



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



In the matter of:)
)
) ISCR Case No. 23-02886
)
Applicant for Security Clearance)

Appearances

For Government:
Jenny G. Bayer, Esq., Department Counsel

For Applicant:
Carl Marrone, Esq.

12/09/2024

Decision

MURPHY, Braden M., Administrative Judge:

Applicant used and purchased marijuana between 2017 and January 2024, both recreationally and under his state’s medical marijuana program. For a brief period during late adolescence, he exchanged explicit photographs over social media with someone he met online. Security concerns under Guideline D (Sexual Behavior) arising from this conduct are mitigated given its age and limited duration. However, I conclude that more time is needed to mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse), given the frequency and recency of Applicant’s marijuana involvement. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 26, 2023. On January 22, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued

a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and D. The DCSA acted 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective on June 8, 2017.

Through counsel, Applicant answered the SOR on May 26, 2024, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 23, 2024, soon after Applicant's counsel requested an expedited hearing due to the potential impact on Applicant's post-college employment status. On October 28, 2024, after confirming the parties' availability, DOHA issued a notice scheduling the hearing for November 7, 2024.

Applicant's hearing convened as scheduled. He waived the right to 15 days of written notice of the hearing date and location under the Directive. (Tr. 6-7) Near the end of the hearing and without objection, I took administrative notice of memoranda issued in 2021 by the Director of National Intelligence (DNI) concerning DOD's position on legalization of marijuana under state law. (Tr. 134-136; Hearing Exhibit (HE) 4)

Government Exhibits (GE) 1 and 2 and Applicant's Exhibits (AE) A-N were marked and admitted without objection. Applicant's Exhibits A-M had been submitted with his SOR response. Applicant also testified. The record closed at the end of the hearing. DOHA received the hearing transcript (Tr.) on November 20, 2024.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.b, concerning his history of use and purchase of marijuana but denied SOR ¶ 1.c, concerning future use, under Guideline H. He admitted SOR ¶ 2.a under Guideline D. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 22 years old. He graduated from high school in May 2021. Since August 2021, he has been an undergraduate student at a large university in his home state, State 1. He is majoring in computer science and minoring in business administration and expects to graduate in the spring of 2025. During the summer of 2023 and again during the summer of 2024, he worked as an intern with defense contractor A in City 1, State 1, where his parents now live. During the current semester, he has been working for contractor A remotely, from his off-campus apartment, about 10 hours a week, while continuing his studies, and he has a post-college full-time job offer with the company. He has not had a clearance previously. He has never married

and has no children. (GE 1, GE 2; AE H – AE K; Tr. 12, 28-30, 79-80, 119-120, 124, 129-130)

The SOR largely concerns Applicant's history of involvement with marijuana. He first used marijuana in August 2017, shortly after he turned 15. He was hanging out with several other teenagers, one of whom had marijuana, so he tried it. He continued using marijuana socially in high school, about weekly. He also purchased it, in the sense that he and other friends "pooled" their money for collective purchases by one member of the group who knew where to get it. (Tr. 31-41, 83-84, 115-116).

Applicant continued using marijuana socially on about a weekly basis in high school until early 2020, when, like many other students, he stopped attending school in person due to the nationwide COVID-19 pandemic shutdown. Applicant testified that his family was significantly affected by COVID. He and both of his parents caught the virus, and his father was hospitalized in early 2020. Applicant spent a month locked in his room, quarantining from his parents. Neighbors and friends brought food to the house. He connected to his friends by phone or on the computer. (Tr. 38, 43-45)

During this period, Applicant was using marijuana daily or more, while quarantined at home. He was bored and had "nothing to do [and] nowhere to go." (Tr. 42-43, 46, 50-51) He initially got access to marijuana during quarantine by texting friends, who would buy it and then come by in their car and pick him up. They would drive around the corner and he would give them money for the drug. (Tr. 116)

In early 2021, when he was 18, Applicant researched how to get a medical marijuana card on the internet. He applied for and received a medical marijuana card under the State 1 medical marijuana program after a brief telephone consult with a medical provider regarding his anxiety and sleep issues. At the hearing, he acknowledged that he was never diagnosed with anxiety or a sleep disorder by a medical professional. (GE 1; Tr. 48-49, 85-89)

Once Applicant received his medical marijuana card, he purchased marijuana from a legal dispensary about once or twice a month. He used marijuana to help him fall asleep, but he also used it socially with friends once he could leave the house. He had the impression that it was legal to use marijuana in State 1 if he had a medical marijuana card but not if he didn't. Before he got the card, he knew it was illegal. (GE 1; Tr. 49-52, 61-62, 87-88, 123-124)

Applicant submitted his SCA in April 2023, in connection with his upcoming summer job with contractor A. He disclosed his marijuana use from August 2017 to April 2023, though he noted that he used marijuana "occasionally with friends in high school." (GE 1 at 28). This was true, as was the timeframe, though he omitted reference to using marijuana in college as well (fall 2021 and afterwards). He disclosed his purchases of medical marijuana, from February 2020 to April 2023. (GE 1). This was also true, though he omitted his earlier recreational purchases of marijuana in high school by

pooling money with friends (2017-2020). He testified that he did not really consider that conduct as “purchasing” marijuana, since the purchases were made by others. (Tr. 84-85, 120-123) Once he got his medical marijuana card, he purchased only from legal dispensaries and not from friends or others. (Tr. 92-93)

Applicant took a pre-employment drug test in April 2023. He acknowledged that he stopped using marijuana some time in advance in order to pass the test. He also acknowledged using marijuana daily or nightly after work while interning with contractor A in the summer of 2023, but not in the summer of 2024. He said his manager and others at work are aware of his marijuana use because he has told them that it is what is holding up his clearance eligibility. (Tr. 80-83, 124-127)

In June 2023, Applicant had a background interview. He discussed his marijuana use for medical purposes, through the State 1 medical marijuana program. He said he usually used it alone to help him sleep but also used it with friends, most of whom also had medical marijuana cards. He said he had continued to use marijuana up to June 2023 (the month of his interview). He said at the time that he felt like he could stop using marijuana but did not really want to. (GE 2 at 4; Tr. 57-59, 97-98) He testified that he stopped using marijuana for several months after filling out his SCA but resumed during final exams. (Tr. 59-60) He said he knew that continuing to use marijuana was not compatible with holding a clearance. (Tr. 97)

In January 2024, in response to a DOHA interrogatory, Applicant authenticated his interview summary. He also disclosed the timeframe of his history of use and purchase of marijuana. He said that he used marijuana weekly between August 2017 and February 2020, and he used it nightly between February 2020 and January 2024. He said he purchased marijuana between February 2020 and January 2024. He reported that he “was given a [State 1] medical marijuana license in February 2021 for sleeplessness and anxiety.” He provided a copy of his medical marijuana card, with an expiration date of February 2024. (GE 2) He testified that he renewed his initial card before it expired but did not renew his most recent card. (Tr. 89-91) He said he stopped using marijuana before the card expired. (Tr. 117) He acknowledged using his medical marijuana card to justify his legal possession of marijuana. (Tr. 92)

The DOHA interrogatory contained the following question:

8. Do you understand that despite any state laws to the contrary, marijuana use remains illegal under Federal law; therefore, if you are granted a clearance or public trust position, any future use of marijuana or products containing THC may affect your eligibility to maintain a clearance or public trust position?

Applicant answered, “I understand.” In answer to the next question, “Do you intend to use marijuana, any CBD products containing THC, or any other illegal drug in the future?”, he answered “Yes.” (GE 2 at 10)

The SOR was issued on January 22, 2024. The file reflects that Applicant received it on February 23, 2024. He retained counsel by mid-March 2024 and responded to the SOR on May 26, 2024. He testified that he last used marijuana in January 2024. He said that when he received the SOR, he contacted his counsel's law firm and was told, "if you're serious about this, you have to stop, like, yesterday." He took a few days to think things over and decided to abstain from then on. He had marijuana at the time but threw it out. He rescinded his medical marijuana card by mailing it in and filling out a form. (Tr. 52-53, 60-63, 126-129) He now understands that marijuana has been and remains illegal under federal law and why marijuana use is problematic for clearance applicants. (Tr. 54, 62-66, 132-133)

Applicant explained that, despite being interviewed by an investigator and despite receiving interrogatories asking about marijuana, he still believed at the time that he could "have my cake and eat it too" and use it legally. This changed when he received the SOR and spoke to a lawyer. He now recognizes that his prior view was immature. He believes he has demonstrated a commitment to abstinence over the last 11 months. (Tr. 63-65, 98-100, 131)

Applicant provided several recent hair follicle drug tests, showing no indication of marijuana use. A recent evaluation showed no diagnosis of substance abuse or dependence. He provided a statement of intent to abstain from illegal drug use and documented his current prescriptions. (Tr. 130-131; AE D, AE E, AE G, AE M, AE N)

Applicant acknowledged that a lot of his friends still use marijuana, but he says they are respectful of how it impacts his job and do not talk to him about it. He has other lifelong friends but they live in different locations now. Some of them do not use marijuana, but some still do. (Tr. 66-68, 93-97)

Near the end of his background interview, Applicant was asked if there was anything more he needed to share. He volunteered that when he was about 18 years old, he met C, a young woman online. They interacted via social media and he shared nude photos of himself with her. He said he regretted sending the photos and was concerned that he might be blackmailed because they are "out there." They never met in person, and he broke off contact. (GE 2 at 4) This conduct is alleged as SOR ¶ 2.a.

Applicant explained in his testimony that these interactions occurred over about a month or so in 2020, when he was about 18 and still in high school, in quarantine during the COVID-19 pandemic. When he met C on the social media platform Instagram, he was led to believe she was a college student nearby, about five years older. They exchanged nude photos of each other for a brief period shortly after they interacted. Soon thereafter, C's account was shut down by Instagram. He then became suspicious about her identity and intentions, and he did not engage with her when she later contacted him via another Instagram account. He then asked her to engage with him via "FaceTime" instead, but she resisted and he terminated contact. He has not engaged with C since then, has not responded to further messages, and has not heard from her

in about two years. He told his mother what had happened soon thereafter and told his father and a few friends after he received the SOR. His parents were both sympathetic. He disclosed the matter to the interviewer out of the abundance of caution. He has not engaged in this conduct before or since and will not do it again. He regrets his actions and recognizes that he showed immaturity and poor judgment. He does not believe he can be subjected to blackmail or coercion, and C has not contacted him to make such a threat. If she were to contact him again, he would ignore it and would report it if she threatened blackmail. (Tr. 68-77, 83, 100-105, 108-115)

Applicant provided character letters from several personal, academic, and professional references. They attested that he is reliable, trustworthy, thoughtful, intelligent, and has integrity and fine character. He has concern for others in his community. (AE L; Tr. 105-108) He provided an internship evaluation noting that he took initiative and demonstrated excellent performance. (AE E)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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, 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. 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline H: Drug Involvement

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

The following disqualifying conditions under AG ¶ 25 are potentially applicable:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and

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

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, possess, or distribute certain drugs, including marijuana. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana is classified as a Schedule I controlled substance, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment, §812(b)(1). See *Gonzales v. Raich*, 545 U.S. 1 (2005).

In October 2014, the Director of National Intelligence (DNI) issued a memorandum entitled “*Adherence to Federal Laws Prohibiting Marijuana Use*” (2014 DNI Memo), which makes clear that changes in the laws pertaining to marijuana by the various states, territories, and the District of Columbia do not alter the existing National Security Adjudicative Guidelines, and that Federal law supersedes state laws on this issue:

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

The DOHA Appeal Board has cited the 2014 DNI Memo in holding that “state laws allowing for the legal use of marijuana in some limited circumstances do not preempt provisions of the Industrial Security Program, and the Department of Defense is not bound by the status of an applicant’s conduct under state law when adjudicating that individual’s eligibility for access to classified information.” ISCR Case No. 14-03734 at 3-4 (App. Bd. Feb. 18, 2016). The current National Security Adjudicative Guidelines went into effect on June 8, 2017, after the 2014 DNI memo was issued. Nevertheless, the principle continues to apply.

On December 21, 2021, the DNI issued a memorandum entitled, “*Security Executive 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.*” (2021 DNI Memo) The memo incorporates the

AGs (at reference B) and the 2014 DNI Memo (at reference G) among various other relevant federal laws, executive orders, and memoranda. I take administrative notice of the 2021 DNI memo here. (HE IV)

The 2021 DNI memo specifically notes that “under policy set forth in SEAD 4’s adjudicative guidelines, the illegal use or misuse of controlled substances can raise security concerns about an individual’s reliability and trustworthiness to access classified information or to hold a sensitive position, as well as their ability or willingness to comply with laws, rules, and regulations.” Thus, consistent with these references, the AGs indicate that “disregard 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.” (2021 DNI Memo; HE IV)

Applicant began using marijuana recreationally in 2017, when he was 15 years old. He continued using marijuana socially on about a weekly basis in high school until early 2020, when he began using marijuana daily or more while he was quarantined at home during the COVID-19 pandemic. He procured marijuana by pooling his money with friends, one of whom would purchase it. In February 2021, he acquired a medical marijuana card and began purchasing marijuana legally at local dispensaries. He continued using marijuana frequently, often daily or nightly, both to ease his anxiety and to help him fall asleep, but also recreationally as a high school senior in early 2021 and since he started college in the fall of 2021. His use continued during his first summer internship in the summer of 2023, after he submitted his SCA, after his pre-employment drug test, after his background interview, and through his submission of his interrogatory response in January 2024.

Applicant’s marijuana use, whether under the State 1 medical marijuana program or recreationally, as alleged in SOR ¶ 1.a, satisfies AG ¶ 25(a). His marijuana purchases, whether through friends or through the medical marijuana program, as alleged in SOR ¶ 1.b, satisfy AG ¶ 25(b).

AG ¶ 25(f) potentially applies to Applicant’s frequent use of marijuana during his internship in the summer of 2023 with contractor A, as it was likely a “sensitive position.” However, that status was not alleged in the SOR, so AG ¶ 25(f) does not apply.

Applicant indicated as recently as his January 2024 interrogatory response that he would continue using marijuana in the future. SOR ¶ 1.c was alleged on that basis. He stopped using marijuana in January 2024 and denied SOR ¶ 1.c in responding to the SOR. This put the burden on the Government to establish SOR ¶ 1.c. I find that Applicant has not continued to express an intent to continue using marijuana, so AG ¶ 25(g) does not apply. This does not preclude consideration of the history, recency, and frequency of Applicant’s marijuana use in addressing mitigation, to be addressed below.

The Guideline H mitigating conditions are set forth under AG ¶ 26:

(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 is grounds for revocation of national security eligibility.

In ISCR Case No. 20-02974 at 6 (App. Bd. Feb. 1, 2022), the DOHA Appeal Board held that it was a security concern when an applicant purchased and used medical marijuana after applying for a clearance and after being adequately placed on notice that his conduct was inconsistent with holding a clearance. In the same case, in reversing a favorable decision, the Board held that the applicant had used marijuana little more than six months before his hearing.

Here, Applicant was placed on notice multiple times that marijuana use was illegal under federal law and problematic for clearance applicants – through his SCA, a pre-internship drug test, and his interrogatory response. The fact that he stopped using marijuana in order to pass the drug test yet continued using marijuana later is particularly troubling. He stopped using marijuana only in January 2024, after receiving the SOR and getting legal advice, less than 11 months before his November 2024 hearing date. He also has a long history of frequent, even daily marijuana use, both recreationally and under the medical marijuana program.

Simply put, Applicant has not established a demonstrated track record of abstinence from illegal drug use. He provided a signed statement of his future intent to abstain from illegal drugs, which satisfies AG ¶ 26(b)(3), but he has not established sufficient evidence that AG ¶¶ 26(b)(1) or 26(b)(2) should apply. His drug use is also too long-term, too recent, and too frequent to establish that it occurred under such circumstances that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) does not apply.

Guideline D: Sexual Behavior

AG ¶ 12 expresses the security concern for sexual conduct:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

(d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

The definition of sexual behavior under the Guideline D general concern “includes conduct occurring in person or via audio, visual, electronic, or written transmission.” About four years ago for a brief period in 2020, when Applicant was about 18 and still in high school, and with limited social outlets during the COVID-19 pandemic, he exchanged sexually explicit photos with a young woman he had recently met over social media. Applicant’s actions, while dated and isolated, meet the above definition of sexual behavior under Guideline D. AG ¶ 13(c) applies, since he realized his actions made him potentially vulnerable to exploitation. AG ¶ 13(d) also applies, since his conduct reflected a lack of judgment, even though it was not public.

AG ¶ 14 sets forth potentially applicable mitigating conditions for sexual conduct, including:

(a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature:

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

Applicant's actions put him in a position where he might have been subject to coercion, exploitation, or duress. To his credit, he recognized this when the young woman's social media account was blocked, which made him suspicious. He soon ended the contact and did not pursue the matter. He also told his mother, which is one of the things teenagers are supposed to do when they get into trouble. He also volunteered information about the incident during his background interview, both out of the abundance of caution, and because he recognized that what he did made him potentially vulnerable to exploitation. In short, while he should not have done it, he did the right thing after that in being upfront about it. I find that it is not necessary for Applicant to tell everyone in his life about something he did in high school several years ago and now regrets, for AG ¶ 14(c) to apply.

Even if not, Applicant was also a high school student and an adolescent (and, if he wasn't, at age 18, he might as well have been) when he briefly engaged in this conduct. He regrets what he did, and he has no interest in repeating it. His conduct also occurred under circumstances that were both normal as a teenager and unusual due to the pandemic. Under the circumstances, AG ¶¶ 14(a) and 14(b) both apply. The Guideline D concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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 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 the facts and circumstances surrounding this case, and the record evidence, including Applicant's testimony and other statements, as well as Applicant's strong whole-person evidence from his work references. I have incorporated my comments under Guidelines H and D in my whole-person analysis.

Applicant presents as an intelligent, thoughtful, highly educated college student with a bright future ahead of him. He also has a long history of significant and frequent marijuana involvement, both under the State 1 medical marijuana program and recreationally. He simply has not met his burden at this time of mitigating the security concern arising from his conduct. This is not to say that he might not apply successfully for a clearance in the future. While Guideline D security concerns are mitigated, at this time he needs to demonstrate more of a track record of abstinence from marijuana to mitigate the Guideline H security concerns and warrant eligibility for access to classified information. Overall, the record evidence leaves me with questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for a security clearance.

In his SOR Response, Applicant requested consideration of a waiver or a conditional clearance, under DOD Directive 5220.6, Enclosure 2, Appendix C. (SOR Response; AE M; Tr. 154-155) Neither a waiver nor a conditional clearance is warranted. The benefit of eligibility does not clearly outweigh any security concern.

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-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

Considering all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge