



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



In the matter of:)
)
) ISCR Case No. 21-02800
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant mitigated the concerns under the criminal conduct guideline. The falsification allegations as well as those about his use of marijuana and his prescription medications are resolved in his favor. Clearance is granted.

Statement of the Case

On April 15, 2022, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns under the drug involvement and substance misuse, criminal conduct, and personal conduct guidelines. The Agency acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Based on the available information, DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge to determine whether to grant or deny his security clearance.

Applicant timely answered the SOR and initially requested an administrative determination. Exercising their right under Directive Additional Procedural Guidance ¶ E3.1.7, Department Counsel elected to have a hearing in this case. On July 20, 2023, I convened a hearing via Microsoft Teams. Applicant appeared, as required, accompanied by a coworker to assist him during the hearing. After completing preliminary issues, including two SOR amendments, it appeared that Applicant had difficulty following the proceedings. I determined that it would be in the best interests of Applicant's due process rights to adjourn the hearing and reconvene, in person, on September 12, 2023. DOHA received the transcript (TR1) on July 28, 2023. (Tr. 15-20, 25-30)

The hearing reconvened as scheduled. Applicant appeared with his coworker. I appended to the record as Hearing Exhibit (HE) I and II, the disclosure letters sent to Applicant on November 11, 2022, and June 12, 2023, respectively. I also appended to the record as HE III, the memorandum converting the case to a hearing, dated September 20, 2022. In advance of the initial hearing, the Government put Applicant on notice of its intent to amend SOR ¶ 3.c to correct a clerical error. That email is appended to the record as HE IV.

Both parties offered exhibits for admission into the record. Accordingly, I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through C without objection from either party. The record remained open until October 3, 2023, for the parties to submit additional documentation. The Government offered the following document for administrative notice:

HE V: *Buprenorphine Quick Start Guide*, published by Substance Abuse and Mental Health Services Administration – U.S. Department of Health and Human Services, undated (6 pages).

The document is appended to the record without objection from Applicant. (HE VI)

Applicant submitted six additional documents:

AE D: Defendant Trial Summary, Case No. D-042-CR-19-002590, dated November 19, 2019 (2 pages);

AE E: Defendant Trial Summary, Case No. D-042-CR-19-002657, dated November 19, 2019 (1 page);

AE F: Defendant Probation/Supervision Summary, Case No. D-042-CR-19-002590, dated November 19, 2019 (2 pages);

AE G: Discharge Summary, dated November 25, 2020 (2 pages);

AE H: Certificate of Completion, dated November 24, 2020 (1 page); and,

AE I: Physician Letter, dated September 21, 2023 (1 page).

The documents are admitted without objection. (HE VII – HE VIII). DOHA received the hearing transcript (TR2) on September 22, 2023.

Procedural Matters

SOR Amendments

As issued SOR ¶ 3.b alleged Applicant intentionally failed to disclose his use of marijuana and misuse of Suboxone while possessing a security clearance. The Government moved to amend the allegation to include that Applicant also intentionally failed to disclose his misuse of Percocet while possessing a security clearance. The amended allegation reads as follows:

You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or about August 7, 2020, in response to “Section 23 – Illegal use of Drugs or Drug Activity . . . Have you EVER illegally used or been involved with a drug or controlled substance while possessing a security clearance?” You answered, “No” and thereby deliberately failed to disclose the information set forth in subparagraphs 1.a (use of marijuana), 1.c (misuse of Percocet), and 1.d (misuse of Suboxone), above.

Applicant did not object to the amendment. He denied the amended allegation. (TR2 at 19-20)

As issued, SOR ¶ 3.c incorrectly references a security clearance application dated December 11, 2011. Department Counsel moved to amend the allegation to correct the date to December 20, 2011. The amended allegation reads as follows:

You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or about December 20, 2011, in response to “Section 23 – Illegal use of Drugs or Drug Activity . . . In the last seven (7) years, have you ever illegally used any drugs or controlled substances. . . . have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else...?” You answered, “No” and thereby deliberately failed to disclose the information set forth in subparagraphs 1.c and 1.d, above.

Applicant’s answer, an admission in part and a denial in part, remains unchanged. (TR2 at 15-19)

Findings of Fact

Applicant, 41, has worked as a pipefitter on the same federal contract since approximately 2007. During his tenure on the contract, he has worked for several federal contracting companies. He was initially granted access to classified information in 2004. He completed security clearance applications on September 3, 2009 (GE 3); December 20, 2011 (GE 2); and most recently on August 8, 2020 (GE 1). On the 2020 application, he disclosed a January 2018 arrest for second degree assault. The ensuing investigation uncovered a history of marijuana use as well as potential misuse of Percocet and Suboxone. Applicant's history of drug use and alleged misuse of prescription drugs was not disclosed on the 2009 and 2011 clearance applications. (TR2 at 54,64; GE 1-5)

Criminal Conduct

The single allegation of criminal conduct, SOR ¶ 2.a, arose from an incident between Applicant and his ex-wife. Sometime in 2018, the two had an altercation, which Applicant claims was about her extra-marital affairs. He claims that she attacked him first. He fell, inadvertently hitting his head against hers in the process. Applicant claims that she did not file charges until they were in the midst of their divorce proceedings in 2019. He was charged with first degree assault, second degree assault, and false imprisonment. In November 2019, he pleaded guilty to second degree assault, received probation before judgment, and was fined \$257.50. He completed a court-ordered domestic violence class in November 2020, and participated in biweekly therapy sessions between December 2019 as January 2020. Applicant and his wife were divorced as of 2021. They co-parent their minor two children without incident. Applicant has no other incidents of criminal conduct in his record. (TR2 at 52-53,55-58,98-105; GE 5, AE D-H)

Prescription Drug Use

In 2001, Applicant suffered a workplace injury. His doctor prescribed him Percocet. He was prescribed up to 2 pills per day of an unknown dosage. At times, he felt that prescribed amount was not enough to relieve his pain, so he would take up to four pills per day. If he ran out of pills, he did not try to obtain additional pills through illegal means. He continued to use the Percocet in this manner until 2007, when he felt that his reliance on the drug was problematic. On his own, he sought treatment from a psychiatrist in November 2007 who prescribed Suboxone, a treatment approved by the Food and Drug Administration for opioid use disorder. His treatment also included individual and group therapy. (TR2 at 59-63,83; GE 4)

During his May 2021 interview with a background investigator, Applicant revealed his use of Suboxone. When asked if he had ever misused a prescription drug, even if it has been prescribed to him, Applicant responded that he had. According to the subject interview:

Subject is prescribed 1.5 pills per day out of 35 pills prescribed per bottle... Subject will at times take 2 Suboxone pills if, which is an additional half more than he is prescribed. Subject was confronted why he takes 2 Suboxone pills if he is only prescribed 1.5 Subject answered that he'd either take an additional half if he still feels pain that day and/or to make up for not taking the additional half that he's prescribed to make up for his prescription doses. (GE 4)

At the hearing, Applicant's testimony about use of Percocet was largely consistent with his statements in the subject interview. However, he offered clarification on his use of Suboxone. Applicant explained that he was not prescribed pills, but sheets of lingual films. Initially, he was prescribed 2 films, which was reduced to 1.5 films. To achieve this dose, he would cut one of the films in half, but he stated this would ruin the remaining film and he would sometimes just take 1 film instead of the prescribed 1.5. He would not take more than the 1.5 film dosage because he was not trying to increase, but rather decrease the dosage. He did not think that taking less than prescribed was considered misuse of a prescription drug. (TR2 at 75-92)

Regarding his past use of Percocet, Applicant stated in the 2021 subject interview:

Subject was asked to explain his past Percocet use. Subject was initially prescribed Percocet in 2001 (unknown prescription amount). ... Subject was prescribed to take 1-2 Percocet 7 days a week, but the pain did not go away. Subject began self-medicating with Percocet, taking up to 4 pills per day. Subject was asked if each time he ran out of Percocet earlier or before the expected refill date, was he denied a refill from either doctors or the pharmacy, Subject replied no. (GE 4)

Applicant provided a September 21, 2023, letter from his treating psychiatrist, stating:

[Applicant] is seen for medication management and has been compliant with his appointments and medication. [He] submits [to][sic] frequent urinalysis and the results are negative. [He] attended substance abuse classes until May 2019 when COVID started.

[He] has been lowering his dosage of suboxone gradually and is doing well with the adjustment. He started out on 2 strips per day and now only using 1 strip per day He will be monitored for the next lower dosage gradually, with him being completely off the Suboxone. (AE I)

Marijuana Use

Applicant began to use marijuana in 2019 to medicate his depression and anxiety symptoms he experienced during his volatile marriage. He obtained a medical marijuana card from his state's issuing authority, giving him the ability to legally purchase the drug from state-run dispensaries. He used the drug through vaporizer cartridges in the evening before bed. He did not use the drug before reporting to work. Though he was vaguely aware that he could not use marijuana while having a clearance, he believed that once the drug was legally prescribed to him by a physician that the use was permissible. He stopped using the drug after he received the initial notice of hearing from DOHA in May 2023, when he perceived his use of the drug to be an issue with his security clearance. (TR2 58-59, 64-72)

Security Clearance Application Disclosures

The circumstances under which Applicant completed his 2011 security clearance application are not clear from the record. It is unknown if he completed the application on his own or with the help of a third party. In response to questions whether he illegally used controlled substances, narcotics, stimulants, depressants, steroids, inhalants, or prescription drug in the last seven years and whether he intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for him, Applicant he answered 'no.' The allegation, SOR ¶ 3.c, is based on the statements Applicant made during his May 2021 subject interview as indicated on page 5, *supra*. (GE 1, GE 4)

When Applicant completed his August 2020 security clearance application, he did so with the help of the coworker who assisted him at the hearing. She is the account administrator on the contract on which Applicant works. She handles the human resources paperwork and any administrative needs the contract requires. She testified on his behalf. She and Applicant have worked together for 13 years and are friends. She explained that Applicant often comes to her when he encounters things at work that he does not understand. She explained that he understands his obligation to follow security protocols and did not have any concerns about his ability to follow them. (TR2 at 35-37,40-41)

To complete the August 2020 application, Applicant's coworker would read the questions to Applicant, who would then verbally answer. She would enter Applicant's answer into the electronic application. When she asked Applicant the following questions comprising Section 23 – Illegal Use of Drugs and Drug Activity, he verbally answered that he had not illegally used drugs or controlled substances in the past seven years, or illegally used marijuana while possessing a security clearance. Accordingly, Applicant's coworker entered "No" into the application. She was aware of his marijuana use. He told her about his use of medical marijuana during his divorce in 2019. She has seen his medical marijuana card. Because he used marijuana as allowed with a state-issued marijuana card, neither Applicant nor his coworker believed that his use could be considered illegal and required a 'yes' answer to the questions in Section 23. Neither appeared to consider the explanatory language under the Section

23, which advises, “The following question pertains to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws.” (TR2 at 43-46; GE 1))

When asked by his coworker if he had intentionally engaged in the misuse of prescription drugs in the last seven years, regardless of whether or not the drugs were prescribed for you or someone else...?” Applicant told her no. He did not disclose his use of Suboxone to his coworker because he did not consider his use of the drug as prescription misuse. When Applicant received the SOR, he discussed the allegation with his coworker. He explained to her that he didn’t always take his prescriptions as ordered, sometimes taking less than his prescribed based on how he was feeling. (TR2 at 48-50)

At the hearing, Applicant disclosed that he had reading comprehension issues. He explained that while he could read, he did not read on the level expected of a high school graduate. He also explained that when he did read documents, he did not always comprehend the substance of the material. (TR2 at 35,37, 40-41)

Policies

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 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 security 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

The SOR alleges misconduct under the drug involvement and substance misuse, personal conduct, and criminal conduct guidelines. While the government had a good-faith basis for each of the allegations, the behavior alleged under the drug involvement and substance misuse and personal conduct guidelines does not rise to the level of a security concern. The allegations under these guidelines are resolved in Applicant’s favor as explained below. However, the record supports a *prima facie* case under the criminal conduct guideline, but the alleged conduct is mitigated as explained below.

Drug Involvement and Substance Misuse

The illegal use of controlled substances, to include the misuse of prescription drugs 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. (See AG ¶ 24).

The SOR alleges a history of prescription drug misuse, specifically Percocet between and 2001 and 2007 (SOR ¶ 1.c) and Suboxone from 2007 to present (SOR ¶ 1.d). These allegations warrant consideration under disqualifying condition AG ¶ 25(a), “any substance misuse.”

More than 18 years ago, Applicant sought treatment for what he believed was a problematic reliance on Percocet. He came to this realization on his own and not as the result of adverse legal or employment action. He has been under medical care for the issue since 2007. According to his treating physician, Applicant has been in compliance with his treatment plan without incident or concern. The record does not contain any evidence of a current substance abuse concern.

Applicant also admitted to taking his prescription for Percocet and Suboxone as other than directed. However, applying the disqualifying condition to any admitted incident of taking a prescription in a manner other than directed does not equate to substance misuse as intended under the Directive. Circumstances matter. The guideline defines the term 'substance misuse' as the "generic term adopted in the guideline to describe any of the behaviors described in the guideline (e.g., to cause physical or mental impairment or a manner inconsistent with its intended use).

The evidence does not establish if the alleged misuse was a routine behavior. He used the prescription drugs for pain management, not to impair his physical or mental state. There is no evidence that Applicant engaged in drug seeking or other behavior to obtain additional quantities of his prescription drugs in a manner that suggested abuse or dependence. There is no evidence that his use of the prescription drugs caused him to engage in legal or professional misconduct. While Applicant may not have followed his perception orders precisely, there is no evidence of substance misuse as contemplated under the drug involvement and substance misuse guideline.

The SOR also alleges that Applicant used marijuana from December 2019 until at least May 2021, while possessing a DOD security clearance (SOR ¶ 1.a) and that he stated his intent to continue using the drug in the future (SOR ¶ 1.b). The allegations must be considered the following disqualifying conditions:

AG ¶ 25(c), "any illegal drug use while granted access to classified information or holding a sensitive position; and,

AG ¶ 25(g) expressed intent to continue drug involvement ad substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The Appeal Board has held that the application of AG ¶ 25 (a) has two distinct parts that must be met: that the applicant has engaged in illegal drug use, and that the applicant has access to classified information or holds a sensitive position. (ISCR 22-02623 (App. Bd. Jan 24, 2024) There is no dispute that Applicant used marijuana while granted access to classified information. The issue of whether or not his use of marijuana is illegal, is not as clear. While marijuana remains classified as an illegal drug under federal law, the drug is legalized for medical use in his state of residence. He legally obtained a state-issued medical marijuana license and purchased the drug from state-sanctioned dispensaries. He did not know that he was acting in violation of federal law or intentionally engaging in misconduct that raised a security concern. His statements regarding his intent to continue using the drug were based on his belief that his behavior was legal. He is not held to a higher standard because he is a long-time clearance holder. The Appeal Board has held:

Applicants cannot be expected to be constitutional law experts or versed in the concept of Federal supremacy. The ambiguity between state and Federal drug laws and the ensuing confusion was addressed by the Security Executive Agent in December 2021 in "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” (SecEA Clarifying Guidance). Relevant to the topic of notice, the Guidance encourages employers “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 [SCA].” SecEA Guidance at 2. Implicit in this guidance is the recognition that the SCA itself no longer puts applicants on notice and that employers should affirmatively be providing notice to prospective employees. The SecEA’s guidance to employers, however, cannot be presumed to have been followed. (ISCR Case No. 22-02132 App. Bd. Oct. 27, 2023)

There is no evidence that Applicant received any advice from his employer about the use of marijuana even when done so legally in the employee’s state of residence. While the completion of the 2020 security clearance application was not sufficient to alert Applicant to the potential security concern raised by his use of marijuana, he made the realization on his own in May 2023 and ceased using before the hearing in this case. Accordingly, AG ¶ 25(f) does not apply, SOR ¶¶ 1.a. and 1.b are also resolved in Applicant’s favor.

Personal Conduct

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 information. Of special interest is any failure to cooperate or provide truthful answers during national security investigative or adjudicative process. (AG ¶ 15)

The SOR alleges that Applicant intentionally falsified his December 2011 and August 2020 security clearance applications by failing to disclose the extent of his history of illegal drug use and prescription drug misuse while having a security clearance. The absence of information alone is not enough to establish an intentional falsification. The record must also contain direct or circumstantial evidence of Applicant’s intention to mislead the Government.

Specifically, the SOR alleges that Applicant intentionally failed to disclose his misuse of Percocet and Suboxone on his December 2011 application (SOR ¶ 3.a), and his misuse of Suboxone on the August 2020 application (SOR ¶¶ 3.c). The record does not have sufficient evidence to establish the underlying conduct. The record contains evidence of Applicant’s admissions of occasional prescription misuse at unspecified times. There is no evidence to support a finding that Applicant misused any prescription drug during the required 2004 to 2011 reporting period for the 2011 application or the 2013 to 2020 reporting period for the August 2020 application. Even if Applicant’s admissions are deemed sufficient evidence of his prescription misuse during the required reporting periods, there is no evidence in the record of his intent to deceive or

mislead the Government. The record does not contain statements contemporaneous to the 2011 application about his use of prescription drugs that could elucidate his intent at the time he completed the security clearance application. Neither the May 2021 background interview, nor any of Applicant statements during this adjudication provide evidence of his to intentionally falsify either his 2011 or 2020 security clearance applications.

The SOR also alleges that Applicant failed to disclose his marijuana use between 2019 and August 2020 (SOR ¶ 3.a) and that he used the drug while holding a security clearance. (SOR ¶ 3.b) He did not know that he engaged in illegal behavior under Federal law because he used the drug legally under the marijuana laws of his state of residence. Applicant also did not believe that his legal use of marijuana violated his duties or responsibilities as a clearance holder. While Applicant's assumptions were wrong on both counts, his mistaken belief about the legality of his behavior does not rise to the level of intentional falsification. The Appeal Board has determined that despite the instruction preceding the Section 23 questions about illegal drug use:

[T]he SCA does not inform an applicant that marijuana remains illegal under Federal law. Depending on the facts of a given case, it is foreseeable that some applicants might believe that their state-authorized use of marijuana is legal, and erroneously check "No" to "illegal use." The security significance of that answer in terms of a falsification under Guideline E would be defined by the specific circumstances. Regardless of a "Yes" or "No" answer, whether or not this question puts applicant on notice that continued use of state-legal marijuana is incompatible with being granted eligibility for access to classified information is a separate matter. Given the dichotomy between state and Federal laws, some applicants may continue to use marijuana products after completing the questionnaire—not in reckless disregard of security clearance standards but in ignorance of Federal law. In the subsequent interview, the background investigator may—or may not—clarify the Federal position and put an applicant on notice that such use is Federally illegal and incompatible with holding a clearance. (ISCR Case No. 22-02132 App. Bd. Oct. 27, 2023)

Applicant did not intentionally use marijuana in violation of Federal law or his responsibilities as a clearance holder. He did not intend to conceal his behavior. The coworker who helped him complete the 2020 application was also aware of Applicant's marijuana use before they completed the application. The coworker also had no reason to believe that Applicant's use of marijuana required reporting on the security clearance application. Under these circumstance, Applicant's failure to report based on his and his coworker's misunderstanding of federal law does not constitute an intent to deceive the Government. Allegations ¶¶ 3.a through 3.c are resolved in Applicant's favor.

Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. In November 2019, Applicant was arrested for and convicted of, second degree assault and sentenced to probation before judgment. The following disqualifying condition applies:

AG ¶ 31(b) evidence (including but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions apply:

AG ¶ 32(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 32(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time, without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's arrest and conviction occurred five years ago. He has been released from court supervision for over three years. Although serious, the arrest occurred during his contentious divorce. He completed his court-ordered counseling. He does not have a history of violent behavior or other criminal conduct. He and his ex-wife have developed a more cordial parenting relationship. It is unlikely that Applicant will engage in similar behavior in the future.

Based on the record, I have no doubts regarding Applicant's ongoing security worthiness. In reaching this conclusion, I have also considered the whole-person factors listed in AG ¶ 2(d). Having had the opportunity to interact and observe Applicant in a Microsoft TEAMS setting and at an in-person hearing, his reading comprehension and language processing issues were apparent. I believe he provided answers to the questions of the 2011 and 2020 security clearance applications and provided disclosures during the recent adjudication to the best of his abilities. His misunderstanding of prohibition against marijuana use by individuals having a security clearance was genuine. However, he is sufficiently self-aware to seek help and clarification when he does not understand something to ensure he does not violate any rules or regulations. He has demonstrated that once issues are clarified for him, he will adjust his behavior accordingly.

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, Drug Involvement and Substance Misuse:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Criminal Conduct:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant
Paragraph 3, Personal Conduct:	FOR APPLICANT
Subparagraphs 3.a – 3.g:	For Applicant

Conclusion

In light of all of the circumstances presented in this case, it is clearly consistent with the national interest to grant Applicant's security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge