



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-02034

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: Bradley P. Moss, Esq.

09/05/2025

**Decision**

HARVEY, Mark, Administrative Judge:

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

**Statement of the Case**

On September 9, 2020, and July 11, 2023, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCAs). (Government Exhibit (GE) 1; GE 2) On February 3, 2025, 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 Guideline H. (HE 2) On February 27, 2025, Applicant provided a response to the SOR and requested a hearing. (HE 3) On April 25, 2025, Department Counsel was ready to proceed.

On May 5, 2025, the case was assigned to me. On May 20, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for June 23, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered four exhibits; Applicant provided six exhibits; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 7, 11-14; GE 1-GE 4; Applicant Exhibits (AE) A-AE F) Applicant requested and I approved administrative notice of ISCR Case No. 24-00914 at 3-4 (App. Bd. Apr. 9, 2025)(addressing evolving landscape of marijuana law in the United States and need for consideration of that reality in context of whole-person assessment of applicant's prior marijuana use) and 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 (SecEA Guidance) (Dec. 21, 2021) at 2 (emphasizing prior use of marijuana is relevant but not determinative to eligibility determination). (Tr. 9, 14; HE 4) The administrative notice materials are addressed in the analysis section, *infra*. On July 3, 2025, DOHA received a transcript of the hearing. No exhibits were received after his hearing. (Tr. 105)

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 in part and denied in part the allegations in SOR ¶ 1.a. (HE 3) He also provided mitigating information. (HE 3) His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 38-year-old chief product officer who has been an employee of a Defense contractor since January 2020. (Tr. 50-51, 58) He has access to classified information for about five percent of his work. (Tr. 52) He did not have any adverse or negative incidents at work. (Tr. 70) He has never been accused of a security violation. (Tr. 83) In 2005, he graduated from high school. (Tr. 52) He has not served in the military. (GE 2) In 2022, he married, and he has a one-year-old child. (AE F) He has worked in product management since about 2015. (Tr. 52) If his security clearance is revoked, he believes he will retain his current employment. (Tr. 82)

## **Drug Involvement and Substance Misuse**

SOR ¶ 1.a alleges, Applicant "used and purchased marijuana on various occasions between at least January 2001 and August 2024, including on various occasions while holding a sensitive position, i.e., one for which [he] held a security clearance." In

Applicant's SOR response, he articulated a well-written chronology of marijuana-related events as follows:

I admit that in my first Standard Form 86 ("SF86"), which I submitted in approximately July 2020, I disclosed both the use and purchase of marijuana dating all the way back to 2001. . . . I sat for a subject interview January 8, 2021 ("First Interview"), in which I addressed my SF86 disclosures about the use and purchase of marijuana in the past. As I noted in my First Interview, my drug use was exclusively recreational and was never consistent or regular. I estimated that the use between 2001 and January 2020 was no more than 5-6 times each year. . . . [However,] it does not mean that every year there was use and/or purchases of marijuana. The purchases of marijuana I made during these years only occurred at commercial dispensaries in states or countries where it was legalized. I never purchased drugs "off the streets" or from a dealer. As I explained in my First Interview, I have never had drug counseling or treatment. I never failed a drug test. I was never arrested, charged or prosecuted tied to my past use or purchase of marijuana. I have never been diagnosed with a drug abuse condition.

At the time I submitted my SF86 and participated in the First Interview, I had never previously been vetted for a security clearance or had access to classified information. This was an entirely new process for me. I stated in my First Interview that I did not socialize with individuals who use drugs illegally or are involved in criminal activity. My statement was meant in the context that the individuals I associated with who did still use marijuana were only doing so in states or countries where it was legalized. . . . In preparation for submitting this Answer to the SOR, I have reviewed the training modules that were used to refresh my memory. I do not see any part that specifically addressed the distinction between state and Federal law on marijuana. With the benefit of hindsight, I understand that I should have sought clarification at the time on this issue anyway.

On July 11, 2023, I submitted another SF86, this time as part of an upgrade investigation to increase my clearance to Top Secret. I disclosed my marijuana use that continued after first being granted a security clearance, noting that I had used as recently as October 2022, while holding a security clearance. Consistent with my misunderstanding of the distinction between state law and Federal law for a clearance holder, I voluntarily and properly disclosed without hesitation that I was still using marijuana.

I sat for a second subject interview on August 23, 2024 ("Second Interview"). In my Second Interview, the investigator asked if I had made a mistake with my dates for the last date of drug use and I said no, that I had correctly noted I was still sporadically using marijuana to aid in falling asleep once or twice each month. It was then, for the first time, that a security official explicitly told me that I could not use marijuana while holding a

security clearance, even if legal under the state law. I remember responding in shock, saying I did not realize I could not do so and that I thought all that mattered was that it was legal in [my state of residence]. I did state that now that I was now aware of the distinction, I would cease any future use. I have not used marijuana since August 2024.

In my Answers to Interrogatories, dated January 13, 2025, ("Answers"), I provided largely the same information about the frequency of use of marijuana over the years. . . . (HE 3)

Applicant occasionally used marijuana in high school. (Tr. 54) He received several drug tests over the years when he started employments. (Tr. 53) He did not use marijuana between 2005 and about 2014. (Tr. 55-56, 79-80) In 2014, the use of marijuana was legalized under state law where he resides. (Tr. 56) When he was using marijuana, he did not consider the status of marijuana under federal law. (Tr. 63) From 2014 to 2016, he used marijuana a total of about five times. (Tr. 55) From 2016 to 2020, he used marijuana sporadically about once or twice a month to help him sleep; however, he did not use marijuana every month. (Tr. 56, 59-60) He has never failed a drug test. (Tr. 53) He has never been arrested or charged with an offense as an adult involving use of an illegal substance. (Tr. 53) He has never sold marijuana. (Tr. 57) He has not used any illegal drugs except for marijuana. (Tr. 55) He has never been diagnosed with a substance use disorder. (Tr. 53)

In his September 9, 2020 SCA Applicant said his last use of marijuana was in January 2020, and his marijuana use was in the past. (GE 1 at 32) His SCA asked him to "provide [an] explanation or why you intend or do not intend to use this drug or controlled substance in the future." *Id.* Applicant responded, "Do not plan to use this drug recreationally any longer as a result of my current employment/obtaining of a security clearance." *Id.*

In Applicant's January 8, 2021 Office of Personnel Management (OPM) interview, he said he would not be involved with illegal drugs in the future because he needed a security clearance. (Tr. 64-65) At the time he made this statement to the OPM investigator, he did not fully appreciate the serious nature of his marijuana statements. (Tr. 64-65, 89) He may have been thinking about illegal drugs other than marijuana. (Tr. 89) He did not receive any security training in which he was told he was not permitted to use marijuana while holding a security clearance. (Tr. 66) He did not seek information about using marijuana while holding a security clearance. (Tr. 67)

From 2021 to 2024, Applicant used marijuana up to twice a month to help him sleep. (Tr. 68) He did not seek medical attention for insomnia because it was infrequent and somewhat insignificant to him. (Tr. 71) He used marijuana from a device similar to a vape pen while sitting on the porch of his residence. (Tr. 69) He did not drive after using marijuana. (Tr. 70) He purchased marijuana from a dispensary. (Tr. 70) In his July 11, 2023 SCA Applicant said his last use of marijuana was in October 2022, and he intended to use marijuana in the future. (GE 2 at 32)

After the second OPM interview on August 23, 2024, he did not use marijuana. (Tr. 71-75) His company's policy prohibits marijuana use; however, there is no evidence he was aware of the company policy when he was using marijuana. (Tr. 86) He does not possess any marijuana in his residence. (Tr. 80) He promised not to use marijuana in the future. (Tr. 76)

Applicant had private urinalysis tests on February 10, 2024, and on June 17, 2025, which were negative for illegal substances. (Tr. 95; AE A; AE B) He received security training in 2025. (AE C)

### **Character Evidence**

A female friend who has known Applicant for 17 years and cohabited with him for part of that time, said his marijuana use was less than five times per month. (Tr. 20-21) He went for several years without using marijuana. (Tr. 21-23) He used marijuana at home in the evening mostly as a sleep aid. (Tr. 22, 29) He did not drive after using marijuana. (Tr. 24) His marijuana use did not adversely affect his work or home life. (Tr. 24) She did not have any information about his failing a drug test or being diagnosed with a substance use disorder. (Tr. 28) He did not use any other illegal drugs. (Tr. 23) He does not currently use marijuana. (Tr. 30) He did not understand until recently that marijuana was a prohibited substance under federal law. (Tr. 31) She considered Applicant to be a trustworthy and reliable person. (Tr. 32-33) She recommended that he receive a security clearance. (Tr. 33)

Applicant's brother-in-law is a police officer, and he lives about two miles from Applicant. (Tr. 39-40) Marijuana use is legal for recreational and medical use in their state of residence. (Tr. 41) There are no state-law restrictions on persons over 21 years of age from using marijuana. (Tr. 42) It is a crime to operate a vehicle while under the influence of marijuana. (Tr. 42) He has never observed Applicant to be under the influence of any substance. (Tr. 45) He has not smelled marijuana on Applicant or in his residence. (Tr. 45) Applicant used marijuana about twice a month to help him sleep. (Tr. 46) He did not use marijuana before going to work or before driving his vehicle. (Tr. 46) Applicant's wife used marijuana recreationally, and she stopped using marijuana about two years ago. (Tr. 49) Applicant's brother-in-law believes Applicant is trustworthy and recommends that he receive access to classified information. (Tr. 47-48)

Applicant's wife said she had "absolute confidence in [Applicant's] integrity, reliability, and judgment. He is unfailingly responsible[.]" (AE F) His spouse described his marijuana use as follows:

[Applicant] used [marijuana] typically once or twice in a month. There were entire months in which he did not use it at all. The only reason regarding which I am aware for why he was using marijuana was to help him sleep, and the only time I ever saw him use it was in the evening when he was getting ready to go to bed. I have never seen him use marijuana in any other situation, nor have I ever had reason to suspect he was using it in other

situations. He does not have drug paraphernalia around the house and we do not routinely associate with individuals who use illegal drugs.

After sitting for the August 2024, interview, and after the investigator clarified for him that the state legalized status of marijuana in [his state of residence] did not permit [Applicant] to use marijuana as a clearance holder, he immediately stopped using marijuana entirely. He has not used since [that interview] and I have no reason at all to believe he will use again in the future. (AE F)

Two coworkers and friends, including the chief executive officer and facility security officer of his current employer, praised Applicant for his diligence, trustworthiness, judgment, and reliability. (AE D; AE F) Their statements support approval of his access to classified information.

## 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 security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; "(c) illegal possession of a controlled substance . . . ."; and "(f) any illegal drug use while granted access to classified information or holding a sensitive position." The record establishes AG ¶¶ 25(a), 25(c), and 25(f). 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.

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 he possessed and used marijuana while having access to classified information. Marijuana is listed on Schedule I, 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> (information link on bottom of web page). His multiple possessions of marijuana are federal crimes. "As a Schedule I Controlled Substance, it has 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)

The SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications 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 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 the assessment of mitigation of illegal drug involvement: 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 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 occasionally used marijuana in high school. He did not use marijuana between 2005 and about 2014. In 2014, his use of marijuana was legalized in his state of residence under state law. From 2014 to 2016, he used marijuana a total of about five times. From 2016 to 2021, he used marijuana sporadically about once or twice a month to help him sleep; however, he did not use marijuana every month. When he was using marijuana, Applicant did not consider the status of marijuana under federal law. His uses of marijuana prior to having access to classified information are not recent and are of limited or low security significance.

From 2021 to 2024, Applicant used marijuana up to twice a month to help him sleep. After the second OPM interview on August 23, 2024, he did not use marijuana. He does not possess any marijuana in his residence. He does not associate with known marijuana users. In his first SCA, he promised not to use marijuana in the future.

Applicant possessed and used marijuana after he completed SCAs on September 9, 2020, and on July 11, 2023 and had his first OPM interview. "The Board has 'long held that applicants who use marijuana [or other illegal drugs] 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).

Applicant provided some important mitigating information. He disclosed his involvement with marijuana during the security clearance process. His possession and use of marijuana were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. He was unaware of his company policy at his current employment regarding marijuana use. He was not fully aware of the significance of federal law, which prohibits marijuana possession. He does not associate with known marijuana users. His marijuana involvement did not include selling marijuana, and he does not currently possess marijuana. He promised not to use illegal drugs in the future.

AG ¶¶ 26(a) and 26(b) do not fully apply to SOR ¶ 1.a because Applicant has not established a sufficient period of abstinence from marijuana purchase, possession, and use. His decisions to purchase, possess, and use illegal drugs, while occupying a sensitive position, after completion of his SCAs, and while having access to classified information are indications he lacks the qualities expected of those with access to national secrets. 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).

The time between Applicant's involvement with marijuana and his hearing was about 11 months (August 2024 to July 2025). This period is insufficient under the circumstances to establish a pattern of abstinence. His relatively recent involvement with marijuana while having access to classified information continues to cast doubt on his current reliability, trustworthiness, and judgment. None of the mitigating conditions fully apply. Guideline H security concerns are not mitigated at this time.

## **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 Guideline H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 38-year-old chief product officer who has been an employee of a Defense contractor since January 2020. He has access to classified information for about five percent of his work. He did not have any adverse or negative incidents at work. He has never been accused of a security violation. He has worked in product management since about 2015.

The general sense of the statements of Applicant's spouse, coworkers, friends, and brother-in-law is that Applicant is reliable, trustworthy, responsible, honest, and diligent. The character evidence supports reinstatement of his security clearance.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse section, *supra*. The reasons for denial of Applicant's 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. Drug involvement and substance misuse security concerns are not mitigated.

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 H:                                   **AGAINST APPLICANT**

Subparagraph 1.a:   Against 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