engineers. (AE A)

Applicant’s work performance evaluations from 2017 to 2023 reflect sustained superior performance and provided specific examples of his contribution to the national defense. (AE - I) For example, his 2023 evaluation states, “[Applicant] continued to be sought by [client] for his control design expertise. [Applicant] is deeply respected for his creativity, intellect, passion, maturity, and good nature and should continue to be a tremendous asset for [employer] in the years to come.” “[Applicant’s] work was acknowledged by the senior leadership. He has been asked to obtain a clearance so that he can employ his work on several programs.” (Tr. 35; AE I)

In addition to his contribution to the national defense, Applicant likewise contributes to his local community. He developed a passion for teaching while he was a graduate student working on his Ph.D. He participates in a company-sponsored program to encourage young people to pursue careers in science and engineering. He developed a curriculum and leads classroom laboratory sessions for elementary students in electricity, magnetism, and the fundamentals of circuit design. Applicant participates in career days where he gives presentations on exciting engineering projects to middle schoolers. He provided a photograph of him in the “teaching mode” and copies of numerous thank you notes from students who benefited from his teaching. (Tr. 38; AE J – K)

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 provides conditions that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition)”; and “(f) any illegal drug use while granted access to classified information or holding a sensitive position.” Applicant held a security clearance and did not have access to classified information, but did hold a sensitive position.

DNI Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, states:

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

On December 21, 2021, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. Its application applies to “federal agencies.” It states in pertinent part:

[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, dated December 21, 2021 (SecEA Clarifying Guidance), ES 2021-01529, at page 2.

These proceedings were initiated after Applicant self-reported his marijuana use on his November 3, 2021 SF-86, and later during his January 4, 2022 OPM interview. While Applicant may have concluded that his use of Delta-8 THC products did not violate Federal law, his use at the time while in a state of uncertainty raises a security concern. Marijuana is a Schedule I controlled substance. Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). See Drug Enforcement Administration listing at https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf. These self-disclosures establish AG ¶¶ 25(a) and 25(f). Further review is required.

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.

AG ¶ 26(a) applies because Applicant's marijuana use occurred before he fully realized the implications of marijuana involvement. As such, his marijuana use "happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, [and] good judgment."

AG ¶ 26(b) partially applies because Applicant acknowledged his marijuana involvement and substance misuse. He provided evidence of his actions taken to overcome this problem, and he established a pattern of abstinence, including: (1) disassociation from most of his 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. His spouse also submitted a signed statement expressing her commitment to support her husband decision to abstain from all hemp products. She also discontinued all use and plans to abstain going forward. Applicant did not indicate he would disassociate with others who use marijuana. Prong AG ¶ 26(b)(1) is difficult to fully satisfy because marijuana use is so common and, apart from his friend on the hockey team, it is difficult to know about whether he has other associates who use marijuana.

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 approximately "a year" before his December 2022 hearing. I accept his post-hearing recollection of time elapsed versus the answer he gave during his hearing as being more accurate. His history of using marijuana was infrequent and sporadic. Using marijuana while holding a clearance is arguably of the most concern in this case. Applicant explained that his decision to use marijuana with varying frequency after it was legalized in his state of residence stemmed from a combination of factors to include his uncertainty over the legality of its use, emerging societal norms, and a mistake in judgment. He cannot undo the past, but he intends to avoid making the same mistake going forward. Applicant recognized that mistake, admitted and accepted responsibility for making that mistake, and promised to adhere to DOD's zero drug tolerance policy.

The record contains persuasive evidence that Applicant has turned the corner on achieving drug abstinence. Applicant's self-reflection, change in behavior, and support from his family, friends, and associates, in addition to about one year of abstinence, are indicative of an individual who wants to right his course. The absence of evidence of more recent or extensive drug use, and his commitment not to use illegal drugs in the future, eliminates doubts about his current reliability, trustworthiness, and good judgment with respect to illegal drug use.

Applicant's reference letters document that he is an individual who possesses character and integrity. Applicant's work performance evaluations reflect the caliber of performance the contribution he is making towards the national defense. His performance further reflects that 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 career and family plans and manifested a steadfast commitment to continue lifestyle changes consistent with total abstinence of involvement with all illegal drugs.

Applicant volunteered the information about his marijuana involvement. His marijuana involvement was not detected in a urinalysis, in a post-polygraph interview, through OPM interviews of his associates, or through a law enforcement investigation. I am satisfied that he will keep his promise not to possess or use marijuana in the future. His history of marijuana use does not cast doubt on his current reliability, trustworthiness, and good judgment.

In evaluating Applicant's credibility, I did so after assessing his demeanor, which can most effectively be done by personal observation, 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 his description of his history of past drug use and assertion that he will not use any illegal substance in the future were sincere and credible. 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 April 22, 2016 SF-86, Applicant stated "no" when queried whether he had illegally used any controlled substance in the last seven years. He answered "no" because when he completed that SF-86 he had not used marijuana for approximately 14 years. He did not use marijuana until 2017 after it had been legalized in his state of residence. In short, Applicant truthfully answered the question about past drug use and therefore did not falsify his SF-86. The evidence does not support the allegation under this concern.

My credibility assessment of Applicant discussed under Drug Involvement and Substance Abuse, *supra*, is applicable under this section. I found Applicant's testimony to be consistently credible throughout his hearing, even when doing so exposed him to greater liability. I accept his statement that that he understood the gravity and importance of being transparent. Accordingly, and in light of the fact that no evidence supports this allegation, further discussion regarding disqualifying and mitigating conditions is not warranted.

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.

To review, Applicant is employed as a senior control systems engineer for a defense contractor. He has worked on a number of major projects of critical importance to the national defense. I note that Applicant has demonstrated considerable perseverance by committing 13 years of his life to earn a Ph.D. in electrical engineering. He has shown a similar commitment to dedicating his adult working life to the defense industry since 2006. Application of the mitigating conditions as well as a whole-person assessment support a favorable adjudication in Applicant's case.

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 or Delta-8 THC is incompatible with DOD regulations and is committed to refrain from all further use. He enjoys the full support of his spouse in abstaining from its use. He recognizes that his decision to use Delta-8 THC even if "legal" is incompatible with DOD policy and contrary to the direction he wants to take his career. While legalized marijuana and its derivatives may have gained greater acceptance as a result of emerging social norms, Applicant understands that any future use would be cause to end his access to classified information. In short, his lifestyle changes since he stopped using marijuana are significant, noteworthy, and eliminated any potential for pressure, coercion, or duress.

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 wife and three children 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. His past, present, and future contributions to the national defense are substantial, and far more important to him than recreational use of THC.

Clarifying guidance provided by the December 21, 2021 SecEA concerning marijuana-related issues cited *supra* was particularly instructive in evaluating this outcome. 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline H: | FOR APPLICANT |
| Subparagraphs 1.a – 1.b: | 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