



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



In the matter of: )  
)  
) ISCR Case No. 22-02474  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William H. Miller, Esquire, Department Counsel  
For Applicant: Alex Berg, Esquire

03/11/2024

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and substance misuse and personal conduct. Eligibility for a security clearance is denied.

**Statement of the Case**

On August 16, 2016, and again on April 21, 2022, Applicant applied for a security clearance and submitted Questionnaires for National Security Positions (2016 SF 86 and 2022 SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories, and also asked him to verify the accuracy of an investigator’s summary of an interview. He responded to those interrogatories and verified the summary on December 19, 2022. On December 30, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4),

*National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) and detailed reasons why the DCSA CAF adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated January 27, 2023, but re-formatted on February 9, 2023, Applicant responded to the SOR, and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 30, 2023. The case was assigned to me on September 11, 2023. A Notice of Hearing was issued on January 18, 2024, scheduling the hearing for February 12, 2024. I convened the hearing as scheduled.

During the hearing, Government Exhibits (GE) 1 through GE 3, and Applicant Exhibits (AE) A through AE G were admitted into evidence without objection. Applicant and two witnesses testified. The transcript (Tr.) was received on February 23, 2024. I kept the record open to enable the parties to supplement it. Applicant took advantage of that opportunity and timely submitted additional documents, which were marked and admitted, without objection (AE H through AE M). The record closed on February 26, 2024.

### **Rulings in Procedure**

During the hearing, Department Counsel made a Motion to Amend the SOR by deleting the words “while granted access to classified information” in subparagraph 1.a. and substituting therefore the words “while holding a sensitive position.” There being no objection, the Motion was granted. (Tr. at 9-10)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, both factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. as amended, and ¶ 1.b.), but denied the allegations under personal conduct (SOR ¶¶ 2.a. and 2.b.). Applicant’s admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

### **Background**

Applicant is a 41-year-old employee of a defense contractor. He has been serving as the co-founder and chief executive officer (CEO) with his current employer providing cybersecurity and digital services since 2021. He was previously employed by various employers in a variety of positions, including vice president (February 2019 – June 2021); director (June 2016 – January 2019); and senior technical advisor (September 2009 –

June 2016). A 2000 high school graduate, he received a bachelor's degree in 2004. He was commissioned into the U.S. Army in August 2004 and served on active duty until January 2009, when he was honorably discharged as a captain (O-3). He transitioned into the U.S. Army Reserve and served in the active reserve until he was honorably discharged in November 2011. In June 2010, the U.S. Department of Veterans Affairs (VA) awarded him a ten percent disability rating for post traumatic stress disorder (PTSD), effective January 27, 2009. (AE J) He was granted a secret clearance in 2004. He was married in 2011. He has a stepson born in 2000 and a daughter born in 2013.

### **Military Awards and Decorations**

During his military service, including two deployments to Iraq (July 2005 – July 2006, and September 2007 – October 2008), Applicant was awarded the Bronze Star Medal, the Meritorious Unit Commendation, the National Defense Service Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Overseas Service Ribbon (two awards), the Iraq Campaign Medal (two awards), and the parachutist badge. (AE L)

### **Drug Involvement and Substance Misuse and Personal Conduct**

The SOR, as amended, alleges the following:

1.a. From about September 2009 until at least November 2022, you used marijuana with varying frequency, including use while holding a sensitive position. You intend to continue to use marijuana in the future.

1.b. In about September 2009, you were charged with Possession of Marijuana.

In his April 2022 SF 86, Applicant reported that in September 2009, he was charged with possession of under .5 grams of marijuana. In November 2009, the charge ended in a *Nolle Prosequi*, and the charge was subsequently expunged from the state judiciary case research system. (See AE A at 1; AE B; Tr. at 39-41) He noted that he had documented PTSD and the marijuana was helping him cope with the graphic memories of the deaths of some comrades during his deployment during Operation Iraqi Freedom. He also reported that his estimated first use of marijuana occurred in September 2009 and his estimated most recent use occurred in April 2022. He contended that marijuana helps him cope with the memories of certain traumatic events, and when he uses it, it is a very small amount, mostly to help him get to sleep. He inhales marijuana sometimes once a week, and sometimes two to three times per week, or some weeks or months without doing so, depending on when the memories of the traumatic events are most prevalent. He acknowledged that as part of the state court process, the judge “encouraged” him to join a marijuana substance abuse group counseling in September 2009. Applicant reported that after about two months in the program, the program counselor understood why he used marijuana and his participation in the group was no longer necessary. (GE 1 at 30-35)

On June 8, 2022, Applicant was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). Applicant stated that when he was arrested for possession of marijuana, he spent the night in jail, and with the assistance of an attorney, as part of a plea agreement, he was given probation before judgment and agreed to one year of drug education and testing. He acknowledged sporadic use of marijuana sometimes once a week, and sometimes two to three times per week, or some weeks or months without doing so. He never mentioned that there were periods longer than a few months when he had not used marijuana. He acknowledged that after four months in the program – not merely two months as he had previously stated – he was released from it. Applicant stated that although he does not intend for this type of event to occur again, he acknowledged that there was the potential for further marijuana use in the future to alleviate his PTSD issues. He has not made any attempts to stop or reduce his use of marijuana, and he continues to use it to deal with his PTSD. He added that other than the friends who “freely” provide him with marijuana for medicinal purposes (not prescribed for him), he does not associate with people involved in criminal activities. (GE 3 at 6)

In his response to interrogatories following his OPM interview, Applicant admitted purchasing less than 1 gram of marijuana from a public dispensary on September 13, 2022, and that he had continued to use marijuana with the most recent use taking place on November 5, 2022, claiming it was the 15<sup>th</sup> anniversary of his traumatic incident. (GE 3 at 10-12)

Since the summer of 2017, through as recently as the week of the hearing, Applicant has been a patient of a licensed clinical social worker (LCSW)/psychotherapist whose specialty is couples’ counseling therapy. Although she claims in her report to be treating him for PTSD, her qualifications do not reflect any such specialty, and her report does not indicate any reference to treatment for substance abuse regarding marijuana. During her testimony she acknowledged that the nature of the therapy never changed from couples therapy to other therapy. (AE D; Tr. at 99-102) Applicant considered the counseling to be marital counseling. She did not administer any tests, never reviewed any medical records and did not consider his use of marijuana to be an issue of her concern. While not discussing his use of marijuana, she opined that he is a highly functioning, caring and supportive member of his family, is an active and productive member of society, and has “a willingness to comply with laws, rules, and regulations.” (AE A; AE D; Tr. at 86)

On February 1, 2024, in response to Applicant’s attorney’s request for a psychological evaluation of Applicant, a Telehealth video connection facilitated by Zoom was performed by a licensed clinical psychologist – a Ph.D. – for over two hours. In addition to an interview, Applicant was administered the 335 question Minnesota Multiphasic Personality Inventory – 3 (MMPI-3) questionnaire. Because Applicant was not considered to be a regular user of marijuana, the questioning never delved into the frequency of his use. No medical records from the VA were reviewed. Based on his analysis of the interview and test, the psychologist concluded that Applicant was diagnosed with PTSD, in partial remission (F43.10), under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Revised (DSM-5-TR)*, but that a diagnosis of

Cannabis Use Disorder (F12.10 and F12.20), *DSM-5-TR*, was ruled out. (AE G; Tr. at 103-123)

During the hearing, Applicant testified and added to, or seemingly modified, several of his former comments regarding his use of marijuana. He admitted that his most recent use of marijuana took place on November 5, 2022 – approximately seven months after he submitted his 2022 SF 86 – and approximately five months after he was interviewed by the OPM investigator. (Tr. at 63) In his Answer to the SOR, he had noted that one of the traumatic incidents occurred on November 5, 2007. He now acknowledged that November was a particularly sensitive month for his PTSD flare-ups because his brother-in-law passed away with melanoma in November a decade earlier; and Veterans Day falls in November, and it brings things like the traumatic events in Iraq to the surface. (Tr. at 53-54)

Applicant used marijuana less than a handful of times while in high school, as well as in April or May 2009 – use that he had previously not revealed. (Tr. at 64-65) Although he had admitted using marijuana from about September 2009 until at least November 2022, and had previously said in his 2022 SF 86 that he used it sometimes once a week, and sometimes two to three times per week, or some weeks or months without doing so, he now stated that he had not used it for one entire year, between August 16, 2015, and August 16, 2016. (Tr. at 42-43, 48) Rather than mentioning abstinence for weeks or months as he had in the past, he now claims that he sometimes went for “years between uses.” (Tr. at 49) In fact, he now denies using marijuana for four entire years from 2013 through 2016. (Tr. at 66) Applicant has never obtained a medical marijuana card. (Tr. at 71) He knows that it is federally illegal to possess and use marijuana, but he continued to use it after he was given a position of public trust in 2016. (Tr. at 72, 76-77)

Applicant submitted a statement and two proclamations associated with marijuana from President Joseph R. Biden, Jr., that he issued on October 6, 2022, and December 22, 2023, respectively. In the statement, the President announced that he intended to “pardon of all prior Federal offenses of simple possession of marijuana;” was urging all Governors to do the same with regard to state offenses; and he was seeking an administrative process to review expeditiously how marijuana is scheduled under federal law. (AE C) In his proclamation, of the same date, President Biden stated that he grants a full and complete pardon to all current United States citizens and lawful permanent residents who committed the offense of simple possession of marijuana in violation of the Controlled Substances Act, on or before October 6, 2022. Those eligible applicants for such a pardon would have to apply for a pardon through the Attorney General. (AE E) The additional pardon proclamation covered both the simple possession and the use of marijuana. (AE F) Applicant argued that under the new policy as stated by President Biden, that because criminal records for marijuana possession have imposed needless barriers to employment opportunities, and that we have a failed approach to marijuana, I should “right this wrong.” (AE A at 1-2) Applicant never applied for a pardon under President Biden’s policy. (Tr. at 85)

With respect to the future use of marijuana, Applicant repeated his earlier stated position that he is hopeful that he won't have to use it again but because of the graphic nature of his PTSD-driven images, it is "a binary yes, no question." (Tr. at 78-79)

## **Personal Conduct**

When Applicant completed his 2016 SF 86, in response to a question in Section 20 – *Your Police Record*: In the last seven years, have you been arrested for, charged with, or convicted of any offense(s)?, he answered "no." (GE 2 at 17) In fact, as noted above, he had been arrested and charged for possession of marijuana in September 2009 – six months, and approximately two weeks earlier. (GE 2 at 17) In his Response to the SOR he denied intending to falsify his response and claimed that he was never convicted of any crime and that he simply miscalculated the period in question and thought that it had occurred outside the seven-year period covered by the question. (AE A at 2) He effectively ignored having been arrested.

When Applicant completed his 2016 SF 86, in response to a question in Section 23 – *Illegal Use of Drugs*: In the last year, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?", he answered "no." (GE 2 at 17) In his Response to the SOR, and during his testimony, he denied intending to falsify his response and claimed, as stated above for the first time during the processing of the investigation, that he denied using marijuana for four entire years from 2013 through 2016, including the year before the inquiry. (Tr. at 48)

## **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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). "Substantial evidence" is "more than a scintilla but less than a preponderance." (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).)

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. 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).)

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which 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 (Reference H and I). 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.

In addition, on December 21, 2021, the DNI issued Memorandum ES 2021-01529, *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*, which states in part:

[D]isregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position. . . .

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 . . . , Questionnaire for National Security Positions.

The guideline notes some conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including . . . purchase. . .;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position;
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant was granted a security clearance in 2004. In June 2010, the VA awarded him a ten percent disability rating for PTSD, effective January 27, 2009. In September 2009, he was arrested and charged with possession of marijuana. Upon a plea agreement, the charge was *Nolle Prosequi*, and it was subsequently expunged from the state judiciary case research system. Unbeknownst to his employers, he purchased marijuana from a public dispensary on September 13, 2022, and from about September 2009 until at least November 2022, to self-medicate for his PTSD, Applicant admittedly used marijuana with varying frequency, including use while holding a sensitive position. His reported history of marijuana use has changed over time, and he initially admitted using it sometimes once a week, and sometimes two to three times per week, or some weeks or months without doing so, and later stated that he had not used it for one entire year, between August 16, 2015, and August 16, 2016. Rather than mentioning abstinence for weeks or months as he had in the past, he claims that he sometimes went for “years between uses.” He now denies using marijuana for four entire years from 2013 through 2016. Because of the severity of his PTSD symptoms, he was previously unable to commit to discontinue such misuse, but now claims that while he does not want to use marijuana in the future, he acknowledged that there was the potential for further marijuana use in the future to alleviate his PTSD issues. Such a statement fails to clearly and convincingly commit to discontinue such misuse. AG ¶¶ 25(a), 25(c), 25(f), and 25(g) have been established.

Applicant argued that under the new policy as stated by President Biden, that because criminal records for marijuana possession have imposed needless barriers to employment opportunities, and that we have a failed approach to marijuana, I should “right this wrong.” Applicant never applied for a pardon under President Biden’s policy. Federal law regarding marijuana remains unchanged despite President Biden’s declared policy.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(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.

AG ¶¶ 26(a) and 26(b) do not apply. Applicant's struggles with PTSD are unfortunate. But he has offered no evidence to show efforts to be treated for PTSD intertwined with marijuana use by the VA or even his own therapist. Marital counseling is not PTSD or substance abuse counseling, and while he claimed that he had completed four months of a court-mandated substance abuse education and counseling program, he failed to submit any documentation to verify such participation. Moreover, his licensed clinical psychologist was unaware of his history of marijuana use and because Applicant was not considered to be a regular user of marijuana, the questioning never delved into the frequency of his use. No medical records from the VA were reviewed. Thus, the clinical psychologist's conclusion with respect to marijuana lacks this important corroborative basis.

While Applicant's eventual candor in April 2022 in admitting some marijuana use is considered to be a positive factor, his last-minute alteration of the facts regarding the frequency and recency of such use is disappointing. Applicant's PTSD purportedly arose in November because of certain identified activities. It was purportedly so bad that after a multi-year period, he resorted to self-medication with marijuana in violation of federal law. He sought counseling. While he repeatedly attributed his use of marijuana to his PTSD, and because of those symptoms, he could not rule out using marijuana in the future. Now, he contends that those symptoms have not appeared for four entire years from 2013 through 2016. With that statement, his credibility has been severely diminished. All of the above continues to cast doubt on his current reliability, trustworthiness, and good judgment.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes examples of conditions that could raise security concerns under AG ¶16:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

My discussions above related to Applicant's drug involvement and substance misuse are adopted herein. When Applicant completed his 2016 SF 86, he answered the questions – one related to arrests, charges, or convictions for any criminal offenses; and the other related to the use of illegal drugs within the last year – both with denials. While Applicant's explanation regarding the criminal arrest merely weeks before the period in question had expired can be understood as a mere miscalculation and not a deliberate falsification or concealment of the truth, his new assertion regarding the claimed period of abstinence during 2015 – 2016, and actually during the four-year period from 2013 through 2016, when compared with his other explanations associated with his substance misuse, is not credible.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate meaningful security clearance assessment and eligibility determination. Without all the relevant and material facts, a clearance determination is susceptible to error, thus jeopardizing the nation's security. Applicant's actions lead me to conclude that at some point in August 2016 he was not candid; in April 2022, he was partially candid; and in June 2022, he was more candid; but that his candor

has subsequently diminished. Applicant's inconsistent statements describing his marijuana use have significantly damaged his credibility.

With regard to Applicant's response to the 2016 SF 86 inquiry about arrests, charges, or convictions for any offenses in the last seven years (SOR ¶ 2.a.), I believe there is insufficient evidence to conclude that he intentionally falsified his response and AG ¶ 16(a) has not been established. However, with regard to Applicant's response to the 2016 SF 86 inquiry about his use of illegal drugs within the last year (SOR ¶ 2.b.), AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct:

(a) the individual made prompt, good-faith efforts 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; and

(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.

None of the conditions apply. Although Applicant was admittedly regularly self-medicating with marijuana since about September 2009 – at least 12 years before he reported such use in his 2022 SF 86, such a delay does not qualify as a “prompt, good-faith effort” to correct his prior concealment of such use. It is unfortunate that he is afflicted with PTSD from his service to the Nation. However, accepting his explanation that the health situation was so difficult for him that it led to self-medicating efforts with a substance that is illegal to possess and use under federal law; acknowledged use of marijuana as recently as November 2022 – approximately five months after his OPM interview – and an inability to promise no future use of marijuana, one cannot conclude that the offense of concealing or falsifying the truth is minor, sufficient time has passed, the behavior is infrequent, or that it is unlikely to recur. All of the above continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

### **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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

There is some evidence mitigating Applicant's conduct. Applicant is a 41-year-old employee of a defense contractor. He has been serving as the co-founder and CEO with his current employer providing cybersecurity and digital services since 2021. He was previously employed by various employers in a variety of positions, including vice president; director; and senior technical advisor. A 2000 high school graduate, he received a bachelor's degree in 2004. He was commissioned into the U.S. Army in August 2004 and served on active duty until January 2009, when he was honorably discharged as a captain (O-3). He transitioned into the U.S. Army Reserve and served in the active reserve until he was honorably discharged in November 2011. In June 2010, the VA awarded him a ten percent disability rating for PTSD, effective January 27, 2009. He was granted a secret clearance in 2004. During his military service, including two deployments to Iraq, he received several significant military decorations. In his most recent SF 86, he was somewhat candid regarding his use of marijuana and anticipated future use.

The disqualifying evidence under the whole-person concept is more substantial. Applicant was granted a security clearance in 2004. In September 2009, he was arrested and charged with possession of marijuana. Upon a plea agreement, the charge was *Nolle Prosequi*, and it was subsequently expunged from the state judiciary case research system. From about September 2009 until at least November 2022, to self-medicate for his PTSD, Applicant admittedly possessed and used marijuana with varying frequency, including use while holding a sensitive position. He purchased marijuana from a public dispensary on September 13, 2022. Applicant's reported history of marijuana use has changed over time, and he initially admitted using it sometimes once a week, and sometimes two to three times per week, or some weeks or months without doing so, and later stated that he had not used it for one entire year, between August 16, 2015, and August 16, 2016. Rather than mentioning abstinence for weeks or months as he had in the past, he claims that he sometimes went for "years between uses." He now denies using marijuana for four entire years from 2013 through 2016. He failed to honestly respond to an SF 86 inquiry regarding his use of marijuana. Because of the severity of his PTSD symptoms, he was previously unable to commit to discontinue such misuse, but now claims that while he does not want to use marijuana in the future, he

acknowledged that there was the potential for further marijuana use in the future to alleviate his PTSD issues. Such a statement fails to clearly and convincingly commit to discontinue such misuse.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his drug involvement and substance abuse, and personal conduct. See SEAD 4, App. A, ¶ 2(d) (1) through AG ¶ 2(d)(9).

### **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
Subparagraph 2.a.:	For Applicant
Subparagraph 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge