



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



In the matter of:

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ISCR Case No. 24-01550

Applicant for Security Clearance

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel

For Applicant: Ryan C. Nerney, Esq.

07/09/2025

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guidelines E (personal conduct) and H (drug involvement and substance misuse) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 16, 2024, and November 7, 2022, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCA). (Government Exhibit (GE) 1; GE 2) On October 29, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines E and H. (HE 2) On January 22, 2025, Applicant provided a response to the SOR and requested a hearing. (HE 3) On March 14, 2025, Department Counsel was ready to proceed.

On March 19, 2025, the case was assigned to me. On April 7, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 14, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered four exhibits into evidence; Applicant offered one exhibit into evidence, which was in addition to the 17 exhibits attached to his SOR response; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 7, 11-13; GE 1-GE 4; Applicant Exhibits (AE) A-AE R) On May 27, 2025, DOHA received a transcript of the hearing. No exhibits were received after the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 2.a, and 2.b, and he partially admitted the SOR allegation in ¶ 1.b. (HE 3) He also provided clarifying, and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 28-year-old technician, and he has been in this position since October 2023. (Tr. 30-31) In 2019, he received a bachelor's degree with a major in political science and a minor in business. (Tr. 30; AE G) He is not married, and he does not have any children. (Tr. 30) He has never served in the military. (Tr. 31) He has held a security clearance since March 2023. (Tr. 32) His resume and personal statement provide additional information about his background and professional experiences. (AE C; AE D) He has never been accused of mishandling classified information. (Tr. 32)

Personal Conduct

SOR ¶ 1.a alleges in about March 2023, Applicant did not do any work for his employment with a federal contractor on one or two workdays without obtaining authorization and without ensuring that his absence was reflected in his time/pay records. When a supervisor questioned him about this, he initially stated that there must have been a computer glitch.

Applicant was scheduled to work at home for two days. (Tr. 33) He did not do any work for his employer on those two days. (Tr. 33) He falsely entered time on a timesheet claiming that he worked for two days. (Tr. 58) When his supervisor questioned him about working, he said that there must have been a computer glitch. (Tr. 34) He said there was a computer glitch because he was worried about losing his job. (Tr. 34) He subsequently

admitted he did not work on one of the two days. (Tr. 34) This incident resulted in the termination of his employment. (Tr. 34) Before he was terminated, he said he was experiencing “burnout,” and he felt alienated because he was not receiving recognition for his accomplishments. (Tr. 35) He said, “I didn’t work because of the burnout and alienation.” (Tr. 35) When his supervisor then asked him if he had worked on one of those two days, he stated that he had not. He was fired a day or two after he lied to his supervisor. (Tr. 59) As a result of his termination, he learned it is important to be honest, and he would not make the same choices today. (Tr. 36)

Applicant said on his January 16, 2024 SCA that he was fired because he was “[f]eeling alienated & mental health issues led to burn-out and unsatisfactory performance.” He conceded at his hearing that the real reason for the termination was timecard fraud and lying to his supervisor. (Tr. 60; GE 1 at 16)

SOR ¶ 1.b alleges in about September 2017, Applicant was charged with failure to properly affix license plate to vehicle. During a traffic stop, a police officer confiscated a small amount of marijuana and paraphernalia from his vehicle. Applicant pleaded guilty and was fined. (Tr. 39, 68) On about August 3, 2024, he was charged with failure to register vehicle. He pleaded guilty and was fined \$200. (Tr. 39-40) On about August 24, 2024, Applicant was charged with expired vehicle plates. (Tr. 40-41) Currently, his vehicle is properly registered, and his plates are properly affixed to his vehicle. (Tr. 41)

Drug Involvement and Substance Misuse

SOR ¶ 2.a alleges from about 2014 until at least February 2024, Applicant used marijuana with varying frequency, including after submitting a security clearance application in January 2024. Towards the end of college, he was using marijuana on almost every day. (Tr. 46) Marijuana helped him with stress and anxiety. (Tr. 47) In 2016, he was diagnosed with epilepsy. (Tr. 46) In 2018, he received a medical marijuana card, and he used marijuana in conjunction with his other medication to treat his epilepsy. (Tr. 46-47) He believed the marijuana was helpful to addressing his epilepsy. (Tr. 62-63) He received medical marijuana from a dispensary in state M. (Tr. 47)

In October 2022, Applicant stopped using marijuana to improve his chances of obtaining a security clearance. (Tr. 63) He knew marijuana use would cause a problem for him to obtain a security clearance. (Tr. 64)

On November 7, 2022, Applicant completed an SCA, and he disclosed his marijuana use. (Tr. 49; GE 2) During his December 23, 2022 follow-up background interview, he was told that illegal drug use is not permitted for maintaining a security clearance. (Tr. 64, 66; GE 3 at 13) He said he would cease his marijuana use if he received a security clearance. (Tr. 49-50, 64) On February 6, 2023, he was still using marijuana. (Tr. 64-65) He said he was looking for a medication change in lieu of marijuana for treating his epilepsy, and he received a change in dosage. (Tr. 64-65) However, at his hearing, he said he had not had an epileptic seizure in years. (Tr. 71) He stopped using marijuana in February or March of 2023, and in March 2023, he received a security clearance. (Tr. 48, 50, 69-70)

In April 2023, after Applicant lost his employment, he resumed marijuana use because he lost his health insurance and marijuana was less expensive than his epilepsy medication. (Tr. 51) He did not have access to classified information, and his security clearance was inactive while he was unemployed from April 2023 to October 2023. (Tr. 51, 69-70)

In October 2023, Applicant was hired for his current employment. (Tr. 67) His employment required him to have a security clearance. (Tr. 67) On January 16, 2024, he completed an SCA, and he disclosed his use of marijuana. (GE 1 at 34) He said his most recent marijuana use was in December 2023, and he explained, "I smoked very occasionally from when I first smoked. This continued through May of 2016, when I had seizures and was ultimately diagnosed with epilepsy. Since then, I have smoked most days and have had a medical prescription since roughly 2018. I use as prescribed." (GE 1 at 34) His completion of the January 16, 2024 SCA reminded him of the issue that he could not use marijuana while holding a security clearance. (Tr. 52, 67; GE 1 at 35) In his SOR response, he said that he realized when he completed this SCA that marijuana use was not permitted for security clearance holders. (SCA response at 9) Nevertheless, he used marijuana in February 2024, after he completed this SCA, to treat his epilepsy and to relieve stress. (Tr. 52-53) He promised not to use marijuana in the future. (Tr. 53)

In November 2024, December 2024, and May 2025, Applicant received drug tests which were negative for marijuana and cocaine. (AE L; AE R)

In sum, Applicant used marijuana while holding a security clearance. (Tr. 74) However, he did not actually have access to classified information. (Tr. 74) He used marijuana in a state in which medical marijuana is not illegal under state law.

SOR ¶ 2.b alleges in about September 2017, Applicant used cocaine. He used a small amount of cocaine on one occasion in about September 2017 at a tailgate after a football game. (Tr. 42-43) He was 20 years old when he used cocaine. (Tr. 43) He used cocaine because of peer pressure, and he felt physically intimidated. (Tr. 44, 68) This was the only time he used cocaine, and he does not intend to use it in the future. (Tr. 45)

On December 18, 2024, Applicant received a mental-health evaluation, and he has never been diagnosed with a substance abuse issue. (Tr. 56; AE Q) The evaluating psychologist said:

[Applicant's] use of marijuana is longstanding but does not appear to have caused any functional impairment, changes to personality, or problematic patterns of behavior which are typically present with those who meet criteria for a use disorder. He reports no further use of marijuana since FEB, 2024 and denied any cravings or withdrawal symptoms. Based upon these conclusions, [he] does not currently meet criteria for any clinical conditions. (AE Q at 5)

On November 19, 2024, Applicant signed a 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. (Tr. 54; AE K) He does not associate with anyone while they are using illegal drugs in his presence. (Tr. 54) He completed the following four-hour classes in November to December 2024: drug and alcohol awareness; behavioral modification; and marijuana education. (Tr. 55; AE N; AE O; AE P) He has never been impaired at work due to substance abuse or used illegal drugs at work. (Tr. 56) He considers himself to be an honest person who can be trusted with access to classified information. (Tr. 57-58)

On January 6, 2025, Applicant said:

In the latter half of 2022, I was diagnosed with depression and generalized anxiety disorder. I have been seeing a psychiatrist for these ailments and have been working towards overcoming them. My psychiatrist recommended we set up monthly appointments to evaluate my progress, assess the efficacy of my treatment plan, and work towards identifying the root of my problems. During these meetings we would also discuss life goals and how to put myself in the best position to achieve them. To build myself up, I first needed to establish a strong foundation. My goal for 2023 was to get back on my feet by finding a job and moving in with my girlfriend. I was able to achieve these goals, and with that came confidence and optimism. My psychiatrist noticed a major improvement; so much so that, around January 2024, we both felt comfortable reducing the frequency of my visits to once every three months. In that same meeting, I established that during 2024 I wanted to get healthier and begin taking my savings more seriously. The purpose of these goals was to strengthen my discipline and establish better habits. Over that time, I have begun running again between 3-5 times per week. This has boosted my mood and resulted in losing over 20 pounds. I was also extremely successful when it came to increasing my savings. I am now in a position where I can begin looking to the future. These self-improvements have had such a profound effect on me mentally that, as of next month, I will be weaning off of my medications. I can say with confidence that I no longer have a need for them. (AE B at 6, ¶ 7)

Character Evidence

Applicant's most recent performance evaluation at his current employment indicates he is an outstanding employee in every aspect of his work. (AE F) Two coworkers and three friends provided character statements. (Tr. 15-26; AE E) The general sense of their statements is that Applicant is intelligent, honest, friendly, responsible, loyal, trustworthy, and detail oriented. He has an excellent reputation, and the character evidence supports approval of his security clearance.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S.

518, 528 (1988). As Commander in Chief, the President has the authority “to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy” to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, denial of a security clearance should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-

31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 lists personal conduct disqualifying conditions that are potentially relevant in this case as follows:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The evidence is sufficient to establish AG ¶¶ 16(d) and 16(e). Additional discussion is in the mitigation section, *infra*.

AG ¶ 17 lists conditions that could mitigate personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

Applicant possessed marijuana and drug paraphernalia related to his marijuana use in about September 2017. These misdemeanor-level offenses are minor and not recent. He has not been arrested for any subsequent drug-related crimes. He was cited

for failure to properly affix license plate to vehicle in about 2017, failure to properly register vehicle in about August 2024, and expired plates in about August 2024. These license and registration-related offenses happened under unique circumstances, and they are unlikely to recur. None of the offenses in SOR ¶ 1.b cast doubt on Applicant's reliability, trustworthiness, or good judgment, and SOR ¶ 1.b is mitigated.

The submission of a false timecard for work not performed is a serious offense. Applicant's false statement to his supervisor that it was a computer glitch aggravates the offense. These two offenses occurred in about March 2023, and it is relatively recent.

Applicant said on his January 16, 2024 SCA that he was fired because he was "[f]eeling alienated & mental health issues led to burn-out and unsatisfactory performance"; however, the real reason for the termination was timecard fraud and lying to his supervisor. (Tr. 60; GE 1 at 16)

Applicant's misleading statement on his January 16, 2024 SCA about the reason he was fired, and his holding a position requiring a security clearance or occupying a sensitive position, as discussed *supra*, were not alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These two non-SOR allegations will not be considered except for the five purposes listed above.

Applicant's submission of a false timecard, making a false statement to his supervisor, and providing a misleading explanation on his January 16, 2024 SCA about his termination of employment are relatively recent and serious. None of the mitigating conditions fully apply to SOR ¶ 1.a, and SOR ¶ 1.a is not mitigated. Personal conduct security concerns are not mitigated.

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; and "(c) illegal possession of a controlled substance . . ." The record establishes AG ¶¶ 25(a) and 25(c). AG ¶ 25(f), which states, "(f) any illegal drug use while granted access to classified information or holding a sensitive position," is not alleged in the SOR and is not considered an applicable disqualifying condition in this case because of lack of notice to Applicant. Additional discussion of the disqualifying conditions is in the mitigation section, *infra*.

AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse security concerns:

- (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;
- (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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant admitted that he possessed and used marijuana and cocaine. Marijuana is listed on Schedule I, and cocaine is listed on Schedule II, of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration listing at <https://www.dea.gov/drug-information/drug-scheduling>. His possession of these two substances is a federal crime. His possession and use of the cocaine on one occasion and his possession and use of marijuana, which occurred prior to his receipt of a security

clearance in October 2023 are not recent and are unlikely to recur. AG ¶¶ 26(a) and 26(b) apply to his possessions and uses of these two controlled substances prior to October 2023.

THC possession and use while holding a security clearance

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications as follows:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that require them to use a “whole-person concept.” This requires adjudicators to carefully weigh a few variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (Dec. 21, 2021) at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

SOR ¶ 1.a alleges, and Applicant admitted, he used THC in various forms with varying frequency from about 2014 to February 2024. He is credited with not using marijuana from February 2024 to May 14, 2025, which was the date of his hearing. He used marijuana within about 15 months of his hearing. His marijuana possession and use before he knew or should have known that marijuana use was prohibited for security clearance holders is not a security concern unless he was in a sensitive position or had access to classified information because he was operating under the belief that his marijuana use was in compliance with state law.

Applicant is credited with disclosure of his marijuana involvement during the security clearance process. His use of marijuana was not discovered through a polygraph test, investigative efforts, or a urinalysis test. He promised not to use illegal drugs in the future. He provided 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 used marijuana while employed in his current position. Because he held that position, he was required to have a security clearance. He used marijuana after completion of two SCAs. In ISCR Case No. 22-02623 at 4 (App. Bd. Jan. 24, 2024), the DOHA Appeal Board discussed the term of “holding a sensitive position” as follows:

For purposes of national security eligibility determinations, the Directive defines “sensitive position” as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor.

SEAD 4, ¶ D.8. We have previously held that this broad language is “designed to be inclusive and encompass a wide range of positions, including those that require eligibility for access to classified information (i.e., a security clearance).” ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023). The term “sensitive position” is not so broad, however, to encompass any and all employment with a defense contractor.

Applicant held a sensitive position when he used marijuana. This issue of holding a sensitive position was not alleged in the SOR, and as indicated previously, his marijuana possession and use while holding a sensitive position will only be used for the five purposes previously listed.

The DOHA Appeal Board cited the importance of consideration of “the changing landscape of marijuana law and . . . of the Director of National Intelligence’s *Clarifying Guidance Concerning Marijuana*.” ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the “evolving landscape of marijuana law and policy,” “the resulting increasing prevalence of marijuana use,” and in some instances “recreational marijuana use deserves less, or even no negative inference on judgment.”).

Several factors are important in assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position or having access to classified information; and promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying

sensitive position; marijuana possession and use was not illegal under state law; no use after notice that marijuana use was federally illegal).

State law did not prohibit Applicant's possession and use of marijuana. Applicant was informed of the issue of marijuana possession and use when he completed his SCAs. He did not fully understand that he could not use marijuana until he completed his second SCA in January 2024. At that point, he was adequately placed on notice that he needed to stop using marijuana for security clearance purposes. "The Board has 'long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.'" ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (quoting ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021)). See also ISCR Case No. 24-00468 at 6 n.7 (App. Bd. Apr. 16, 2025).

AG ¶¶ 26(a) and 26(b) do not fully apply because Applicant has not fully established a pattern of abstinence of marijuana possession and use. His decisions to possess and use marijuana while occupying a sensitive position and after completion of his second SCA are indications he lacks the qualities expected of those with access to national secrets. The time between Applicant's involvement with marijuana and his hearing was about 15 months and this period is insufficient under all of the circumstances. His relatively recent involvement with marijuana continues to cast doubt on his current reliability, trustworthiness, and judgment. Guideline H security concerns are not 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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guidelines E and H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 28-year-old technician, and he has been in this position since October 2023. In 2019, he received a bachelor's degree with a major in political science

and a minor in business. His resume and personal statement provide additional information about his background and professional experiences. He has never been accused of mishandling classified information. (Tr. 32)

Applicant's most recent performance evaluation at his current employment indicates he is an outstanding employee in every aspect of his work. The general sense of five character statements is that Applicant is intelligent, honest, friendly, responsible, loyal, trustworthy, and detail oriented. He has an excellent reputation, and the character evidence supports approval of his security clearance.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse and personal conduct sections, *supra*. The reasons for denial of his security clearance are more persuasive at this time.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence, to the facts and circumstances in the context of the whole person. Applicant failed to mitigate drug involvement and substance misuse and personal conduct security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual’s eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

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 E: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant |

Conclusion

Considering all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge