



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



In the matter of:)	
)	
)	ISCR Case No. 23-00476
)	
Applicant for Security Clearance)	

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2024

Remand Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant frequently used marijuana between about June 2019 and August 2022. Although he mitigated the drug involvement and substance misuse security concerns, he did not mitigate the personal conduct security concerns arising from his deliberate falsifications on his security clearance application and during his security interview. Eligibility for access to classified information is denied.

Statement of the Case

On June 5, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In Applicant's June 13, 2023 response to the SOR (Answer), he admitted, with explanation, SOR ¶¶ 1.a. and 1.b. He provided additional information, and he did not attach any documentary evidence. He requested a decision by a Defense Office of

Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On November 27, 2023, Department Counsel submitted a file of relevant material (FORM). On December 4, 2023, Applicant received the FORM and its attachments. He provided a two-page response to the FORM (FORM Response) and did not submit any documentary evidence.

On February 15, 2024, I issued a decision denying Applicant's eligibility for access to classified information. On March 7, 2024, Applicant appealed that decision. On May 1, 2024, the DOHA Appeal Board remanded the case to me for what it considered to be errors within the findings of fact and the analysis. On May 8, 2024, I received the case.

On May 15, 2024, Department Counsel moved to amend SOR ¶¶ 1.a. and 1.b. and to add allegations SOR ¶¶ 2.a.-2.c. under Guideline E (personal conduct) (Hearing Exhibit (HE) 2). On May 28, 2024, I reopened the evidentiary record to provide both parties the opportunity to supplement the record. I also permitted Applicant to elect a hearing or to proceed based upon the written record. In Applicant's June 3, 2024 response (HE 3), he elected to have a hearing, and he did not object to Department Counsel's motion to amend the SOR.

On June 5, 2024, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconference for July 9, 2024. The hearing proceeded as scheduled. The Government proffered nine exhibits, which I admitted as Government Exhibits (GE) 1 through 7 and Administrative Notice (AN) I and II without objection. Of note, the Appeal Board considered new evidence introduced by Applicant on appeal, which was proffered and admitted as GE 7. Applicant testified and proffered three exhibits, which I admitted as Applicant Exhibits (AE) A through C without objection. DOHA received the hearing transcript (Tr.) on July 22, 2024. The record closed on July 22, 2024.

Amendments to the SOR

As discussed above, on May 15, 2024, Department Counsel moved to amend SOR ¶¶ 1.a. and 1.b. to read as follows:

- a. From about 2019 until at least September 2022, you used marijuana with varying frequency.
- b. From about June 2022 until at least August 2022, you purchased marijuana on various occasions.

Department Counsel also moved to add SOR ¶ 2 as follows:

2. Guideline E: 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. Available information raising this concerns shows that:

a. You falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by you on or about August 18, 2022, in response to “Section 23 – Illegal Use of Drugs or Drug Activity Illegal Use of Drugs or Controlled Substances In the last seven (7) years, have you illegally used any drugs or controlled substances?” You answered “No,” and thereby deliberately failed to disclose your marijuana use as set forth in subparagraph 1.a., above.

b. You falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by you on or about August 18, 2022, in response to “Section 22 – Police Record Police Record (EVER) Other than those offenses already listed, have you EVER had the following happen to you? . . . Have you EVER been charged with any offense involving alcohol or drugs? You answered “No,” and thereby deliberately failed to disclosed that you were charged with marijuana possession in 2000.

c. You omitted material facts during a September 26, 2022 interview with an authorized investigator for the U.S. Department of Defense when you stated that after you quit using marijuana in 2004, you started using marijuana again after you received your medical marijuana card on June 7, 2022. You deliberately omitted that from 2019 until about May 2022, you used marijuana without having a medical marijuana card.

Applicant did not object to the motion to amend. In his June 5, 2024 email, he admitted the allegations in SOR ¶¶ 1.a. and 1.b. as amended. He disagreed with the use of the word “deliberately” within the Guideline E allegations. I granted the motion to amend without objection and provided Applicant an opportunity to respond to the amended allegations and submit evidence. At the outset of the hearing, I reviewed the amended allegations with Applicant, who specifically admitted the facts in SOR ¶¶ 1.a. and 1.b. He denied any deliberate falsifications or omissions as to SOR ¶¶ 2.a.-2.c. (HE 2, HE 3; Tr. 10-13)

Findings of Fact

Applicant is 54 years old. He graduated from high school in 1988, and he earned a bachelor’s degree in December 1992. From March 1993 to August 1996, he served in the U.S Navy, from which he received an honorable discharge. He maintained a top secret clearance while serving in the Navy. He married his first wife in February 2004, and they divorced in January 2016. He married his second wife in February 2020, and they separated in May 2022. He has an 18-year-old son who lives with Applicant on occasion. From September 2022 until an unspecified date, he was employed as an illustrator for a

DOD contractor. At the time of the hearing, he was unemployed but remained sponsored for clearance eligibility. (GE 3, GE 4; Tr. 33, 35-38, 67)

Drug Involvement

From about 1988 until March 1993, Applicant illegally used marijuana about once a month. He abstained from illegal drug use while in the Navy. From August 1996 until March 2004, he illegally used marijuana with varying frequency – annually to daily. By October 2000, he was using marijuana two or three times a week. As of 2001, he used marijuana daily, and he illegally purchased marijuana on multiple occasions. In 2004, he discontinued his use of marijuana given the sensitive nature of his employment. When he left that position in June 2019, he resumed using marijuana. (Tr. 40-50)

Beginning in 2017, Applicant accompanied his then fiancée (L), who had a medical marijuana card, to state-licensed dispensaries to purchase marijuana. He occasionally entered the dispensaries with her at the time of purchase, and, following their marriage, the funds she used to purchase marijuana came from their joint account. After June 2019, L would use marijuana in the car while Applicant drove her home from the dispensary. Between June 2019 and March 2022, they typically purchased marijuana every two or three months. During this same period, Applicant and L operated a group home for adults with disabilities. While at the group home, Applicant and L would use marijuana in the garage after hours. Between June 2019 and May 2022, Applicant illegally used marijuana, purchased under his wife's medical marijuana card, about two or three times a week. He last used marijuana with his second wife in March or May 2022. Applicant himself did not have a medical marijuana card until June 2022. He admitted that he was aware, at the time of his use, that his recreational marijuana use violated state drug laws. (Tr. 40-50, 61, 69-76)

In June 2022, Applicant obtained a medical marijuana card and used marijuana almost daily. He purchased marijuana twice – in June 2022 and August 2022 – from state-licensed dispensaries. He testified that he last used marijuana in August 2022; however, he retained his recently purchased marijuana until after his September 6, 2022 security interview. After the security interview, Applicant disposed of his remaining marijuana. In his June 13, 2023 Answer, Applicant admitted that he last purchased marijuana on August 29, 2022 and that he had not used marijuana since his security interview. (Answer; GE 6, GE 7; Tr. 50-56)

In October 2000, Applicant was charged with possession of less than 20 grams of marijuana, a misdemeanor offense.¹ A friend, with whom Applicant had connected with his marijuana dealer, had an adverse reaction to marijuana. Law enforcement officers arrested, booked, and charged Applicant. In November 2000, he appeared in court and was sentenced to a pre-trial diversion program. Upon completion of the program, the charge was dismissed in February 2001. (GE 7; AN II; Tr. 25, 41-44, 83)

¹ Department Counsel stipulated that Applicant was charged with a misdemeanor offense and that the FBI record was in error. (Tr. 25)

On May 6, 2024, Applicant participated in a urinalysis. The test results do not indicate that Applicant's urine was tested for illegal drugs. Rather, it was tested for blood, bilirubin, ketones, glucose, protein, nitrate, and leukocyte esterase. (AE A)

At the hearing, Applicant explained that he had been unsure about the legality of his marijuana use in the summer of 2022, yet he continued to use marijuana in August 2022. Although he had not consumed all of the marijuana from his first purchase, he purchased additional marijuana from a different dispensary on August 29, 2022, after he had completed his security clearance application. At the time of his August 2022 marijuana use, he was principally concerned with whether marijuana use conflicted with his prospective employer's polices or policies for DOD clearance holders. He testified that he last used marijuana prior to his submission of the e-QIP. Applicant continues to see his first wife about once a month; however, she has not used marijuana in Applicant's presence since 2004. In his Answer, Applicant confirmed his intent to abstain from illegal drug use in the future. (Tr. 55-56, 61)

Falsifications

Under Guideline E, the SOR alleges that Applicant deliberately falsified an e-QIP submitted on August 18, 2022, in response to two queries (SOR ¶¶ 2.a. and 2.b.) and that Applicant deliberately provided false information during an interview with an authorized investigator on behalf of the Department of Defense, conducted on September 26, 2022 (SOR ¶ 2.c.). In his Answer and FORM response, Applicant attributed his omissions to memory problems following a March 2022 accident.

Applicant testified that his memory problems resulted from a fall on March 29, 2022. He injured his spine, fractured his ribs, and sustained a traumatic brain injury (TBI). He was hospitalized for three or four days. Immediately after the accident, he experienced visual hallucinations on a near daily basis. Despite his head injury, he returned to full time employment about two weeks after the accident, and he administered his own medications throughout. He continued to drive to and from work, although he did experience some hallucinations due to the head injury. His concerns about using opioids for pain managements prompted him to obtain a medical marijuana card in June 2022. In his Answer, FORM Response, appeal brief, and hearing testimony, Applicant explained that he did not recall his mid-2019 to May 2022 marijuana use at the time he completed his August 2022 e-QIP. (Answer; FORM Response; GE 7; Tr. 64, 73-82)

Notwithstanding his injuries, Applicant hired a divorce attorney and filed for divorce in May 2022. He applied for and obtained a medical marijuana card for pain management. Because his wife ran the group home, he was terminated from his employment after he filed for divorce in May 2022. He searched for and applied for a DOD contractor position, and he completed the e-QIP on his home computer over a period of two days. He contacted his sister for assistance in answering some of the questions, and he ran a credit bureau report for the financial queries. He did not contact any criminal court or run a criminal records check. He testified that he had no recollection of his 2000 marijuana offense when he completed his e-QIP, but he did recall attending alcohol rehabilitation in

1995. At the time he completed his e-QIP, his contentious divorce from his second wife – with whom he had frequently used marijuana between mid-2019 and March 2022 – was the primary focus in his life. (Tr. 80, 86-88, 91)

In Applicant's August 2022 e-QIP, under Section 13 – Employment Activities, he reported that he was going through a divorce and his estranged wife was also his business partner. He referenced he was "recovering from recent injury" as of June 2022. Under Section 22 – Police Record, Applicant answered "NO" in response to "Have you EVER been charged with an offense involving alcohol or drugs?" Under Section 23 – Illegal Use of Drugs or Drug Activity, Applicant answered "NO" in response to "In the last seven (7) years, have you illegally used any drugs or controlled substances?" Under Section 24 – Use of Alcohol, Applicant reported his 1995 alcohol rehabilitation treatment. Applicant did not report his October 2000 charge for marijuana possession or any of his marijuana use. Besides the reference to a "recent injury," there is no mention in the e-QIP of any head injury or memory issues that may have impacted Applicant's ability to accurately complete the e-QIP. (GE 3)

On September 26, 2022, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, Applicant was twice questioned whether he had ever been charged with a felony offense or a drug offense. He twice denied such an occurrence. When the investigator confronted Applicant about a 2000 drug possession charge, Applicant explained that he had not known it was a felony drug offense. During the interview, Applicant admitted that he had been using marijuana about three times a week and purchasing marijuana every few months at the time of his 2000 arrest. He was arrested, fingerprinted, and charged. Later, Applicant appeared in court and the charge was dismissed. During the OPM interview, Applicant explained that he omitted the drug possession charge because he had forgotten about it or because he thought he did not need to list it. He further explained that he mis-read the question requiring him to report any alcohol or drug offense on his e-QIP. (GE 4)

During his September 2022 security interview, Applicant admitted that he first used marijuana from 1998 until 2004. He then started using again after getting his medical marijuana card on June 7, 2022. He had obtained the medical marijuana card to alleviate pain from an injury sustained after he fell from a ladder in late March 2022. Prescription medications had not adequately alleviated his pain and had negative side effects. During the interview, Applicant admitted that he used marijuana daily and spent approximately \$150-200 total on marijuana. He ceased using marijuana in early September 2022 because he was unsure whether his new employer permitted the use of medical marijuana. When confronted about why he omitted his marijuana use on his e-QIP, he claimed that he had been confused about the difference between state and Federal drug laws. During the interview, Appellant stated that he would continue his medical marijuana use unless it is prohibited by his employer. (GE 4)

In his May 18, 2023 response to DOHA interrogatories, Applicant adopted the summary of the OPM interview without any corrections, revisions, or additions. He further admitted that he had used marijuana between 2019 and "probably in late 2022" and that

he had purchased marijuana. He did not provide any information about the frequency of his marijuana use and purchase between 2019 and 2022. He reported that L had regularly used marijuana in Applicant's presence, and that his father and first wife continued to use marijuana in Applicant's presence. (GE 4)

In his FORM Response, Applicant explained the link between the TBI and his memory issues. He stated, "It was a difficult time as memory issues were entrenched with my condition. It was difficult to create new memories and long term memories were sparse [sic] with several gaps." (GE 6)

In his appeal brief, Applicant stated that he believed it was acceptable under Federal drug laws to purchase and use marijuana for treating a TBI. He further explained that he was unaware that Federal and state drug laws differed on the legality of medicinal marijuana use, and he relied upon the U.S. patent for medicinal marijuana. Applicant also averred that, at the time he completed his e-QIP, he had no recollection of his marijuana use between 2004 and May 2022 due to his head injury. He claimed that, by the time of his FORM response, he had regained some of his pre-injury memories. (GE 7)

At the hearing, Applicant was questioned about his omitted drug charge and drug use. He twice addressed the omissions:

At the time of getting my medical marijuana card, I had no knowledge or recollection of using it with [L] before the incident, so to me, this was the first time I'd used it since 2004. (Tr. 50)

I believe I wrote that I had not [used illegal drugs], because at the time I thought I had not used illegal drugs. I had no knowledge of using illegal drugs, and that is still a [deficit]. I know now that there is a difference between legal and illegal drugs. (Tr. 58)

Applicant further explained that he did not understand that medical marijuana use was illegal under Federal drug laws, and he had no recollection of any of his (illegal) recreational drug use between June 2019 and May 2022. He acknowledged that he recalled and reported other events in his life between June 2019 and May 2022, but not his drug use. He did not consult L about his marijuana use when he completed his e-QIP because they were going through a contentious divorce. He also admitted that, at the time he completed his e-QIP, he was aware of his memory problems. He testified that he first recalled his marijuana use between June 2019 and May 2022 during the summer of 2023 when he was prescribed medication to assist in his recovery from the TBI. (Tr. 58-60)

Applicant did not submit any documentary evidence from a qualified medical professional addressing his traumatic brain injury, memory problems, and subsequent recollection of events. Applicant's first wife submitted a letter attesting to his March 2022 accident. Immediately following his fall, Applicant had telephoned his first wife believing her to be his wife at the time. Applicant sister corroborated his accident and memory problems. She stated, "His memory and many cognitive functions have been greatly

affected immediately afterwards and as an ongoing condition. It seems to vary in severity and length at any given time.” She added that he continued to have memory problems as of July 2024. (AE B, AE C)

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.”

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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

Guideline H: Drug Involvement and Substance Misuse

The security concern for drug involvement 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. In this case, the following disqualifying conditions potentially apply:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Marijuana is a Schedule I controlled substance under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

On December 21, 2021, the DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant admitted using marijuana on many occasions between 1988 and August or September 2022; however, he did not use any illegal drugs while serving in the Navy or between 2004 and June 2019. AG ¶ 25(a) applies.

Applicant illegally purchased marijuana on several occasions between August 1996 and 2004 and between June 2019 and August 2022. AG ¶ 25(c) applies.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. The following are potentially applicable:

(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.

Applicant knowingly and repeatedly violated drug laws between 1988 and May 2022, when he illegally purchased and used marijuana. Applicant used marijuana two or three times a week in 2000 and daily in 2001. Applicant's recreational use of L's medicinal marijuana violated Federal and state drug laws. He used marijuana two or three times a week between 2019 and May 2022 and nearly daily between June 2022 and August 2022. Notwithstanding Applicant's lengthy and extensive drug history, he has abstained from marijuana use since August 2022, after he was apprised of Federal drug laws prohibiting marijuana. There is no evidence of any drug use, purchase, or associations since August 2022. Applicant clarified that he had not been present when his father purportedly used marijuana, and he also believed that his father had an active imagination. With over two years without any drug involvement, Applicant has sufficiently distanced himself from his illegal drug involvement. He has also testified that he will abstain from future drug use. AG ¶¶ 26(a) and 26(b) apply. Applicant mitigated the drug involvement security concerns.

Guideline E: Personal Conduct

The concern under this guideline 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying condition is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; 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.

Applicant denied deliberately falsifying his responses in his e-QIP and denied deliberately providing false information to the DOD investigator. In his e-QIP, he accurately reported his employment history, addresses, education history, relatives, and family information. He accurately responded to the financial queries and about his alcohol treatment. The only two queries that omitted material and relevant information related to his illegal drug use and his marijuana possession charge. He testified that he had forgotten about his marijuana charge and that he had no recollection of his marijuana use between June 2019 and May 2022. While acknowledging the complexities of a TBI, I cannot reconcile that he had no recollection of any of the hundreds of uses of marijuana or dozens of purchases of marijuana between June 2019 and May 2022. Their joint bank account was used for these purchases, and he traveled with his wife to these dispensaries. At the time he completed the e-QIP, Applicant was in the midst of a contentious divorce with the individual with whom he most frequently had used marijuana. Although Applicant attested to memory issues, he was entrusted with driving, working, and administering his own medications shortly after the accident. There is no corroborating evidence as to Applicant's memory issues specifically as to his marijuana use between June 2019 and May 2022. Given the multitude of instances of marijuana use, I cannot reconcile Applicant's explanation with the record evidence. AG ¶ 16(a) applies as to SOR ¶ 2.a.

As for Applicant's omitted marijuana charge, Applicant explained that he forgot this incident. Although this was a misdemeanor drug offense, this was the only time that Applicant has been arrested and charged. He was also required to attend a pre-trial diversion program. Given the unique nature of this event, I cannot reconcile Applicant's explanation with the record evidence. AG ¶ 16(a) applies as to SOR ¶ 2.b.

During Applicant's September 2022 interview, he was confronted about his omitted marijuana use. He admitted that he had obtained a medical marijuana card in June 2022 and had used marijuana frequently between June and August 2022. He did not disclose that he had used marijuana between June 2019 and May 2022 until his May 2023 response to the DOHA interrogatories. As discussed above, Applicant's omission of his June 2019-to-May 2022 marijuana use cannot be reconciled with the record evidence, particularly in the context of discussing his other marijuana use, his injury, and his divorce during the security interview. AG ¶ 16(b) applies as to SOR ¶ 2.c.

The following personal conduct mitigating conditions under AG ¶ 17 are potentially relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not make prompt efforts to correct his falsifications. Rather, he disclosed the full extent of his marijuana use in his May 2023 response to interrogatories. Even in that response, he reported that he used marijuana "on occasion" as opposed to two to three times a week as he later testified. AG ¶ 17(a) does not apply.

Applicant had a lengthy and extensive history of drug involvement. Between June 2019 and May 2022, he illegally, recreationally used marijuana purchased using his wife's medical marijuana card. He then obtained his own medical marijuana card and used marijuana nearly daily until August 2022. His omissions in his e-QIP and during his security interview cast serious doubt on his reliability, trustworthiness, and judgment. AG ¶ 17(c) does not apply. He did not mitigate the personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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. I have incorporated my comments under Guideline H, Guideline E, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant frequently used marijuana between about June 2019 and August 2022. Even accepting Applicant's explanation that he was confused about the legality of medical marijuana, his recreational marijuana use prior to June 2022 violated both Federal and state drug laws. I cannot reconcile Applicant's explanations for his omissions with the entirety of the record evidence. Although he mitigated the drug involvement and substance misuse security concerns, he did not mitigate the personal conduct security concerns arising from his deliberate falsifications on his security clearance application and during his security interview. Eligibility for access to classified information is denied.

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:	FOR APPLICANT
Subparagraphs 1.a.-1.b.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.-2.c.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge