



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



In the matter of:

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Applicant for Security Clearance)

ISCR Case No. 24-00256

Appearances

For Government: Andrea M. Corrales, Esquire, Deputy Chief Department Counsel
For Applicant: *Pro se*

02/07/2025

Remand Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and substance misuse. Eligibility for a security clearance is denied.

Statement of the Case

On December 24, 2022, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 29, 2023, an investigator from the U.S. Office of Personnel Management (OPM) interviewed him. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on December 21, 2023. On another unspecified date, DOHA issued him another set of interrogatories. He responded to those interrogatories on February 27, 2024. On April 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4),

National Security Adjudicative Guidelines (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline H (Drug Involvement and Substance Misuse) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 16, 2024, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM), including proposed Government Exhibits (GE), was mailed to him by DOHA on June 26, 2024, and he was afforded an opportunity, within a period of 30 days, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on July 23, 2024. His response was due on August 22, 2024. As of August 28, 2024, no response had been received. The case was assigned to me on October 11, 2024, and there was still no response to the FORM.

On October 16, 2024, after having considered all the evidence, I issued a decision in the case that it was not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, his access to classified information was denied. Applicant subsequently appealed that decision.

On January 16, 2025, the DOHA Appeal Board issued a decision, remanding the case for the following reasons involving "Statement of Intent" and "Sensitive Position."

Statement of Intent:

In concluding that Applicant's marijuana use was unmitigated, the Judge noted that Applicant "had not submitted 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." Decision at 4, 7-8.¹ On appeal, Applicant successfully challenges this finding.

Applicant, in his mid-20s and a resident of a state where adult recreational marijuana use is legal at the state level, was hired by a federal contractor in July 2022. In his December 2022 initial security clearance application (SCA), he disclosed that he had used marijuana from about March 2018 to February 2022, and stated his intention against using the drug again. During his August 2023 clearance interview, Applicant volunteered that he had used marijuana one additional time the prior month and again asserted his intention to not use marijuana in the future.

¹ The Judge further noted that, "as of the closing of the record, Applicant still had in place his seemingly set-aside previous declaration that he would not use marijuana in the future." *Id.* at 7.

In his May 2024 Answer to the SOR (Answer), Applicant admitted the alleged marijuana use, explaining that, “I used Marijuana a single time in July 2023 after stopping use in February of 2022. I avoid any environment where Marijuana was used. Using it that one time in July of 2023 does not change my resolve to never use Marijuana again.” Answer at 2. Contrary to the Judge’s multiple findings that Applicant submitted no updated Statement of Intent, Applicant concluded his Answer with the following signed attestation:

I, [Applicant], intend to abstain from all drug involvement and substance misuse, acknowledging that any future involvement is grounds for revocation of national security eligibility.

Id. The record before us supports that the Judge did not consider the updated Statement of Intent in his mitigation analysis, which constitutes harmful error as it potentially impacted application of mitigating condition AG ¶ 26(b).²

Sensitive Position:

The Judge’s finding that Applicant was employed in a “sensitive position” also warrants discussion. The Judge found that Applicant was hired “in a sensitive position in July 2022, and thereby concluded that Applicant’s July 2023 marijuana use afforded application of disqualifying condition AG ¶ 25(f).³ Decision at 7. The finding, however, is unsupported by the record.

We have previously held that the term “sensitive position” does not encompass any and all employment with a defense contractor, and that “an individual cannot hold an initial sensitive position prior to commencing a background investigation.” ISCR Case No. 22-02623 at 4 and n.3 (App. Bd. Jan. 24, 2024) (“[A]n individual cannot hold a national security position, to include a sensitive position, until they are found eligible to do so, which either requires favorable completion of the investigative and adjudicative processes or, in exceptional circumstances, may be granted on a temporary basis while the investigation is underway.”).

Applicant’s initial background investigation began with his December 2022 SCA submission and it was erroneous to find that he held a sensitive

² AG ¶ 26(b) - the individual acknowledges his or her drug involvement and substance misuse, provided evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to . . . (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.

³ AG ¶ 25(f) – any illegal drug use while granted access to classified information or holding a sensitive position.

position prior to that date. Moreover, although Applicant could have been granted temporary eligibility while the investigative and adjudicative processes were ongoing, the record is silent to that matter and there is no basis to conclude that he held a sensitive position at the time of his July 2023 marijuana use. To the contrary, the record's only evidence regarding the subject is that Applicant *did not* hold a sensitive position at the time of his marijuana use. See File of Relevant Material (FORM) Item 4 at 5; FORM Item 5 at 6.

The erroneous finding that Applicant was employed in a sensitive position was harmful in that it formed the basis of the Judge's application of AG ¶ 25(f) and contributed to his conclusion that Applicant's "continued use of marijuana after July 2022 . . . raises questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations." Decision at 7.

In light of the foregoing, the best resolution of this case is to remand it to the Judge to correct the identified errors and for further processing consistent with the Directive. See ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) ("[Remand] is appropriate when the legal errors can be corrected through remand and there is a significant chance of reaching a different result upon correction, such as when a judge fails to consider relevant and material evidence."). Upon remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision; however, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.130.

Findings of Fact

In his Answer to the SOR, Applicant, admitted with comments, the factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. through 1.d.). Applicant's admissions and acknowledgments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 25-year-old employee of a defense contractor. He has been serving as a software engineer since July 2022. He was previously self-employed as a part-time ice hockey referee (September 2018 – August 2022). A 2017 high school graduate, he received a bachelor's degree in 2021. He has never served with the U.S. military. While he is sponsored for a security clearance or for a sensitive position, he has never held a security clearance. He has never been married.

Drug Involvement and Substance Misuse, and Personal Conduct

In his December 2022 SF 86, at Sec. 23 – Illegal Use of Drugs or Drug Activity, Applicant candidly acknowledged that, during the last seven years, he had previously used a variety of “legal” and “illegal” substances and had misused a prescription drug. During his August 2023 OPM interview, he essentially confirmed his earlier admissions. Based on Applicant’s admissions and comments up until the date he submitted his SF 86, the following facts have clearly been established:

Applicant was an illegal substance user, and one of his substances of choice was tetrahydrocannabinol (THC) – also known as marijuana – a Schedule I Controlled Substance. From March 2018 through February 2022, he and several friends would make bulk purchases of marijuana every six to eight weeks at a local dispensary in a state where it was legal. He smoked the marijuana in social settings with his friends at parties or merely hanging out in a dorm or apartment a few times per week during that time period, never expecting to work in a government job. At some point, he decided that the marijuana made him feel lazy and anxious, so he lost interest in it and stated that he had no interest or intent in using it again. (Item 3 at 31-32; Item 4 at 5, 9; Item 5 at 2-4)

During the period April 2019 through September 2021, Applicant also “experimented” on fewer than 12 occasions, or approximately 12 times, by snorting powdered cocaine – a Schedule II Controlled Substance – that was furnished to him by one particular long-time friend. He used the cocaine in social settings because it was a pop culture drug known to be fun. Although the substance made him feel docile, he failed to experience the “fun” and instead he felt groggy and dazed. He stated that he does not intend to use cocaine in the future. (Item 2 at 2; Item 3 at 32-33; Item 4 at 5, 9; Item 5 at 2, 4)

During the period July 2019 through August 2019, Applicant “experimented” by using on two occasions 3,4-methylenedioxymethamphetamine, also known as ecstasy – a Schedule I Controlled Substance – that was furnished to him by his long-time friend. His first use took place at a concert. Applicant anticipated that the substance would be enjoyable, but instead it made him feel more awake and not necessarily good. He stated that he does not intend to use ecstasy again because he did not like the way it made him feel, it hurt his stomach, made him feel groggy and dazed, and he did not like the way people on it acted. (Item 2 at 2; Item 3 at 33; Item 4 at 5, 9; Item 5 at 4, 8)

On two occasions during final exams in May 2018 and during a midterm exam in November 2018, Applicant used the prescription drug Adderall, for which he did not have a prescription, while trying to focus for his exams. The drug was given to him without cost by a friend who had a prescription. The drug made him feel “wired and attentive, but he did not like the anxiety or feeling groggy and dazed the next day associated with it. He does not intend to use the drug ever again. (Item 2 at 2; Item 3 at 34; Item 4 at 5, 9; Item 5 at 4, 8)

In May 2022, Applicant underwent a drug test the result of which was negative for drugs. (Item 4 at 11) As noted above, when Applicant submitted his SF 86 in December

2022, he clearly stated that he had no interest or intent in using marijuana in the future. In July 2022, he became an employee of a federal contractor whose General Corporate Policy is to have a substance-free workplace where prohibited substances such as those specifically defined as controlled substances under federal law are prohibited. (Item 5 at 10-14) During his August 2023 OPM interview, Applicant admitted that on July 22, 2023 – approximately a year and one-half after he stopped using marijuana – at a friend’s birthday party cookout, shortly after a “relationship breakup,” he “took a hit” or smoked marijuana out of a vape pen that a friend’s girlfriend gave him. He claims he immediately regretted doing so because of his commitment to his job and the country. He said he avoids any environment where marijuana was used, and that his one-time use in 2023 does not change his resolve to never use marijuana again. (Item 2 at 2; Item 4 at 4, 9; Item 5 at 2, 4)

As I previously noted in my initial decision, at the closing of the record, with the exception of his repeated comments in his May 2024 Answer to the SOR, in his February 2024 responses to the interrogatories, during his August 2023 OPM interview, and in his December 2022 SF 86, that he had no intention to ever use marijuana again in the future, Applicant had not submitted 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; and had not submitted verifiable proof that he had disassociated himself from drug-providing associates. Although offering such commentary in response to the FORM would have been a perfect opportunity to do so, Applicant chose instead to be silent. There is no evidence to indicate that Applicant ever reported his marijuana use to his employer’s security manager or to anyone else where he worked. He has never received counseling or treatment associated with his drug use. (Item 4 at 10)

With respect to the Appeal Board’s position on Applicant’s Statement of Intent, I am not fixated on a physical document but rather on Applicant’s overall position. In his December 2022 SF 86 he wrote that he would no longer use marijuana, claiming that he last did so in February 2022. Nevertheless, despite his written declaration, in July 2023, he resumed his use of marijuana on one brief occasion. More recently, he repeated his earlier intention to abstain from all drug involvement and substance misuse during his OPM interview, in his interrogatories, and in his Answer to the SOR. In addition, he offered no verifiable proof that he had disassociated himself from drug-providing associates such as his friend’s girlfriend at a birthday cookout in July 2023. Although the Appeal Board determined that I did not consider Applicant’s “updated Statement of Intent,” I did consider it but gave it much less weight since he had already violated his initial declared promise.

Regarding the Appeal Board’s determination that I found that Applicant was hired in a “sensitive position” in July 2022. That interpretation is inaccurate for in my Findings of Fact I merely noted that Applicant had been serving as a software engineer since July 2022, and I made no determination that he was in a “sensitive position.” The confusion arose not because of my finding but because of an error in applying a disqualifying condition in my analysis. The Appeal Board is correct in that Applicant was not in a sensitive position at the time. Nevertheless, while he may not have been in a sensitive position, Applicant had already submitted his SF 86 to commence the security clearance

eligibility process, and that was a factor in analyzing Applicant's overall future intent and security clearance eligibility.

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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of several variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable, and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). "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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation, or mitigation, sufficient to overcome the doubts raised by the Government's case. 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))

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, at 531)

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, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains

adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In addition, on December 21, 2021, the DNI issued Memorandum ES 2021-01529, *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*, which states in part:

. . . disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position....

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.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including . . . purchase; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Commencing as far back as March 2018, and continuing periodically until as recently as July 2023, Applicant legally and illegally purchased, as well as used, marijuana, purportedly "experimented" with cocaine on about a dozen occasions, experimented with ecstasy twice, and also used a prescription drug that was not prescribed for him. His "experimentation" with cocaine took place between April 2019 and September 2021 but was never continued thereafter. His experimentation with ecstasy took place during a two-month period in 2019 but was not continued thereafter. His illegal use of the prescription drug Adderall, for which he did not have a prescription, took place on two occasions in 2018 but was never continued thereafter. His marijuana use, though paused for over a year and one-half, resumed in July 2023 after he had submitted his SF

86 in December 2022 and after he was hired by an employer with a drug free workplace in July 2022. Applicant's continued use of marijuana after July 2022, and especially after he submitted his SF 86, raises questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 22-02132 at 4 (App. Bd. Oct. 27, 2023); ISCR Case No. 23-00093 at 3 (App. Bd. Nov. 21, 2023). Applicant was aware that marijuana use was illegal federally, and against his corporate policy, even if it was legal in his state, but he used it at least one more time. See ISCR Case No. 20-02974 at 6 (App. Bd. Feb. 1, 2022); ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015).

Applicant's comments regarding future use of marijuana creates some confusion regarding his true intentions. He initially intended never to use it again, but after a one and one-half year period of purported abstinence, he resumed it once again, however briefly. His repeated "no intent" comments and resumption of such use, even one time, reflects an equivocation or failure to clearly and convincingly commit to discontinue such misuse. Even if he reinstates his initial intention, because he has already violated that declared intention once, his renewed statement of intent is decreased in weight. AG ¶¶ 25(a), 25(c), and 25(g) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

As noted above, in his December 2022 SF 86 Applicant wrote that he would no longer use marijuana, claiming that he last did so in February 2022. Nevertheless, despite his written declaration, in July 2023, he resumed his use of marijuana on one brief occasion. More recently, he repeated his earlier intention to abstain from all drug involvement and substance misuse during his OPM interview, in his interrogatories, and in his Answer to the SOR. He offered no verifiable proof that he had disassociated himself from drug-providing associates such as his friend's girlfriend at a birthday cookout in July 2023. I considered Applicant's renewed statements of intent but gave them much less weight since he had already violated his initial declared promise. AG ¶ 26(b) has not been established.

It is clear that from about March 2016 and continuing until at least September 2021, Applicant was imbedded in an environment where drug use thrived. Applicant essentially

became a regular marijuana user and a frequent cocaine user. His use of ecstasy and Adderall was fairly limited, and by now, stale. With respect to his past involvement with cocaine, ecstasy, and Adderall, AG ¶ 26(a) has been established. However, with respect his past purchase and use of marijuana, and his resumption of such use after he had accepted his corporate position, submitted his SF 86, and repeatedly declared he had no intention of using marijuana again, but then did so, AG ¶ 26(a) has not been established.

A person should not be held forever accountable for misconduct from the past. Continued abstinence is to be encouraged, but, when balanced against his full history of drug use, especially his marijuana use, the resumption of his marijuana use after a relatively brief period of purported abstinence is considered insufficient to conclude that the abstinence will continue, especially after so much confusion regarding his future intentions. Applicant's use of marijuana for such a lengthy period, continues to cast doubt on his current reliability, trustworthiness, and good judgment.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case considering the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

My comments associated with Applicant's drug involvement and substance misuse are incorporated herein. Applicant is a relatively young employee of a defense contractor for which he has been serving as a software engineer since July 2022. While in college he experimented with some illegal substances, periodically used other illegal substances or used a prescribed medication that was not prescribed for him, and regularly purchased and used marijuana, something that was legal in the state where he was located. The college-based drug culture was acceptable to him because he never expected to work in a government job. He was hired by a government contractor with a drug-free workplace, and he candidly acknowledged his past involvement in drug involvement and substance

misuse and pledged to never use those substances in the future. If the facts had ended at that point, Applicant would probably not be currently having his eligibility for a security clearance questioned. However, the story continued when he resumed using marijuana, even on one occasion. That resumption raised a degree of equivocation surrounding his future intent regarding using marijuana.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his drug involvement and substance abuse. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

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

Subparagraphs 1.b. through 1.d.: For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge