



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



In the matter of:

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ISCR Case No. 19-02124

Applicant for Security Clearance

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: Daniel P. Meyer, Esq.

08/25/2020

**Decision**

HARVEY, Mark, Administrative Judge:

Security concerns under Guideline E (personal conduct) are fully addressed under Guideline H (drug involvement and substance misuse). He failed to mitigate security concerns under Guideline H because his most recent marijuana use was on April 20, 2018, and his marihuana use was inconsistent with his promises not to use marijuana in 2014, 2015, and 2017. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 11, 2014, and October 18, 2017, Applicant completed and signed Questionnaires for National Security Positions or security clearance applications (SCA). (Government Exhibit (GE) 1, GE 3) On September 10, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; 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 DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H and E. (HE 2) On November 20, 2019, Applicant responded to the SOR and requested a hearing. (HE 3) On February 7, 2020, Department Counsel was ready to proceed.

On February 19, 2020, the case was assigned to me. On March 5, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting Applicant's hearing for March 27, 2020. (HE 1A) The hearing was cancelled due to the coronavirus. On July 28, 2019, DOHA issued a hearing notice setting Applicant's hearing for August 4, 2020. (HE 1B) On August 3, 2020, the hearing was delayed until August 6, 2020, due to bad weather. Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Transcript (Tr.) 5-6).

During the hearing, Department Counsel offered four exhibits; Applicant offered seven exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 12-15, 38-39; GE 1-4; Applicant Exhibit (AE) A-G) On August 17, 2020, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

### **Findings of Fact**

In Applicant's SOR response, he admitted all of the SOR allegations in whole or in part. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 28-year-old analyst employed by a federal government contractor for the previous three years. (Tr. 16; GE 1; AE A; AE F) In 2011, he received a high school diploma. (GE 3) In 2013, he received an associate's degree. (GE 3) He has a bachelor's degree with a major in history. (AE A) He has not served in the military. (GE 1) He is not married, and he does not have children. (GE 1) His employer recently promoted him to a leadership position. (AE D) In his current position, he is not involved with classified information. (Tr. 22)

### **Drug Involvement and Substance Misuse**

SOR ¶ 1.a alleges that Applicant used marijuana with varying degrees of frequency from about June 2011 to about July 2014. Applicant said he used marijuana on about five to ten occasions during this time period. (Tr. 25-26; AE F at 1) In his September 11, 2014 SCA Applicant disclosed his marijuana use; he said he used marijuana less than 10 times; and he said he did not intend to use marijuana in the future. (Tr. 26; GE 3) In Applicant's February 11, 2015, Office of Personnel Management (OPM) personal subject interview (PSI), he said he did not intend to use marijuana in the future. (Tr. 27)

SOR ¶ 1.b alleges that Applicant used marijuana in December 2016, while granted access to classified information. On New Year's Eve in 2016, Applicant was intoxicated by alcohol consumption, and he took two puffs on a marijuana cigarette. (AE D) He held a security clearance; however, at that time he did not have actual access to classified information. (Tr. 26-27; AE D)

In his October 18, 2017 SCA Applicant disclosed his marijuana use in 2016, and he said he did not intend to use marijuana in the future. (Tr. 27-28; GE 1) He explained, "I would like to not compromise my clearance." (GE 1) His follow-up OPM PSI was on August 5, 2019. (GE 2)

SOR ¶¶ 1.c and 1.d allege that Applicant used marijuana in April 2018, after completing his SCA on October 18, 2017, and while granted access to classified information. On April 20, 2018, Applicant was intoxicated from alcohol consumption. (AE D) He was with his friends when he consumed a cookie containing marijuana. (AE D) Applicant admitted he used marijuana on April 20, 2018 at a small gathering for the unofficial National Marijuana Holiday. (Tr. 28-31) He admitted he held a security clearance when he used marijuana. (AE D)

Applicant said that after his marijuana use in April 2018, he improved his ability to manage stress. (Tr. 18) He was intoxicated and under stress the two most recent times he used marijuana. (Tr. 18) He started an exercise program one to three days a week to manage stress, and he has "strictly limited contact with [his] family" which is usually the source of his stress. (Tr. 19) He has not consumed alcohol in months. (Tr. 32) On October 4, 2019, and July 10, 2020, Applicant provided a hair sample, which tested negative for the presence of a panel of illegal drugs, including marijuana. (AE F; AE G)

On October 18, 2019, a substance-abuse therapist assessed Applicant's propensity for future illegal drug use, and she concluded he was at a "very low risk" to abuse illegal drugs because of his "history of sporadic, recreational use and the gravity of the consequences of his use outweighing its value to the client. The detrimental impact on his security clearance and the risk of losing his job far exceed [marijuana's] usefulness to [Applicant]." (Tr. 19; AE D at 2; AE F at 1, 4) Applicant does not associate with anyone involved in the 2016 marijuana use. (Tr. 20) He ended his association "with the majority of people" who used marijuana with him in the past. (Tr. 20)

Applicant received counseling about how to abstain from illegal drug use in the future, and he promised not to use marijuana in the future. (Tr. 20-21) He provided a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. (Tr. 20-21; AE F; see AG ¶ 26(b)(3)) He promised not to use marijuana in the future because he has a better understanding on the adverse effect of using marijuana on his access to classified information. (Tr. 33)

## Personal Conduct

SOR ¶ 2.a alleges that Applicant showed poor judgment when he engaged in the conduct alleged in SOR ¶¶ 1.b through 1.d. Appellant was honest about his marijuana use on his September 11, 2014, and October 18, 2017, SCAs and in the follow-up OPM PSIs. He advised his employer of his marijuana use. (AE D)

## Character Evidence

Five roommates, friends, and/or coworkers provided character statements supporting reinstatement or continuation of Applicant's access to classified information. (AE E) The general sense of their statements is that Applicant is friendly, conscientious, honest, reliable, professional, stable, calm, empathetic, and trustworthy. He consumes alcohol in moderation (one or two drinks). His character witnesses are familiar with his marijuana use as indicated in the SOR. None of his character statements said they observed him using illegal drugs.

There is no evidence that Applicant received any adverse employment actions, violated security rules, or otherwise compromised national security. Appellant described himself as being passionate about the protection of national security, and he indicated he is an excellent analyst who can contribute to national defense. (Tr. 21) A security clearance will enable him to make greater contributions to national security and the protection of the United States. (Tr. 21)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

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, nothing in this decision should 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 DNI 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). “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted). “The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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 including: “(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.” Applicant admitted marijuana possession and use on about five occasions from June 2011 to April 20, 2018. His marijuana possession and use in 2016 and 2018 occurred while he had access to classified information.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule (Sch.) I controlled substance. See Drug Enforcement Administration listing at [http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308\\_11.htm](http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm). See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I). AG ¶¶ 25(a), 25(c), and 25(f) are established.

AG ¶ 26 lists four conditions that could mitigate 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 argued that the following cases involving illegal drug use where administrative judges granted access to classified information were similar to his case: ISCR Case No. 17-02653 (A.J. Mar. 25, 2019); ISCR Case No. 18-00041 (A.J. Jan. 23, 2019); and ISCR Case No. 17-02117 (A.J. Oct. 15, 2018). (Tr. 37)

In ISCR Case No. 17-02117, the Applicant used illegal drugs while holding a security clearance and abstained from illegal drug use for three years before his hearing. In ISCR Case No. 17-02653, the Applicant used illegal drugs in November 2012 and July 2014; he refrained from using illegal drugs from July 2014 to his hearing on June 7, 2018; and the administrative judge did not find that he used illegal drugs while holding a security clearance. In ISCR Case No. 18-00041, the Applicant used illegal drugs on multiple occasions until January 2015 while holding a security clearance, and he did not use illegal drugs from January 2015 until his hearing on November 7, 2018.

The three cases Applicant cited are persuasive; however, they are not binding precedent, and they are different from Applicant's case. For example, in none of these cases, did the Applicants promise security officials that they would not use illegal drugs and then break that promise and use illegal drugs. All three of the Applicants abstained from illegal drug use for at least three years.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. The Appeal Board has rejected "bright line" rules for determining when conduct is "recent" stating:

[T]he Directive does not specify how much time must pass to mitigate the various types of misconduct identified in the adjudicative guidelines. Contrary to the Judge's conclusion, the Board has repeatedly declined to establish a "benchmark" or "bright-line" rule for evaluating the recency of misconduct. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole.

ISCR Case No. 18-02526 at 3 (Dec. 20, 2019) (rejecting two-year "benchmark" for alcohol abstinence as key factor in mitigation of alcohol-related misconduct) (citing ISCR Case No. 18-01926 at 4 (App. Bd. Sept. 20, 2019)). See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004)(reversing grant of security clearance due to recent marijuana use). If

the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” (*Id.*) In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation and format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, affirmed the administrative judge’s decision to revoke an applicant’s security clearance after considering the recency analysis of the administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse. In ISCR Case No. 14-00775 (App. Bd. July 2, 2015), the Appeal Board sustained the revocation of a security clearance for an Applicant, who did not hold a security clearance that used marijuana 20 months before the administrative judge decided the case.

In this case, Applicant used marijuana about five times. He used marijuana twice while holding a security clearance. His most recent marijuana use was on April 20, 2018, 28 months before his security clearance hearing. He promised not to use marijuana three times. Those three promises were made in a security context, twice on SCAs and once during an OPM PSI. He violated those promises when he used marijuana on April 20, 2018.



Appellant did not believe he would use marijuana in the future for the following reasons: (1) he reduced stress in his life; (2) he has an exercise program; (3) he does not consume alcohol; (4) he received some drug counseling; (5) he has limited access to or association with illegal drug users; and (6) he is motivated by employment considerations not to use marijuana in the future. He understands that possession of marijuana violates federal law and constitutes criminal conduct. I accept Applicant's statement that he intends to continue to abstain from illegal drug possession and use as credible. Applicant provided "a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility." See AG ¶ 26(b)(3).

Applicant has made positive steps towards rehabilitation; however, not enough time has elapsed without marijuana use under the totality of circumstances to establish that Applicant will continue to refrain from marijuana use in the future. His sincere intention now not to use marijuana might not be adhered to in the future especially if he becomes intoxicated. Guideline H security concerns are not mitigated at this time.

## 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 lists "conditions that could raise a security concern and may be disqualifying includ[ing]":

(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;

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

may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
  - (2) any disruptive, violent, or other inappropriate behavior;
  - (3) a pattern of dishonesty or rule violations; and
  - (4) evidence of significant misuse of Government or other employer's time or resources; and
- (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. (emphasis added to AG ¶¶ 16(c) and 16(d).

The SOR alleges and the record establishes that Applicant's illegal marijuana possession and marijuana use while holding a security clearance are "sufficient for an adverse determination under" Guideline H. AG ¶¶ 16(c) and 16(d) do not apply.

Applicant disclosed his marijuana use in two SCAs, his OPM PSI, his SOR response, and at his hearing. His character witnesses and employer are aware of his marijuana use. His history of marijuana use does not create a vulnerability to exploitation, manipulation, or duress because Appellant has been open and transparent about his marijuana use. The Guideline E allegations in this case are a duplication of the Guideline H allegations. AG ¶ 16(d) expresses the Directive's intent not to duplicate allegations under Guideline E that are made under another guideline. I find for Applicant under Guideline E because it is a duplication of the security concerns under the Guideline H.

### **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 28-year-old analyst employed by a federal government contractor for the previous three years. In 2013, he received an associate’s degree. He has a bachelor’s degree with a major in history. His employer recently promoted him to a leadership position.

Five roommates, friends, and/or coworkers provided character statements supporting continuation of Applicant’s access to classified information. The general sense of their statements is that Applicant is friendly, conscientious, honest, reliable, professional, stable, calm, empathetic, and trustworthy. He consumes alcohol in moderation (one or two drinks). See ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of “good security record,” and commenting that security concerns may nevertheless not be mitigated).

There is no evidence that Applicant received any adverse employment actions, violated security rules, or otherwise compromised national security. Appellant described himself as being passionate about the protection of national security, and he indicated he is an excellent analyst who can contribute to national defense. A security clearance will enable him to make greater contributions to national security and the protection of the United States.

After April 20, 2018, Applicant took steps to change, and he reduced stress in his life and his alcohol consumption. He sincerely assured he will not use marijuana in the future. Nevertheless, I have lingering doubts about whether he will keep his promise not to use marijuana in the future. He previously promised three times in a security context that he would not use marijuana again, and he broke those promises and used marijuana while holding a security clearance in 2016 and on April 20, 2018.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate drug involvement and substance misuse security concerns. I find for Applicant under Guideline E because it is a duplication of the security concerns under the Guideline H.

### **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
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge