



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



In the matter of:

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ISCR Case No. 23-02402

Applicant for Security Clearance

Appearances

For Government: Andrea M. Corrales, Esq., Deputy Chief Department Counsel

For Applicant: Carl Anthony Marrone, Esq.

11/18/2025

Remand Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guidelines H (drug involvement and substance misuse) and E (personal conduct) are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 30, 2023. On November 23, 2023, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DCSA acted under Executive Order (Exec. Or.) 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 (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On January 12, 2024, Applicant answered the SOR and requested a hearing before an administrative judge. On February 1, 2024, Department Counsel was ready to proceed, and on August 5, 2024, the case was assigned to another administrative judge (AJ A). On August 22, 2024, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled to be conducted by video teleconference on September 24, 2024, and the hearing was convened as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant made a statement, presented the statements of four witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. AJ A held the record open until October 7, 2024, to enable Applicant to submit additional documentary evidence. At her request, he extended the deadline until October 9, 2024. She timely submitted AX G, which was admitted without objection. Two hearings were held in this case. Transcript cites for the first hearing are designated as Tr1. and cites for the second hearing are designated as Tr2. DOHA received the first transcript (Tr1.) on October 3, 2024. The record closed after the first hearing on October 9, 2024.

On October 22, 2024, AJ A denied Applicant's application for security clearance eligibility. She appealed the decision, contending that AJ A failed to sufficiently analyze the Guidelines H and E security concerns and mitigating conditions. On February 19, 2025, the Appeal Board remanded the case to AJ A.

On February 25, 2025, Applicant filed a request to reopen the record "for the presentation of additional testimony and evidence to address the Appeal Board's identified errors listed in its order to remand the matter." Department Counsel objected to the request on the ground that adding new evidence would be beyond the scope of the remand. AJ A denied the request to reopen the record on the grounds stated by Department Counsel, and on February 27, 2025, AJ A denied Applicant's security clearance.

Applicant filed the second appeal in this case, and on May 27, 2025, the DOHA Appeal Board remanded the case "with the recommendation that it be reassigned to another judge for further processing[s]." ISCR Case No. 23-02402 at 3 (App. Bd. May 27, 2025). The Appeal Board provided the following instruction:

When there is a remand to a different Administrative Judge, and credibility is an issue in the case, a new hearing may be necessary. See DISCR Case No. 90-0279, 1993 WL 545025 at *5 (App. Bd. Sep. 22, 1993). Because Applicant's credibility may be important to the issues in this case, the judge assigned on remand should ascertain if the parties consent to have a determination made on the basis of the existing record. If both parties consent to such a determination, then the judge should render a new decision without holding a new hearing. If either party declines to consent to having the case decided on the basis of the existing record, then the judge should hold a new hearing and issue a decision that complies with all of the relevant provisions of the Directive.

Id. at 3.

On June 2, 2025, the case was assigned to me. Applicant declined to consent to having the case decided based on the existing record. (Hearing Exhibit (HE) 1) On July 7, 2025, DOHA issued a Notice scheduling her hearing on August 15, 2025. (HE 2) On

July 22, 2025, DOHA issued an Amended Notice scheduling her hearing on August 28, 2025. (HE 3) The hearing was held as scheduled in the Amended Notice using video teleconference. At her hearing, Applicant made a statement, and two witnesses made statements on her behalf. Applicant provided two additional exhibits, which were admitted along with the exhibits from her first hearing. (Tr2. 14; AX A-AX I) One exhibit was received after her hearing, and it was admitted without objection. (AX J) The transcript was received on September 9, 2025. The record closed on September 28, 2025, when her final exhibit was received. (AX J)

Applicant's May 27, 2025 Appeal Board decision stated AJ A made one error in his findings of facts when he failed to fully credit Applicant with making a statement of intent to refrain from future use of illegal drugs under AG ¶ 26(b)(3). ISCR Case No. 23-02402 at 6-7 (App. Bd. May 27, 2025). Applicant and Department Counsel had no objection to my inclusion in this remand decision of the first five pages of AJ A's statement of facts in his second decision, and the transcript and exhibits previously admitted at the first hearing. (Tr2. 8, 13) With the exception that the statement of facts should include correct information about Applicant's submission of a qualifying statement under AG ¶ 26(b)(3). (Tr2. 8, 13)

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency from about September 2007 to about February 2023 (SOR ¶ 1.a); that she used cocaine with varying frequency from about June 2012 to about January 2023 (SOR ¶ 1.b); that she misused the prescription medication Adderall from about September 2007 to about March 2022 (SOR ¶ 1.c); that she purchased marijuana from about December 2011 to about November 2021 (SOR ¶ 1.d); and that she wrongfully sold her prescription medication Adderall between March 2021 and November 2021. Under Guideline E, SOR ¶ 2.a cross-alleged the conduct alleged under Guideline H.

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.e with explanations. She denied the allegation in SOR ¶ 2.a. Her admissions are incorporated in my findings of fact.

Applicant is a 31-year-old help desk technician employed by a federal contractor since April 2023. She earned an associate degree in May 2017, and she enrolled in a bachelor's degree program in August 2022. (AX B). She has never married. She has a five-year-old daughter. She has never held a security clearance.

During the summer when Applicant was between the eighth grade and ninth grade, she had sexual intercourse with a boy who was a high school senior. She thought it was a serious relationship, until the boy shared his experience with his friends on social media. As a result, she became a target of social media messages, primarily from girls. After the abusive messages continued for two years, she transferred to another school. Before she transferred schools, she became friends with a group of girls who were marijuana users. She felt comfortable with this group and started using marijuana to help her cope with the abusive social media. After Applicant changed schools, her school environment improved, but she continued to receive bullying on social media. By this time, her marijuana use became "more of a social thing." (Tr1. 18-24)

Applicant began taking Adderall at age 14. She had a prescription for “daily extended release” of Adderall for use as needed. (Tr1. 38) She admitted that there were times when she ran out of Adderall but obtained it from family members who also had a prescription. At the time, she did not realize that using someone else’s prescription was illegal. (Tr1. 39) She stopped taking Adderall when she found out that she was pregnant. (Tr1. 40)

Applicant continued to use marijuana after graduating from high school. She either purchased it or received it from others. (Tr1. 24) She stopped using marijuana when she was 25 years old because she learned she was pregnant. (Tr1. 29) Her daughter was born in February 2019. (GX 1 at 30) She abstained from using marijuana for about two years after the birth of her daughter, because she was breast feeding and did not want her daughter to have “anything she did not need in her system.” (Tr1. 31)

In December 2019, Applicant was assaulted by the father of her daughter after she confronted him about his alcohol use, and he grabbed her by the neck and threw her against a wall. She retreated into her daughter’s room, locked the door, and called 911. The police arrested him, and she obtained a protective order. (Tr1. 32-33)

At some time in 2021, an acquaintance from high school contacted Applicant on social media and offered to buy Adderall from her. The acquaintance apparently remembered that Applicant used Adderall while they both were in high school. Applicant was working full time but decided that she could use some extra income. She sold it to her high school acquaintance “a few times” during two or three months. They never met face-to-face. Instead, the buyer sent money to Applicant via social media and Applicant would hide it somewhere outside her apartment. Applicant earned a “couple hundred bucks” from the sales. (Tr1. 42-45)

In January 2023, Applicant was sexually assaulted after going out to dinner with a male friend. She believed that the friend put something in her drink. She reported the incident but does not believe any action was taken. (Tr1. 35) In February 2023, Applicant was in a “really dark place,” and a female friend came to her home to comfort her. The friend offered her marijuana, and she accepted it. (Tr1. 36-37) Another friend also visited her and offered her cocaine, and she accepted it. (Tr1. 46-48)

Applicant testified that she has used cocaine three times. The first was when she was about 18 years old, when she was working at a restaurant and her friends at the restaurant offered it and she accepted it. The second time was when she was cohabiting with the father of her child and a friend of the father. The friend of the father had cocaine, and the friend shared it with Applicant. The third time was in February 2023, after the sexual assault in January 2023, when a friend offered it to her.

Applicant testified that she is determined to refrain from further drug involvement, based on several factors. She has started to attend church and read the Bible regularly. She has received spiritual counseling through her church, and a church official attested to her candor, reliability, and unwavering commitment to personal growth. (AX F at 1) She is in a committed relationship with a kind and caring man, who encourages her and

supports her. She has started working on physical fitness, which reduces her stress level. (Tr1. 52-56)

Applicant testified that she no longer associates with drug users, except for her three younger siblings, who use marijuana. (GX 2 at 6) She was asked during the hearing how she would react if she was at a Thanksgiving dinner with her family and her siblings started using marijuana. Without hesitation, she stated, "I would leave. I would let my [facility security officer] know about it." (Tr1. 74)

Applicant was evaluated by a certified alcohol and drug counselor on April 23, 2024, and was diagnosed with mild cannabis use disorder in remission and mild alcohol use disorder in remission. The counselor made no diagnosis or prognosis regarding cocaine use. (AX A) Applicant underwent hair follicle tests on March 4 and August 29, 2024, and tested negative for cocaine, opioids, phencyclidine, amphetamines, and marijuana. (AX B)

Applicant is credited with 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. See SOR response; AE I; SOR ¶ 26(b)(3); ISCR Case No. 23-02402 at 6-7 (App. Bd. May 27, 2025).

One of Applicant's coworkers, who has known her for about a year and is aware of the issues set out in the SOR, testified that Applicant is a driven, hardworking individual. She also is charismatic, sociable, and kind. The coworker believes that she is "one of the best techs on her floor" that other technicians rely on for advice and assistance. (Tr1. 80)

Applicant's stepmother, who has known Applicant since she was six years old, testified that she believes Applicant has "completely grown out of her troubled childhood and adolescence" and has become a "very responsible, trustworthy, and genuine member of society." (Tr1. 84-85)

Applicant's coworker and current boyfriend has known her for almost two years. Based on his observations and close relationship with Applicant, he testified that "it's completely just mind-blowing how many steps she's taken to be just this mother, this girlfriend, and this person at work, who, in my opinion, just exemplified somebody of character." (Tr1. 94-95)

Another coworker, who has known Applicant for about a year and a half and is familiar with her past, testified that he was surprised when she told him about her past. He testified that she has demonstrated "nothing but optimism and trustworthiness." (Tr1. 98-99)

A friend who was introduced to Applicant seven years ago has seen a "marked change" in her life during the past two years. He states that he has seen "greater focus, with much more concern about her career and the best choices for her daughter." (AX F at 4)

A friend of Applicant's family has known her since she was 18 months old. She recently visited Applicant and her five-year-old daughter, who has severe genetic physical limitations, and "marveled" at Applicant's devotion to her daughter. She describes Applicant as smart, hardworking, determined, and patriotic. (AX E at 3)

Applicant's work performance evaluation for 2023 rated her as "exceptional," based on her initiative in writing and setting policy for the service desk. (AX D) She received certificates of technical proficiency in April and August 2023. (AX E)

A fellow church member believes that Applicant has demonstrated responsibility, candor, reliability, trustworthiness, and dedication to self-improvement. (AX F at 1) Another church member describes her as honest, kind, mentally strong, capable, and stable. (AX F at 2) A lifelong friend who is familiar with Applicant's troubled years in high school was impressed with her ability to overcome her early years and develop into a devoted mother and a smart, determined, and patriotic person. (AX F at 3) Another coworker describes Applicant as "professional, determined, passionate, easy to get along with, and driven to be the best version of herself that she can be." (AX G)

Facts from second hearing

Applicant has worked for her current employer since about April 2023 as a help desk technician. (Tr2. 35) She received two associate degrees. (Tr2. 61) In September 2025, she married E, the person she was dating in 2024. (Tr2. 18) Applicant and E work for the same employer. (Tr2. 35) E is not involved with illegal drugs. (Tr2. 62)

Applicant and B have a six-year-old daughter. (Tr2. 17-19) In November of 2024, B threatened to kill Applicant and E; however, Applicant believes B is better now because he is taking his medications to control his bipolar disorder. (Tr2. 17-19) Applicant continues to associate with B, a person who provided cocaine to her on one occasion. (Tr2. 58) Her daughter had two complex surgeries and physical therapy five days a week in 2025 to aid in her rehabilitation from a serious genetic orthopedic disease. (Tr2. 19-29) Applicant was diagnosed with attention-deficit/hyperactivity disorder (ADHD) and anxiety. (Tr2. 49-50) She has not received any mental health counseling or treatment during the previous 18 months. (Tr2. 49-51, 63) Applicant relies on E, her religious beliefs, and prayer for support and stress reduction. (Tr2. 18-61, 85-86)

Applicant's statements about her involvement with illegal drugs in her second hearing were consistent with the facts from her first hearing, *supra*. (Tr2. 39-50) She continued to refrain from any involvement with illegal drugs, including marijuana, cocaine, and Adderall, after her first hearing on September 24, 2024. (Tr2. 15-16, 19; AX I) She said she has no interest in using marijuana in the future. (Tr2. 32) She did not test positive for illegal substances for her employment drug test around March of 2023. (Tr2. 36) Her employer randomly uses drug tests for employees. (Tr2. 36) She tested negative for illegal drugs on a hair follicle drug test on July 24, 2025. (AX H)

Applicant has excellent performance evaluations. (AX D; AXJ) Her husband and a coworker and friend made statements on her behalf. (Tr2. 68-84) The general sense of

their statements is that Applicant has strong religious faith and is dedicated to her daughter's welfare. She is honest, diligent, and trustworthy. They were both aware of her history of involvement with illegal drugs.

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 applicants 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, this decision 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

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 drug involvement and substance misuse security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)" and "(c) illegal possession of a controlled substance . . ."

AG ¶¶ 25(a) and 25(c) are established. Further discussion will be 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.

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 admitted that she possessed and used marijuana and cocaine. She used Adderall without a prescription. She sold Adderall. Marijuana is listed on Schedule I, and cocaine and Adderall are listed on Schedule II of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration (DEA) listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). Her multiple possessions of marijuana and cocaine, and Adderall possession and sales without a prescription are federal crimes. Drugs on the list as Schedule I Controlled Substances, have "no 'currently accepted medical use in treatment.' 21 U.S.C. § 812(a)(1)(B)." ISCR Case No. 24-01307 at 3 (App. Bd. July 17, 2025). "Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous." See DEA website, *supra*.

The Appeal Board provided a detailed discussion of the mitigating conditions in this case:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence's Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant's state-compliant marijuana use and use of other illegal drugs, holding that such differences are an important aspect of the case that a reasonable person would expect to be addressed. See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

Acknowledging that Applicant last used marijuana and cocaine in [February] 2023, there are significant differences in her drug-related conduct to be noted. For example, she abstained from using marijuana from mid-2018 to mid-2021 in conjunction with her pregnancy, and marijuana possession was decriminalized in her residential state in July 2020 and adult recreational use was legalized in July 2021. . . . Applicant used cocaine a total of three times between approximately 2012 and 2023. Regarding her Adderall misuse, Applicant sold her prescription "a few times" in 2021 and misused Adderall when her own prescription ran out "a few times" at unknown dates, but no more recently than early 2022 when she stopped using the prescription entirely. See Tr. at 40, 42, 45; Government Exhibit (GE) 1 at 50; GE 2 at 7. We note the foregoing, not to minimize the seriousness of illegal drug use or misuse, but simply to identify the distinctions between Applicant's marijuana use and use of other substances that make a summary analysis insufficient.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications the Appeal Board cited states 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.

SecEA Guidance at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board has 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.”). The landscape concerning possession and use of cocaine has not evolved, and possession of cocaine violates state and federal law.

The Appeal Board has “never established a ‘bright line’ rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole.” See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See also ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Several factors are important in the assessment of mitigation of possession and use of illegal drugs: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; types of other illegal drugs used, continued association with drug users; broken promises not to use in the future; 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; and used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 (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 were not illegal under state law; no marijuana use after notice that marijuana use was federally illegal; and no evidence of broken promises not to use marijuana).

Applicant stopped using illegal drugs in February of 2023 **before** she completed her SCA and was hired as a DOD contractor. She did not use illegal drugs while holding a sensitive position or a security clearance. She used marijuana frequently at times and not at all for significant periods of time. She used cocaine three times. She misused Adderall before February of 2023.

Applicant provided some important mitigating information. She disclosed her involvement with illegal drugs during the security clearance process. Her possession and use of marijuana, cocaine, and abuse of Adderall were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. Her most recent involvement with illegal drugs did not occur while she was employed by a DOD contractor or after making a promise to an employer not to abuse drugs. She has limited her association with known drug users. Her marijuana and cocaine involvement did not include selling these drugs, and she does not currently possess illegal drugs. She promised not to use illegal drugs in the future; she provided a written statement of her intention; and she promised to avoid associations with known drug users and environments where illegal drugs are used. She acknowledged that any future involvement or misuse of drugs is grounds for automatic revocation of national security eligibility.

Applicant relies on her husband, her religious beliefs, and prayer for support and stress reduction. She changed in February 2023, and she is dedicated to her employment and family. She credibly and sincerely stated that she does not intend to use illegal drugs in the future. Thus, she satisfied the requirements of AG ¶ 26(b)(3).

AG ¶ 26(a) applies. Applicant has established a sufficient period of abstinence from involvement with illegal drugs. See ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025). The time between Applicant's most recent involvement with illegal drugs and her second hearing was about 30 months (February 2023 to August 28, 2025). This period is sufficient to establish a pattern of abstinence under all the circumstances. Future illegal involvement with drugs "is unlikely to recur [and] does not cast doubt on [her] current reliability, trustworthiness, [and] good judgment." She provided evidence from multiple witnesses at both of her hearings of her outstanding character, dedication to her family, honesty, and successful employment. Guideline H security concerns are mitigated.

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:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; 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.

SOR ¶ 2.a cross alleges the same conduct as alleged in SOR ¶¶ 1.a through 1.e and indicates the conduct also raises personal conduct security concerns. The Appeal Board in the first remand decision noted that AJ A found that AG ¶ 16(e) was established, and commented:

Applicant's family, friends, and employer are aware of the SOR concerns, which she voluntarily disclosed and openly discussed throughout her security clearance investigation. Assuming, arguendo, that the Judge found AG ¶ 16(e) applies based on a concern that Applicant's prior drug use was not widely known and could create a vulnerability, it is unclear why that concern is not fully mitigated by her openness about the conduct.

ISCR Case No. 23-02402 at 7 (App. Bd. Feb. 19, 2025).

In the second remand decision, AJ A found AG ¶ 16(e) was established because Applicant admitted that she used marijuana and cocaine, associated with drug users, and illegally sold Adderall. ISCR Case No. 23-02402 at 8 (A.J. Feb. 27, 2025). AJ A also found that AG ¶ 17(e) "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress" was established because she disclosed her drug involvement to her boyfriend and employer. *Id.* However, AJ A declined to fully mitigate personal conduct security concerns because of Applicant's long history of illegal drug involvement citing ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014). *Id.*

In the second remand decision, the Appeal Board said:

Before moving to application of mitigating condition AG ¶ 17(e), the Judge needed to articulate his rationale for applying disqualifying condition AG ¶ 16(e) – i.e., how Applicant's known and acknowledged drug use history could affect her personal, professional, or community standing and open the door for the disqualifying vulnerability to outside influence. The Judge did not explain this in his original Decision and failed to cure the error on remand.

ISCR Case No. 23-02402 at 2-3 (App. Bd. May 27, 2025). Applicant disclosed her history of involvement with illegal drugs to security officials, her husband, and her employer. She could not be coerced by her history of illegal drug involvement. AG ¶ 16(e) is refuted. However, AG ¶ 16(c) is established. As indicated previously, Applicant's lengthy history

of involvement with illegal drugs was insufficient to warrant disqualification under Guideline H, and it adds to a whole-person assessment of questionable judgment and reliability.

Consideration of personal conduct mitigating conditions is required. AG ¶ 17 lists one condition that could mitigate personal conditions security concerns, AG ¶ 17(c) states, “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.” As discussed in the drug involvement and substance misuse section, *supra*, “so much time has passed” and “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.” AG ¶ 17(c) is established for the same reasons that AG ¶ 26(a) is established. Personal conduct security 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 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 H and E 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 33-year-old help desk technician employed by a federal contractor since April 2023. She earned two associate degrees in May 2017, and she enrolled in a bachelor’s degree program in August 2022. She married in September 2025, and she has a six-year-old daughter.

Applicant has excellent performance evaluations and strong support statements establishing her good character from family, friends, and coworkers. The general sense of the statements of her character witnesses is that Applicant has strong religious faith and is dedicated to her daughter’s welfare. She is professional, honest, diligent, and trustworthy.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse and criminal conduct sections, *supra*. The reasons for granting Applicant's security clearance are more persuasive than the reasons for denial of her security clearance.

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. Drug involvement and substance misuse and personal conduct security concerns are mitigated.

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 through 1.e: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

Considering all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge