



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 20-00125
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

05/27/2022

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s involvement with marijuana, lysergic acid diethylamide (LSD), methylenedioxymethamphetamine (MDMA), and cocaine, raises doubts about his judgment that are not yet fully mitigated. A March 2020 misdemeanor assault charge, for which he was on pretrial probation to September 2021, does not currently cast doubts about his judgment, reliability, and trustworthiness. Clearance eligibility is denied.

**Statement of the Case**

On October 9, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement and substance misuse. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative

Guidelines (AG) effective June 8, 2017, applicable to all adjudications for national security eligibility or eligibility to hold a sensitive position.

On June 17, 2021, Applicant answered the SOR allegations and indicated that he wanted a determination on the written record without a hearing. After some clarification, Applicant requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On September 16, 2021, the Government amended the SOR to allege Guideline J and Guideline E security concerns because of a March 2020 arrest and its disposition. Applicant responded to the amendment on October 7, 2021.

On October 27, 2021, the Government indicated it was ready to proceed to a hearing. On November 29, 2021, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case assignment and file on December 2, 2021.

On March 4, 2022, I informed Applicant that I was scheduling video conference hearings via Microsoft Teams. After some coordination of schedules with the parties, on March 9, 2022, I scheduled a hearing for April 26, 2022.

At the hearing, four Government exhibits (GE 1-4) were admitted into evidence without any objections, and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on May 5, 2022. I held the record open after the hearing, initially through May 17, 2022, for Applicant to submit documents.

Shortly after the hearing concluded, Applicant submitted a court record, which was accepted into evidence as an Applicant exhibit (AE A) without any objection. A copy of his college degree, submitted on May 9, 2022, was admitted into evidence without any objections as AE B. Between May 13, 2022, and May 17, 2022, Applicant submitted 27 statements from character references, primarily but not exclusively co-workers. The documents were accepted into evidence without any objections as AE C through AE CC.

On May 18, 2022, Applicant submitted an additional character reference statement. The Government had no objection to reopening the record or to its admissibility, and the document was accepted into the record as AE DD.

### **Findings of Fact**

The amended SOR alleges under Guideline H that Applicant used with varying frequency marijuana from approximately January 2007 to May 2019 (SOR ¶ 1.a); LSD from approximately January 2009 to December 2018 (SOR ¶ 1.b); cocaine from approximately January 2010 to December 2018 (SOR ¶ 1.c); and MDMA from approximately March 2010 to October 2010 (SOR ¶ 1.d); that Applicant purchased marijuana from approximately January 2007 to May 2019 (SOR ¶ 1.e) and cocaine from approximately January 2010 to approximately January 2018 (SOR ¶ 1.f); and that Applicant was charged with possession of marijuana in approximately November 2007 (SOR ¶ 1.g), September 2010 (SOR ¶ 1.h), and January 2011 (SOR ¶ 1.i).

Additionally, under Guidelines J (SOR ¶ 2) and E (SOR ¶ 3), Applicant was allegedly arrested in March 2020 and charged with assault and battery on a family or household member, intimidation of a witness, and malicious destruction of property (SOR ¶ 2.a, cross-alleged in SOR ¶ 3.a); and that he was on pretrial probation from March 21, 2021, until September 29, 2021 (SOR ¶ 2.b, cross-alleged in SOR ¶ 3.a).

In response to the SOR allegations, Applicant admitted the drug use, drug purchase, and drug charges. He provided a detailed statement (Answer), explaining that he used the drugs primarily while working in the restaurant industry and during his initial college experience. He indicated that he took corrective actions to avoid recurrence of illegal drug use, including returning to college, earning his degree, and commencing his career in engineering. Applicant also admitted that he was arrested and charged as alleged in March 2020, and that he was placed on pre-trial probation until September 29, 2021, but he denied that he had “laid hands” on the complainant, then a cohabitant girlfriend.

After considering the pleadings, exhibits, and transcript, I find that the pretrial probation was imposed for the March 2020 assault and does not represent an additional incident of criminal conduct under Guideline J or of personal conduct under Guideline E. Accordingly, the pretrial probation was considered in assessing the security significance of the conduct in SOR ¶ 2.a, and not as a separate basis for disqualification under either Guideline J or Guideline E. Additional findings of fact follow.

Applicant is a 31-year-old engineer who started with his current employer, a defense contractor, as a co-op student in May 2018. (GEs 1, 2.) He became a full-time employee on earning his bachelor’s degree in electrical engineering in May 2019. (AE B.) He was apparently granted an interim security clearance, as he testified he has been able to access classified information at work. (Tr. 24.) He had not previously held a DOD clearance as he worked outside the defense industry. (GEs 1, 2.) Applicant has never married and has no children. (GE 1; Tr. 25.) He and his current girlfriend began a cohabitant relationship on April 1, 2022. (Tr. 43.)

Applicant began using marijuana in high school in January 2007. A multiple-sports athlete wanting to succeed, he did not use marijuana often. (Answer.) In November 2007, he was stopped while driving for having a broken light. He had used marijuana recreationally with friends, who had provided the marijuana. (GEs 1, 2.) Applicant was charged with misdemeanor marijuana possession. A year later, the case was continued without a finding. (GE 1.) He was required to pay a fine in an amount not now recalled and to complete community service. (GE 2.)

Applicant started college in September 2008. He used marijuana “intermittently,” knowing that it was illegal to use the drug. (GEs 1, 2; Tr. 27-28.) The summer following his freshman year, he began working as a line cook at a restaurant. (GE 1.) He returned to college that fall. He used marijuana on occasion, and in January 2010, he also tried LSD and cocaine. (GE 1.) He found the experience of using LSD to be “overwhelming,” and did not use the drug again for a long time. (Answer.) Around March 2010, he and some friends experimented with MDMA. In March 2010, he was stopped by the police and told he was

being arrested for public intoxication. Surprised and upset because he felt he was being singled out, Applicant hit his head on the police car. He had marijuana on his person and was charged with disorderly conduct, possession of marijuana, and underage consumption of alcohol. (GEs 1, 2.) The charges were dismissed after he completed community service and a required alcohol-education program. (GE 2.) He decided to take a leave of absence from the university and did not return for the fall semester in 2010. (Answer.)

Applicant resumed working in the restaurant industry. Drug use was prevalent, and he used marijuana and cocaine with co-workers. (Tr. 30.) Over a few weekends between March 2010 and October 2010 (primarily during that summer), Applicant partied with co-workers after work and used MDMA provided to him. (GE 1; Answer.) In September 2010, he began taking classes part time at a local community college. That same month, he was stopped for a cracked windshield while driving in an adjacent state. He had marijuana in the car and was charged with possession of marijuana. He was placed on probation and was ordered to complete a drug diversion program. The charge was subsequently dismissed. (GEs 1, 2.)

Applicant returned to the university for the winter semester in January 2011 with the intention of completing his degree. His new roommates invited some people to their room whom Applicant did not know, and one of them smoked marijuana. Someone called the police, who smelled the marijuana. Although Applicant had not used marijuana on that occasion, he was held responsible because it was his room. He was cited for misdemeanor possession of marijuana and placed on probation. (GEs 1, 2.) He dropped out of the university and began pursuing a career in the culinary arts. (Answer.) While working in the restaurant industry, he took two classes a semester at the community college, and earned his associate's degree in June 2015. (GE 1.)

Applicant worked in a succession of restaurants, eventually advancing to the position of sous chef. Due to longer shifts and weekend work required in the industry, it led to many late nights for Applicant, who began socializing with others with similar hours. Illegal drug use, especially of marijuana and cocaine, was widespread among his friends in the industry, and he used both drugs with them. He used marijuana to relax, and was a daily user of marijuana during his early to mid-20s. (GEs 1, 2; Answer; Tr. 28.)

In January 2016, Applicant was laid off from his position as a sous chef at a country club. He worked as a line cook at a restaurant until May 2017, but he wanted more responsibility and challenge. Realizing that he "had turned into someone that [he] did not want to be," he quit to resume his education. Over the summer of 2017, he worked in construction, and in September 2017, he began university studies toward a degree in engineering. (GE 1; Answer.) Applicant reduced his marijuana consumption from daily to "every few days." (Tr. 28-29.) In May 2018, he began working in a co-op position with his current employer. (GE 1.) He continued to use marijuana during his co-op. (Tr. 32.)

After several years of not using LSD and passing on the drug several times when it was offered to him, he became curious as he heard about others' positive experience with

the drug. He tried LSD again at a New Year's Eve party in December 2018. (GEs 1, 2; Answer.) He used the drugs because "friends were doing it." (Tr. 30.)

In May 2019, Applicant earned his bachelor's degree with honors in electrical engineering. (AE B.) He used marijuana at a graduation party in May 2019. (GEs 1, 2.) He became a full-time employee of the defense contractor sponsoring him for clearance eligibility. Shortly thereafter, his supervisor told him that he was happy with his work. Applicant testified that it gave him the motivation to stop using marijuana as he saw the positive impact of continuing his career as an engineer. (Tr. 29.)

On June 4, 2019, Applicant completed a Questionnaire for National Security Positions (SF 86). He reported on his SF 86 that he had been in a cohabitant relationship with a Russian national since May 2018. He listed his arrests for marijuana possession, as well as an August 2013 operating under the influence of alcohol offense that was not alleged in the SOR. In response to SF 86 inquiries concerning the illegal use of drugs or drug activity, Applicant disclosed that he used marijuana "to help sleep and relax" between January 2007 and May 2019, and added "Was a daily smoker for a while then after returning to school did not want it to jeopardize what could be a good new future." He denied any intention to use marijuana in the future, and explained that it was illegal under federal law and could jeopardize his future. He added that he used marijuana after his college graduation "as a celebratory thing because many people I know use it." (GE 1.)

Applicant also reported that he tried LSD "a few times" between January 2009 and January 2018 because friends were using it. He denied any intention to use LSD in the future because he found the effects to be "overwhelming." He indicated that he tried cocaine "a few times" between January 2010 and January 2018, but denied any intention to use it again because of its negative health impacts. He also reported that he "tried [MDMA on] a few weekends" as friends were using it. He gave dates of March 2010 for his first use and October 2010 for last use of MDMA but added that he was not exactly sure of the time frame. He denied any intention to use MDMA in the future and explained, "I do not like it and I have seen people change because of it." (GE 1.)

In response to an SF 86 inquiry about any illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance, Applicant responded that he was "a daily smoker" of marijuana for a while, and he purchased marijuana within the last seven years. He provided dates of January 2007 to May 2019 for his involvement. He disclosed that he had purchased cocaine in the last seven years. He gave dates of January 2010 and January 2019 for first and last involvement, respectively, and stated about the frequency "Once every few months. Not exactly sure of the dates." He denied any intention to purchase marijuana or cocaine in the future. (GE 1.)

On August 21, 2019, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant discussed his arrest history and verified his drug involvement as previously reported on his SF 86. He explained that marijuana had been "a normal part of his life." He liked how it made him feel. He admitted that he bought

marijuana from friends. He indicated that he used cocaine late at night at house parties with friends. He obtained cocaine from friends, who gave him small amounts so he could try it. He stated that cocaine made him feel “super anxious,” which he did not like, and denied any use of the drug since “January 2018.” Applicant stated that he did not like the effects of either the hallucinogen LSD or MDMA that he obtained from friends. He denied any current association with any individuals known by him to use illegal drugs and any intention of future use. He asserted that he did not want to jeopardize his future and that he had grown out of the phase he was in when he used drugs. He related that he had seen the adverse impacts of drug use in the change of personality observed in some friends and the loss of some friends due to overdose. (GE 2.)

On September 19, 2019, the investigator re-contacted Applicant to clarify the discrepancy on his SF 86 regarding the dates of his last use of cocaine (January 2018) and of last purchase of cocaine (January 2019). Applicant indicated that he last used and purchased cocaine in January 2018, and that any reference to January 2019 was a mistake. (GE 2.)

In February 2020, Applicant was given an opportunity by DOHA to review the report of his interview and correct any inaccuracies. After “double checking dates,” he realized that he last used cocaine and LSD at a New Year’s Eve party in “December 2018 going into January 2019” when the drugs were offered to him. He made the “bad decision to try it.” He denied any subsequent use of either LSD or cocaine and indicated that he would not consume either drug again. He gave dates of 2008 for his first uses of cannabis and LSD, and 2010 for MDMA, but that he was not sure of when he first used cocaine. He described the frequency of his cannabis use as regular, and of cocaine, LSD, and MDMA as rare. He explained that he stopped using illegal drugs when he was offered a full-time position with his employer. He “saw [his] hard work was being acknowledged and [he] was moving forward in life.” Applicant responded affirmatively to whether he associates with persons who use illegal substances and stated, “I have friends and family members that use cannabis.” In answer to whether he had been in situations where illegal drugs were being used, Applicant stated: “I have been offed [sic] cannabis, but I decline because of my job and strive to do better than I have done in the past.” (GE 2.)

Also, in his February 2020 response to DOHA’s interrogatories, Applicant admitted that he had failed a urinalysis test for illegal drugs. He explained that, when initially required to go to counseling for the infraction in the adjacent state, he tested positive but then “ended up quitting and passing the remaining tests.” The evidence indicates that the infraction to which Applicant referred was his September 2010 marijuana possession. He indicated that he had not had any drug counseling or treatment. (GEs 1, 2.)

Applicant has not used any illegal drugs since his last use of marijuana in May 2019. He does not believe that he would be drawn to use the drug again in times of high stress or difficult situations. (Tr. 31.) He testified that he associates with different people, and it is not worth risking how far he has come. He is aware that his employer has a drug-use policy in that illegal drug use is not allowed by employees. (Tr. 32.) He later testified that his siblings use marijuana. His siblings, who live out of state, used marijuana around him during the

holidays “a while ago because Covid [had] gotten in the way of family gatherings.” He asserted that he told them that he can no longer use marijuana because of his job. (Tr. 40-41.) When asked for the date when he was last offered marijuana, Applicant responded that he could not remember, but it was while working for his current employer, although he reported that he declined the offer. (Tr. 41-42.) He admitted that he still sees, “every now and then,” a few of his friends who use marijuana, while asserting that “many” have stopped using the drug. (Tr. 42.) Applicant is subject to random drug testing at work, although he has not been called for a drug test. (Tr. 46-47.)

On March 13, 2020, Applicant had an altercation with his then-cohabitant girlfriend. She complained to the police that he came home intoxicated, and she locked their apartment door on him because he had been drinking. He gained entry by damaging the door knob. When she told him she was going to call the police, he threw a plastic statue against the wall and struck her hand causing her to drop her cell phone. She further complained that he ripped a black bag of hers in half, but she also stated that he did not throw any objects at her or in her direction, and she was not injured. Applicant admitted to the police that he had been out drinking, had broken the door, and had argued with his girlfriend, but he denied any other type of altercation. Applicant’s then girlfriend exhibited no signs of injury, and she declined an emergency protective order. Applicant was arrested for assault and battery on a family or household member for hitting his then-girlfriend’s hand; intimidation of witness for attempting to prevent her from calling the police; and malicious destruction of property for damaging the apartment door. (GE 3.) Applicant asserts that his relationship with his then girlfriend was coming to an end at that point. However, he denies that he laid a hand on her or even touched her that night. (Tr. 20, 34.) He asserts that he had consumed only one beer, but his ex-girlfriend did not want him to go out that night so she locked him out of their apartment; that the door that was reportedly damaged was held by a chain lock, and it opened when he leaned on it. (Tr. 33, 36.) He admits that he threw something against the wall and tore a black bag that belonged to his then cohabitant, but denies that he slapped her phone from her hand. (Tr. 34.)

After the incident, Applicant immediately moved from the apartment and ended the relationship. (Tr. 38.) At his arraignment on July 15, 2020, he was ordered to not abuse the victim. On March 29, 2021, he was placed on pretrial probation to September 29, 2021, and ordered to pay \$120 in restitution for the destruction of property. (GE 4; AE A.) On September 29, 2021, the charges were dismissed at the recommendation of the probation department. (AE A.)

Applicant described his present girlfriend as “the most caring, loving person [he has] ever met.” (Tr. 21.) She has three children, ages 17, 14, and 9, who live with them. (Tr. 43.) Applicant’s girlfriend does not use marijuana. (Tr. 42.)

Applicant enjoys his work with the defense contractor. (Tr. 21.) Twenty-eight individuals, 20 of them co-workers (AEs C, G-I, K-N, Q-R, T-X, Z-AA, and CC-DD), authored character reference statements for him. They attest to the professionalism with which Applicant treats his co-workers and his duties. He takes his job seriously; has an “exceptional work ethic;” appreciates assistance and is willing to help others; follows his

employer's quality, safety, and security protocols; and understands and complies with the rules and regulations regarding the handling and safeguarding of classified information. Even as a co-op student, Applicant displayed a positive attitude and demeanor that stood out.

With the exception of a senior engineer, it is unclear whether Applicant's co-workers are aware of Applicant's history of illegal drug use. This senior engineer, who has spent most of his career in the defense industry, indicates that they knew it might be difficult for Applicant to obtain a security clearance because of his association and cohabitation with a foreign national at the time. Nevertheless, the company believed Applicant could be a reliable and conscientious engineer for them, which Applicant has proven to be. This engineer is aware of the incident between Applicant and his former partner, and he has seen no indication of any conduct by Applicant that would substantiate the allegations against him by his ex-girlfriend. The engineer is also aware that Applicant made some poor decisions in the past in that he got mixed up with the wrong group of friends and "experimented" with illegal drugs. The engineer reports that he has had some "serious discussions" with Applicant about those decisions and their effects on his present life and his future aspirations. The engineer believes Applicant takes his job seriously and now associates with individuals who are positive influences on him. (AE H.)

A co-worker who has worked in the electronics field for some 43 years and held a clearance for 29 of those years has known Applicant since he was a co-op student with their employer. This co-worker indicates that he was "shocked" to hear that Applicant was having difficulty obtaining a security clearance. Applicant has shown himself to be very responsible and a "straight shooter" on the job. The co-worker has high hopes for Applicant as an engineer. Applicant has demonstrated good judgment, reliability, and trustworthiness on the job. While Applicant "may have made a mistake during his youth," the co-worker knows him to be law-abiding. (AE K.)

Among the eight family members and friends who authored character reference letters were Applicant's current girlfriend (AE O), an elder cousin (AE F), and a lifelong friend (AE D). Applicant met his girlfriend at work in 2018, although they did not begin dating until late October 2020. She considers him to be a good role model for her three children. He has advised her 17-year-old daughter to avoid drinking and driving and using illegal drugs. (AE O.) The cousin is a retired military officer who currently works as a federal employee as the deputy director of operations for military installations in his region. He has an active top secret clearance with access eligibility to sensitive compartmented information. He believes Applicant has "changed his life," and takes the responsibilities of his interim clearance seriously. (AE F.) The longtime friend expressed that Applicant loves his work and has never been happier. (AE D.)

## **Policies**

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



U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H: Drug Involvement and Substance Misuse**

The security concerns about drug involvement and substance misuse are set forth 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.

In addition to the above matters, I note that, effective January 2, 2009, the state where Applicant lives and works decriminalized the personal use and possession of one ounce or less of marijuana. Possession of one ounce or less of marijuana became a civil offense, subjecting an offender 18 years of age or older to a civil penalty of \$100 and forfeiture of the marijuana. On December 15, 2016, the state legalized the use, purchase, possession or manufacture of one ounce or less of marijuana by adults age 21 years or older. However, possession of LSD, MDMA, and cocaine remained illegal.

Moreover, marijuana, LSD, and MDMA are Schedule I controlled substances under federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Cocaine, as a Schedule II drug has an accepted medical use, but it has a high potential for abuse and may lead to severe psychological or physical dependence. It is illegal to possess cocaine when it is not medically authorized. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.

Moreover, on December 21, 2021, the current DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur. The DNI also made clear that products that contain more than 0.3 percent of THC remain illegal to use under federal law and policy.

Applicant used marijuana intermittently in high school and socially while in college. During his early-to-mid 20s, he used marijuana daily. He persisted in using and purchasing marijuana despite three arrests for illegal possession; completing a drug diversion program for the September 2010 offense; and returning to college for his bachelor's degree in engineering. He used and purchased marijuana while working as a co-op student for his current employer from May 2018 to May 2019. He was introduced to cocaine and LSD

during the 2009-2010 timeframe at the first college he attended. His use of LSD did not go beyond experimentation, but after reportedly disliking the drug's effects, he tried it again at a New Year's Eve party in December 2018. He used cocaine with varying frequency, and purchased it from friends, primarily while working in the restaurant industry, but he also used cocaine at that party in December 2018 because of peer pressure in that others were using it. Guideline H disqualifying conditions AG ¶¶ 25(a), "any substance misuse," and 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," apply. Regarding Applicant's failed drug test following his September 2010 marijuana possession offense, it cannot be considered for disqualification purposes because it was not alleged. Accordingly, AG ¶ 25(b), "testing positive for an illegal drug," does not apply.

Applicant bears the burden of establishing that matters in mitigation apply of his illegal drug activity. AG ¶ 26 provides for mitigation as follows:

(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 an individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or 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 illegal 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.

AG ¶ 26(a) applies in mitigation, but only of Applicant's involvement with MDMA, which was infrequent and occurred over a decade ago. Applicant's use of LSD may well have been "rare," and his use of cocaine primarily occurred while he was working in the restaurant industry. However, his use of LSD and cocaine at the party in late December 2018 was relatively recent as of his June 2019 SF 86 and occurred while he was a co-op

student for his current employer. While this drug involvement preceded the offer of full-time employment to him, it does not justify or minimize the seriousness of his illegal drug use.

Regarding AG ¶ 26(b), Applicant provided discrepant dates for his last use of cocaine. He indicated on his SF 86 that he last used cocaine in January 2018 but purchased it in January 2019, and confirmed those dates during his OPM interview. When contacted in September 2019 about the discrepancy, he stated that any reference to January 2019 was a mistake. He gave a January 2018 date for his last use of LSD. In February 2020, he indicated that he realized after checking dates that he last used LSD and cocaine in December 2018, so almost a year later than previously reported. It is difficult to believe that he failed to recall in June 2019 that he had used the drugs only six months prior, but he is credited with correcting the record in February 2020. His candid admissions of illegal drug use and purchase, including of marijuana to within weeks of completing his SF 86, allow me to accept as credible his claims of abstinence from MDMA since 2010; LSD and cocaine since late December 2018; and marijuana since May 2019.

As to whether Applicant has established a sufficient pattern of abstinence for mitigation under AG ¶ 26(b), I have to consider other factors, such as the frequency and circumstances of drug use and whether Applicant's activities, associations, or environment present a risk of relapse. Applicant would certainly have had a stronger case in mitigation had he ceased using illegal drugs once he left the restaurant industry and decided to return to college. Even so, I am persuaded that he is not likely to use cocaine, MDMA, or LSD in the future. He used those drugs in social settings that are not likely to reoccur.

Applicant's marijuana use is contrasted with his use of other illegal substances by its regularity and duration. He used the drug for over a decade, not only socially but to relax. The drug was a normal part of his life. Some five years ago, he made a life-altering decision to return to school, but that decision did not include a commitment to a drug-free lifestyle. He continued to use marijuana because he enjoyed it. While he indicated during his August 2019 interview that he was no longer socializing or associating with individuals who use drugs illegally, he candidly disclosed in response to DOHA interrogatories in February 2020 that he has friends and family members who use cannabis, and that he has been offered cannabis since he stopped using, although he declined to use it. At his hearing, he admitted that he still sees a few of his friends who use marijuana and that his siblings use marijuana. With regard to his siblings, who live out of state, they used marijuana around him at a family gathering. He asserts that he has told them he no longer uses the drug because of his job, "so they kind of keep it to themselves." Applicant's cohabitant girlfriend does not use illegal drugs, so his day-to-day environment is not conducive to illegal drug use.

Applicant asserts that he did not realize the negative ramifications of his continued use of marijuana until he applied for a security clearance. His job is clearly important to him and is regarded as a significant deterrent to future drug use. He is subject to random drug testing on the job, although he has not been called. At the same time, it is concerning that the illegality of his drug use played no part in his decisions to use or stop using drugs. While those of his character references who are aware of his drug-using past believe he

will not do anything to jeopardize his career and future, Applicant used LSD and cocaine at a party, knowing that it was inconsistent with the goals he had in life. It is more likely that he would use marijuana, a drug that he enjoyed and used regularly, if faced with a similar situation, especially if alcohol was also involved. Applicant has found himself in situations where marijuana was being used, although he did not elaborate about the circumstances or frequency. At this juncture, the drug involvement and substance misuse security concerns are not fully mitigated.

### **Guideline J: Criminal Conduct**

The security concerns about criminal conduct are set forth in AG ¶ 30, which provides:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant was on pre-trial probation from March 2021 to September 2021 because of March 2020 charges of intimidation, domestic assault and battery, and malicious destruction of property against a then cohabitant girlfriend. He denies that he struck or hit her but admits that he argued with her, threw an item against the wall, and damaged both the door lock and a bag of hers during a verbal altercation. Disqualifying condition AG ¶ 31(b) is established by the conduct of concern, not by the disposition, which is the legal consequence of the criminal conduct. AG ¶ 31(b) provides:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Two of the mitigating conditions under AG ¶ 32 are established in whole or in part. They are:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The incident involving Applicant's ex-girlfriend occurred after his case had been referred to DOHA because of his illegal drug use. He was placed on pre-trial probation after the SOR was issued. It cannot reasonably be concluded that "so much time has elapsed since the criminal behavior happened" to conclude that it does not cast doubt on

Applicant's judgment. Yet, given Applicant immediately terminated his relationship with his ex-girlfriend, and it was isolated in nature, it is not likely to recur. Moreover, Applicant has shown evidence of successful rehabilitation in that he completed the pre-trial probation successfully, and has a good employment record. The criminal conduct security concerns are mitigated.

### **Guideline E: Personal Conduct**

The personal conduct security concerns are set forth in AG ¶ 15, which provides:

Conduct involving questionable judgment, lack of candor, dishonest, 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 assault, intimidation, and malicious destruction charges and disposition were cross-alleged under Guideline E. AG ¶ 16(c) applies when the credible adverse information is not alone enough to warrant denial of security clearance eligibility but raises security concerns when considering other issues of security concern, as follows:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant showed poor judgment in damaging the lock to gain entry to their apartment, arguing with his ex-girlfriend, throwing items, and tearing her bag in March 2020. However, his ex-girlfriend was not injured, and it appears to have an isolated incident. The following two mitigating conditions under AG ¶ 17 apply in whole or in part:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's actions escalated the incident to where his ex-girlfriend felt threatened enough to call the police. However, the personal conduct security concerns raised by the March 2020 incident have been mitigated by the ending of the personal relationship with the victim and no recurrence of such inappropriate behavior. The personal conduct security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). They are as follows:

(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.

The Government must be assured that those persons granted access to classified information can be counted on to fulfill their responsibilities consistent with laws, regulations, and policies, including federal drug laws and security clearance requirements. Applicant's drug use was not confined to his first college experience or to his socialization with co-workers and friends while working in the restaurant industry. His drug use cannot be excused as youthful indiscretion.

Applicant's dedication to his engineering studies is reflected in him earning his bachelor's degree with honors, even while continuing to use marijuana. His contributions to his employer are unassailable. The many co-workers who provided character statements attested to the professionalism with which he treats his duties. He takes his job seriously; has an "exceptional work ethic;" appreciates assistance and is willing to help others; follows his employer's quality, safety, and security protocols; and understands and complies with the rules and regulations regarding the handling and safeguarding of classified information. He appears to be committed to his career and to a future without illegal drugs.

Yet, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990). This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a longer track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. For the reasons previously

discussed, I am unable to find at this time that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance at this time.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended 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-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge