



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



In the matter of:)
)
) ISCR Case No. 22-02205
)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Christopher Snowden, Esquire

October 27, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate the drug involvement and substance misuse, and the personal conduct security concerns. National security eligibility for access to classified or sensitive information is denied.

Statement of the Case

On March 31, 2022, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 13, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) (formerly the Department of Defense Consolidated Adjudications Facility) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). The DCAS CAS issued the SOR under Executive Order 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 effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on January 30, 2023. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on April 17, 2023. The case was assigned to me on April 25, 2023. DOHA issued a Notice of Hearing on June 12, 2023. I convened the hearing as scheduled on July 12, 2023. The Government offered Government Exhibits (GE) 1 through 5, which I admitted without objection. (Hearing Transcript at 9-10.)

Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A through R. Department Counsel objected to AE Q on the ground that an opinion set forth therein addressing the ultimate issue in this case, *i.e.*, Applicant's suitability to be granted a security clearance. I overruled the objection, stated that I would give the entire exhibit the weight it deserved, and admitted Applicant's other exhibits without objection. Applicant's counsel requested that I leave the record open so that he could submit additional exhibits after the hearing, I granted his request. Counsel timely submitted exhibits marked as AE S through U, which I admit without objection. DOHA received the transcript of the hearing (Tr.) on July 19, 2023. The record closed on August 18, 2023. (Tr. at 10-13.)

Procedural Ruling

During the hearing, Department Counsel moved to amend the SOR adding a subparagraph 1.d to conform to the evidence developed at the hearing. Immediately following the close of the hearing, he provided an email containing the specific wording of his amendment, which is the following:

1.d. In about 2005, while granted access to classified information you used Marijuana.

Applicant's counsel provided an email stating that he had no objection to the amendment as stated. At the time of Department Counsel's oral motion during the hearing, I raised the issue with Applicant's counsel as to whether he needed additional time to prepare a response to the proposed amendment. He replied that he did not object to the amendment and did not need additional time to respond to the new allegation because it was closely associated with the allegation in SOR ¶ 1.c. I granted Department Counsel's motion to amend, subject to reviewing the final version of the amendment language, as set forth above. Upon review of the proposed amendment, I granted Department Counsel's motion on July 13, 2023, without objection. (Hearing Exhibit I; Tr. at 41-45.)

Findings of Fact

Applicant is 41-year-old, married, and has a minor child and an adult stepchild. He earned a bachelor's degree in 2011. Since April 2020 he has worked for two federal contractors as an engineer. He enlisted in the U.S. Army from 2003 to 2007 and then the Army Reserve from 2007 to 2011. Applicant deployed to a war zone in about 2004 for one year and served in a dangerous part of that country as a part of the Army's communications operations. He was honorably discharged from both the Army and the Army Reserve. He has been diagnosed with combat-related post-traumatic stress disorder (PTSD) and has a 30 percent disability rating from the Department of Veterans Affairs (VA). He was granted a secret clearance in 2010 in connection with his military service. His security clearance status in 2005 and before is discussed below under SOR ¶ 1.d. He applied for a security clearance in April 2020 (2020 SCA), and he submitted a second application, the e-QIP, in March 2022. (Tr. at 14-18; GE 1 at 5, 8-9, 17-21, 28-29, 35-36; AE G.)

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleged in this paragraph of the SOR that Applicant is ineligible for access to classified or sensitive information because he has used illegal drugs and had used illegal drugs in the past when he held a security clearance. In the Answer, he admitted all the allegations under this paragraph of the original SOR with explanations. Applicant wrote that in 2012 a physician gave him a card to permit him to purchase and use medical marijuana under the laws of his state of residence (State 1) to help him with his PTSD symptoms. He used marijuana a couple of times per week to relieve his anxiety and to help him sleep. He claimed that he stopped using marijuana in 2015 when his PTSD symptoms eased. Applicant's wife also received a physician's card permitting her to purchase and use medical marijuana to help her deal with her own medical issue of insomnia. (Answer at 1-2; Tr. at 19-21; AE C; AE D; AE T; AE U.)

SOR ¶ 1.a. Purchases of Marijuana, June 2012 to July 2022. During the dates alleged in the SOR, Applicant purchased medical marijuana in State 1 through dispensaries. He never purchased marijuana illegally under the laws of State 1. He purchased the marijuana for himself and his wife because he received a discount as a veteran. He testified that he purchased medical marijuana for his own use until June 2015, when he claimed that he stopped using marijuana. He continued purchasing marijuana for his wife after June 2015 so that the purchases were less expensive with his discount. His wife stopped using marijuana in July 2022, and Applicant stopped purchasing marijuana at that time. (Answer at 1; Tr. at 22-25; GE 1 at 6-8; GE 2 at 14; GE 3 at 5-6, 16.)

SOR ¶ 1.b. Use of Marijuana, June 2012 to about June 2019. In the Answer, Applicant admitted using marijuana from 2012 until 2015. At the hearing, he testified that he used marijuana from June 2012 to "about June 2015" to help him with his PTSD. He denied any marijuana use at any subsequent time. Applicant's wife provided a notarized

statement after the hearing confirming that Applicant's last use of marijuana was in 2015. He had prepared a security clearance application in April 2020 (2020 SCA), in which he had disclosed marijuana use from June 2012 to June 2019. He testified that the 2019 date was "a typo." He said that the correct last date of marijuana use was in "about June 2015. He designated the month of June as an estimate because he was "pretty certain" that he stopped using marijuana in the middle of 2015. He then testified, "So, June, 2015, was the last time I used [marijuana]." (Answer at 2; Tr. at 19-21, 25-27; GE 2 at 14; AE S.)

As discussed below in detail, I have significant concerns about Applicant's credibility on several factual issues. In this instance, I find that Applicant's last use of marijuana was in about June 2015, as he testified. The critical difference with respect to this issue is that Applicant provided collaborating evidence in the form of his wife's notarized statement.

SOR ¶ 1.c. Article 15, UCMJ, Wrongful Use and Possession of Marijuana in 2005. Applicant failed a drug test conducted on February 22, 2005, while serving in the U.S. Army and deployed to a European country. He claimed that he used marijuana once in December 2004 during his leave at Christmas 2004. He received non-judicial punishment (NJP). The SOR alleged, and Applicant admitted, that his punishment for using marijuana was a reduction in grade from E-3 to E-1, forfeiture of pay, and the imposition of extra duty. Certain documents in the record incorrectly refer to the drug used by Applicant as MDMA (ecstasy) rather than marijuana. Applicant made the same mistake during his background interviews because he did not understand that MDMA and marijuana were two different, unrelated drugs. He testified that the only drug he has ever used was marijuana. The FBI report in the record also incorrectly refers to MDMA rather than marijuana. The Army records regarding the drug test, the NJP, and the investigative report in the record all refer to Applicant's positive test for marijuana and his punishment for using marijuana. I find that all references in the record to MDMA are erroneous and should have referred to marijuana. (Tr. at 28-29, 64; GE 3 at 5-7, 15-16; GE 4 at 1-4; GE 5 at 1-2)

SOR ¶ 1.d. Use of Marijuana in 2005 while Granted Access to Classified Information. Prior to the 2005 incident in which Applicant was charged as alleged in SOR ¶ 1.c, above, Applicant had been granted access to classified information. Applicant acknowledged at the hearing that prior to 2005 he had prepared a security clearance application. He testified he was unaware whether he had actually been granted a clearance. During cross examination, he acknowledged that during his deployment to a war zone in 2004, he was responsible for using classified communication equipment, which required a security clearance (and access to classified information, in this case, the classified equipment). Applicant's admissions are sufficient to establish by substantial evidence the fact that he held a security clearance and had access to classified information during his deployment. There was no evidence in the record that his clearance was ever revoked upon his return on home leave to the United States or thereafter on his deployment to a European country. Applicant testified that during his leave in the United

States in December 2004 he used marijuana. He subsequently tested positive for the drug in a random drug test after he deployed to Europe. (Hearing Ex. I; Tr. at 23-24, 38-40; GE 3 at 9, 11-12, 15-16.)

Paragraph 2 (Guideline E – Personal Conduct)

The Government alleged in this paragraph of the SOR that Applicant is ineligible for access to classified or sensitive information because he deliberately omitted in the e-QIP his past uses and purchases of marijuana. In the Answer, Applicant admitted the two allegations in this paragraph with explanations.

SOR ¶¶ 2.a and 2.b. Falsification in the e-QIP regarding Applicant's Use (SOR ¶ 2.a) and Purchases of Marijuana (SOR ¶ 2.b) in the Last Seven Years, as alleged in SOR ¶¶ 1.b and 1.a, respectively. Section 23 of the e-QIP asks whether Applicant has used or purchased any illegal drugs in the past seven years. He answered both questions in the negative, when in fact he had used and purchased marijuana within seven years of the e-QIP, which he signed and certified as "true, complete, and correct" on March 31, 2022. He testified that his last use of marijuana was in June 2015, which was less than seven years prior to the e-QIP certification date. He also admitted that he continued to purchase marijuana for his wife until July 2022, when she last used medical marijuana. (Tr. at 19-27; GE 1 at 33-34.)

Applicant claimed in his Answer that he mistakenly answered the e-QIP question by failing to disclose that he used marijuana in 2015. He wrote that he was uncertain whether his last use of marijuana was within the seven years prior to the date of the e-QIP. Applicant also claimed in his August 2022 background interview that he had not used marijuana since December 2004 when he was in the Army, as discussed above under SOR ¶¶ 1.c and 1.d. In a follow-up interview on August 3, 2022, Applicant again denied that he had used marijuana since 2004. He insisted that all of his marijuana purchases were solely for his wife's medical use. He denied having PTSD. I note that the VA awarded Applicant a 30% disability award in a letter dated January 10, 2022, about seven months prior to the follow-up interview. As a result of his false statements in his interview, DOHA in its interrogatories did not ask him when he last used marijuana. The only question asked was simply whether he had used marijuana since August 2022. (GE 1 at 33-34, 59; GE 2 at 14; GE 3 at 5, 12, 16; AE C; AE D at 1.)

At the hearing, Applicant testified that "in [his] head" his last use of marijuana was before the seven-year reporting period, which began on March 31, 2015. This was inconsistent with his admission at the hearing that his last use was in about June 2015. In weighing Applicant's credibility on the factual issue of why he omitted his marijuana use in 2015 from the e-QIP, I have considered his success in earning a Bachelor of Science degree in Networking and Communications Management and working in responsible positions as an engineer for two U.S. Government contractors. Also, I have weighed his demeanor at the hearing and his lack of credibility on several factual issues, as discussed above and as set forth below. I find that Applicant's testimony that he was

confused about the dates covered by the seven-year question regarding past drug use lacked credibility. Accordingly, I conclude that Applicant deliberately omitted material information about his use of marijuana from the e-QIP. (Tr. at 30; GE 2 at 14; AE S; AE T.)

Applicant admitted purchasing marijuana for his wife from 2012 to 2022, yet he also failed to disclose these actions in the e-QIP. He testified that his incorrect answer was due to being “mixed up” about what this question and the prior question about drug use meant. He admitted at the hearing that he should have answered this question in the affirmative. I note again that Applicant’s education and important work experience raise serious questions about the credibility of his claim of being confused by the simple language in the e-QIP, as does his demeanor at the hearing. He alternatively explained in his background interview that he did not list his purchases of marijuana because his purchases were legal under the laws of State 1 and the e-QIP question asks whether he has “been involved in the illegal purchase . . . of any drug?” Applicant’s inconsistent excuses for his patently incorrect answer to the e-QIP question further undercuts his credibility about his e-QIP omission. I conclude that Applicant intentionally failed to disclose that he had purchased marijuana during the seven-year period covered by the question. (Tr. at 31; GE 3 at 16; AE L.)

During the security clearance background investigation, Applicant did not voluntarily admit his positive drug test and NJP in 2005. The investigator had to confront him about the 2004-2005 incidents. Also, he has offered two inconsistent versions of the events surrounding his marijuana use in late 2004 after his return from deployment. In his background interview, he reported that he attended a Christmas party with high school friends who were smoking marijuana, which he mistakenly referred to as MDMA, not knowing the difference between the two drugs. He stated that he was offered marijuana by a friend and smoked it. At the hearing, he testified that he did not know that the cigarette that he was given was really marijuana. He presented to a psychologist who prepared a report for this case the same story about his accidental use of marijuana and told the psychologist that he “immediately discontinued using” what he thought was an ordinary cigarette. These inconsistencies further undermine Applicant’s credibility. (Tr. at 28, 46-49, 55-58; GE 3 at 9, 11; AE Q at 2.)

Applicant’s credibility is also strained by his contention in his background interview that the only time he used marijuana (intentionally or accidentally) in the 2004 and 2005 timeframe was at the December 2004 Christmas party while on home leave in State 1 for two weeks. He failed to mention his use of marijuana during the 2012 to 2015 period. With respect to his 2004 use of marijuana, he advised the investigator that he returned to his overseas deployment location in Europe shortly thereafter. He testified that he was drug tested “as soon as we got back from the two-week break.” He tested positive for marijuana. According to the Army’s records, the drug test was actually administered on February 22, 2005, about two months later. In the Army investigative records, Applicant is reported to have advised the investigators that he consumed marijuana on February 13, 2005, while in State 1. In fact, his leave had ended several weeks before that date.

These inconsistencies are significant. Although there is no evidence in the record regarding the time period for the drug to produce a positive drug test after consumption, it strains credibility that Applicant's one-time use of marijuana in late December 2004 would produce a positive test result for THC in late February 2005. The SOR does not allege this inconsistency regarding the date of Applicant's use of marijuana prior to his drug test. However, the inconsistency raises an issue regarding Applicant's general candor and credibility. (Tr. at 28-29, 62; GE 3 at 9,11; GE 4 at 3-4.)

Mitigation and Whole-Person Evidence

Applicant provided extensive evidence in mitigation and in support of a favorable whole-person assessment. I have carefully reviewed all of the evidence and note the following specific items: Applicant provided a written statement of his intent to never use or possess an illegal drug in the future. He also provided his PTSD medical diagnosis and his 30 percent VA disability rating. He provided his DD 214 evidencing his honorable discharge from the Army. The DD 214 also listed the various medals and commendations he was awarded during his military service, copies of which were also provided. (AE A; AE C; AE D; AE G; AE H.)

In addition, Applicant provided six character-reference letters and a notarized letter from his wife. The letters state that he works as an engineer providing valuable expertise with data and computer systems. In October 2022 he was promoted to a lead position. Two Army veterans who served with Applicant in a war zone praised his work ethic and loyalty to the United States. Applicant's wife described her husband as "a dedicated family man" and an "honorable, dependable U.S citizen." (AE I; AE R; AE S.)

Applicant also submitted a Summary of Psychological Evaluation prepared by a Board-Certified Psychologist. The psychologist concluded that despite Applicant's history of PTSD and use of medical marijuana in the past, his "current judgment, reliability, and trustworthiness are not negatively affected or impaired from any psychological condition, substance use disorder, or underlying defect." (AE Q at 6.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and have carefully considered the following:

- (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.

The record evidence established that Applicant used marijuana in 2004 or 2005 while granted access to classified information and that he tested positive in a drug test conducted on February 22, 2005. He also purchased and used marijuana again between June 2012 and June 2015. Furthermore, he continued to purchase the drug from June 2015 until July 2022 for use by his wife. All of the above potentially disqualifying conditions apply. This shifts the burden of persuasion to Applicant to establish mitigation.

The mitigating conditions under AG ¶ 26 have been considered and the following potentially apply to the facts in this case:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug-involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana (including State 1) and sought to "provide clarifying guidance." She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that this policy remains relevant to security clearance adjudications "but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana. See AE E.

Applicant's last use of marijuana in 2015 happened several years ago and happened under such circumstances that it is unlikely to recur. His past use does not cast doubt on his current reliability, trustworthiness, or good judgment. The fact that he received NJP punishment in 2005 for his use or that he used marijuana after having been granted access to classified equipment or sensitive information in 2004 or before does not change this analysis. Since 2015 he has remained drug-free and has expressed his intention to continue to remain drug-free. AG ¶ 26(a) is established with respect to Applicant's past use of marijuana.

The same analysis applies to Applicant's past purchases of marijuana for his personal use. With respect to his purchases of marijuana for his wife as recently as July 2022, I conclude that this behavior was recent, frequent, and did not happen under any unusual circumstances. He attempted to rationalize his purchases of marijuana for his wife by arguing that he was seeking to reduce the cost of the drug with his military discount. His actions cast doubt on his reliability, trustworthiness, and judgment. AG ¶ 26(a) is not established with respect to Applicant's past purchases of marijuana.

AG ¶¶ 26(b) and 26(b)(3) have been established with respect to Applicant's past use of marijuana. Applicant has acknowledged his drug-involvement and has provided evidence of actions taken to overcome this problem. Most significantly, he has established a pattern of abstinence since about June 2015. In addition, he has provided a written statement expressing his intention to abstain from all drug involvement and substance misuse and acknowledging that any future involvement or misuse of illegal drugs is grounds for revocation of his national security eligibility, if granted.

Overall, Applicant has met his burden to establish mitigation of the security concerns raised under Guideline H with respect to his past uses of marijuana and his purchases of marijuana for his use. However, Applicant has not mitigated the security concerns raised by his purchases of marijuana over a ten-year period for his wife's use.

Paragraph 2 – (Guideline E, Personal Contact)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 describes the following condition that may raise security concerns and potentially 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.

Applicant omitted from the e-QIP his use of marijuana within the preceding seven years, *i.e.*, since March 31, 2015. He has acknowledged that his last use of marijuana was at least in June 2015. Based on Applicant's demeanor and the various discrepancies in the record between statements he has made in writing or orally to an investigator or at the hearing in this case, I conclude that Applicant deliberately falsified his response in the e-QIP when he wrote that he had not used marijuana in the prior seven years. I also find that his excuse for not disclosing his purchases of marijuana for his wife since 2015 and most recently in July 2022 was a deliberate falsification. Accordingly, AG ¶ 16(a) is established. This shifts the burden of persuasion to Applicant to establish mitigation.

The mitigating conditions under AG ¶ 17 have been considered and the following potentially apply to the facts in this case:

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

(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.

Applicant did not make a prompt, good-faith effort to correct the omission in the e-QIP regarding his marijuana use in the past seven years. In fact, he denied that he had used marijuana since 2004 in his 2022 background interview. He did advise the

investigator that he had purchased marijuana for his wife since June 2012. This disclosure partially establishes AG ¶ 17(a) with respect to the allegations in SOR ¶ 2(b). However, Applicant did not acknowledge that he had purchased marijuana for his own use within the relevant seven-year time period, which significantly undercuts the mitigation value of his partial disclosure.

AG ¶ 17(c) has not been established. Applicant's falsifications are not minor, and they are recent. The falsifications are directly related to the security concerns raised by Applicant's drug use after 2012 and his purchases of marijuana for both his use and his wife's use. The falsifications cast doubt on Applicant's reliability, trustworthiness, and good judgment. Overall, Applicant has not met his burden to establish mitigation of the security concerns arising under Guideline E.

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 relevant 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), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to Applicant's years of service in the Army and the Army Reserve, which included a one-year deployment to a war zone. Applicant suffered from PTSD as a result of his experiences while deployed. He also provided substantial evidence regarding his character and his educational and employment successes. He has provided sufficient evidence to mitigate the security concerns raised under Guideline H regarding his past purchases and use of marijuana, including his NJP, and use after being granted access to classified information. However, his evidence falls far short of that required to mitigate the security concerns raised by his lack of candor in the preparation of his e-QIP. Other inconsistencies in the record, while not alleged in the SOR, can properly be considered in this whole-person analysis, and they weigh against Applicant with respect to his

honesty, candor, reliability, and judgment. Overall, the record evidence raises questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge