



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-01862

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: Brian G. Smith, Esq.

07/08/2025

**Decision**

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline I (psychological conditions) are mitigated and under Guideline E (personal conduct) are refuted. However, Guideline H (drug involvement and substance misuse) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 28, 2023, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 12, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H, I, and E. (HE 2) On December 13, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On February 7, 2025, Department Counsel was ready to proceed.

On February 25, 2025, the case was assigned to me. On February 27, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for April 29, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered four exhibits into evidence and the major depressive disorder pages from the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition) (DSM-5); Applicant offered eight exhibits into evidence; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 73-74; GE 1-GE 4; Applicant Exhibits (AE) A-AE H; HE 5) On May 7, 2025, DOHA received a transcript of the hearing. Applicant submitted three exhibits after the hearing, which I admitted into evidence without objection. (AE I-AE K) The record closed on May 27, 2025. (Tr. 80)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.f, 2.a through 2.d, 2.f, 2.g, 3.a, and 3.b. (HE 3) He denied the SOR allegation in ¶ 2.e. He also provided clarifying, and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 30-year-old software specialist. (Tr. 81, 113, 170) In 2017, he received a bachelor's degree in electrical engineering. (Tr. 82, 110) In 2021, he received a master's degree in computer science. (Tr. 110, 114) He has never served in the military. (Tr. 113) He is not married. (Tr. 114) He does not have a security clearance; however, a security clearance will enhance his employment opportunities. (Tr. 170-171)

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

SOR ¶ 1.a alleges Applicant used tetrahydrocannabinol (THC) in various forms with varying frequency from about June 2012 to about July 2023. SOR ¶ 1.b alleges he used THC prior to going to work from September 2019 through December 2019.

Applicant first used marijuana in 2012 when he was in high school, and he used marijuana until he was a sophomore in college. (Tr. 83, 114) In 2015, he stopped using marijuana because he had an internship with company M, which prohibited use of marijuana. (Tr. 83) In 2019, he resumed his involvement with THC. (Tr. 143) He used a vape to inhale THC before going to work in 2019. (Tr. 123) He purchased THC cartridges in state O where sale of CBD cartridges is legal. (Tr. 123-125) He used THC about three days a week for about 10 weeks in 2019 to help him get through the day or to relieve

stress. (Tr. 125-127) When he was at work in 2019, he was under the influence of THC. (Tr. 127) He was using marijuana because his prescribed medications were not sufficiently effective. (Tr. 127) After he left employment at company M, he did not use marijuana or THC prior to going to work. (Tr. 164)

### **SCA and Office of Personnel Management interview**

When Applicant completed his SCA in 2023, he disclosed his use of marijuana and he responded to the request, "Provide an estimate of the month and year of most recent use Month/Year." He stated, "10/2022 (Estimated)." (GE 1 at 41) In response to the request, "Provide nature of use, frequency, and number of times used," he stated, "Casual usage, varying from weekly to monthly to once a year to bi-yearly." *Id.* He answered no to the question "Do you intend to use this drug or controlled substance in the future?" (Tr. 115; GE 1 at 41) In his Office of Personnel Management (OPM) personal subject interview (PSI) Applicant said he did not intend to use marijuana or THC in the future. (Tr. 115-116; GE 2 at 9) He used marijuana after making these two statements. (Tr. 116-117) He said when he used marijuana, he did not consider his previous statements about not using marijuana in the future, and he did not consider whether he was violating the law in state I when he possessed marijuana. (Tr. 117, 120-121) When he responded to DOHA interrogatories in September 2023, he said he did not intend to use marijuana in the future, and he commented, "Now, I understand this is against federal law. Whoops." (Tr. 118) On September 7, 2023, he added that not using marijuana in the future was "Easier said than done." (Tr. 122; GE 3 at 4)

In February of 2022, Applicant was using one or two vape cartridges every week or two. (Tr. 156, 165) He had difficulty functioning due to depressive symptoms. (Tr. 155; GE 2 at 128-129) A medical note states, "He has been smoking a lot of marijuana, because he just does not have anything else to do. He says that he has been using marijuana vaping . . . ." (Tr. 157; GE 2 at 129) His physician told him his marijuana use was adversely affecting his welfare as a patient. (Tr. 156; GE 2 at 129) He stopped using marijuana for about two weeks after receiving this advice from a physician. (Tr. 158)

In about March of 2023, Applicant purchased CBD or cannabidiol edibles at a shopping mall. (Tr. 95, 97) The CBDs were not prohibited by state law. (Tr. 96) He used CBDs from about March to July of 2023. (Tr. 96) The CBDs and marijuana had about the same effects on Applicant. (Tr. 96) He suspected the CBDs had some THC in them. (Tr. 96) In April of 2022, Applicant purchased marijuana in the form of vape cartridges and edibles on the dark web. (Tr. 94, 157) Applicant said he used marijuana a few times a month after he and his girlfriend purchased the marijuana in state M. (Tr. 117; GE 3 at 5)

In June of 2023, Applicant purchased marijuana edibles in another state, M, where he is not a resident. (Tr. 97) He purchased the marijuana edibles in a state M licensed dispensary. (Tr. 97) He did not purchase marijuana or marijuana edibles after June of 2023. (Tr. 98) When he transported the marijuana to state I, he did not do so with the intent to violate state I restrictions on marijuana possession. (Tr. 163) On July 6, 2023, Applicant used a CBD edible, and on July 14, 2023, he used marijuana that he purchased in state M. (Tr. 117; GE 3 at 4) He said he used marijuana because he hurt his face in a

bicycle crash. (Tr. 117; GE 3 at 4) State I, which is his state of residence has not legalized possession of THC for recreational use. (Tr. 96-97, 118) He did not use marijuana after July of 2023. (Tr. 99)

In July of 2023, he stopped using marijuana because he researched the federal and state-level restrictions; he read the company policy, and he learned marijuana use was prohibited by federal policy and company policy. (Tr. 171) He did not indicate whether the company policy he read was the same as the policy he provided after his hearing. His personnel records may indicate he read a company policy containing the prohibition against using illegal drugs. (Tr. 172)

### **Company policy on marijuana use**

In February of 2023, Applicant began working for his current employer, company C. (Tr. 169) He did not receive a briefing about the company policy on marijuana use when he joined the company. He said the company policy prohibited use of illegal drugs. (Tr. 169) He did not intentionally violate company policy when he used marijuana. (Tr. 172) The company policy he provided after his hearing was dated September 15, 2021, and it prohibited being under the influence of illegal drugs at work and possessing or using illegal drugs on company property. (AE I) It also requires compliance with supported agencies' policies. (AE I, para. 2.1.5) The company policy he provided did not authorize or prohibit off-duty marijuana use. (AE I; AE J)

### **Sensitive position**

Applicant's employment was to program software for use in equipment, including some military equipment. (Tr. 169-170) He said it was possible that he was in a sensitive position. (Tr. 170) I asked Applicant to provide documentation from company C about whether he held a sensitive position after the hearing. (Tr. 175) He provided a statement from a coworker with knowledge of his work and position. The coworker said Applicant had access to "The technology [which is] restricted under the International Traffic in Arms Regulation (ITAR)," and his work involves access to "Controlled Unclassified Information (CUI). (AE L) "[CUI] is sensitive information that does not meet the criteria for classification but must still be protected. It is Government-created or owned UNCLASSIFIED information that allows for, or requires, safeguarding and dissemination controls in accordance with laws, regulations, or Government-wide policies." (AE L)

Applicant does not associate with the girlfriend with whom he used marijuana. (Tr. 123) He does not associate with anyone who uses marijuana, and he does not have any marijuana in his home. (Tr. 123)

In his SOR response, Applicant said:

My more recent one-time use in 2023 was due to my confusion regarding the state and federal legality of use of hemp and certain CBD products. I have since ceased. using all forms of CBD, hemp, or other marijuana-adjacent products, as well as actual THC products. I now understand that

THC is federally illegal, regardless of any state decriminalization or legalization, and is inconsistent with holding a security clearance. I took several classes on illegal drugs, including marijuana, to better educate myself of the risks and harms associated with marijuana, and I realize it is not safe to use or helpful to me.

Applicant promised not to use marijuana or other THC products again. (SOR response, Ex. 2) 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. (SOR response, Ex. 2; see AG ¶ 26(b)(3)). He took drug tests on August 23, 2024, September 12, 2024, November 5, 2024, and April 11, 2025, using hair samples, which were negative for illegal substances. (SOR response, Ex. 3, 4; AE C-AE E) He completed on-line classes about LSD, cocaine, marijuana, Ritalin, and pain killers. (SOR response, Ex. 5, 6, 7; AE H)

SOR ¶ 1.c alleges Applicant used lysergic acid diethylamide (LSD) on at least three occasions between July 2014 and December 2014. Applicant reported his LSD use on his SCA, in his SOR response, and at his hearing. (Tr. 83; GE 1) He used LSD three times in 2014, and he did not use LSD after 2014. (Tr. 128-129) He used LSD because he was curious about it. (Tr. 128)

SOR ¶ 1.d alleges Applicant used cocaine in about September 2019. He purchased cocaine with the intention of using it to commit suicide. (Tr. 147) He used cocaine about three times over a two or three-day period to attempt suicide. (Tr. 129-130) He had some cocaine left after two or three days, and after three days of cocaine use, he did not want to commit suicide. (Tr. 131, 147) He elected to use the remaining cocaine. (Tr. 131)

SOR ¶ 1.e alleges Applicant used fentanyl with varying frequency from about June 2019 to September 2019, including at least once with suicidal intent. SOR ¶ 1.e also alleges he purchased or used cocaine in October 2019.

Applicant said he used small amounts of fentanyl over about a one-month period, and then he consumed the rest of it in an attempt to commit suicide. (Tr. 132) He denied that he purchased or used cocaine in October 2019. (Tr. 148; SOR response)

SOR ¶ 1.f alleges Applicant purchased the cocaine and fentanyl that he used as set forth in subparagraphs 1.d. and 1.e., above, off the dark web. In 2019, he used a computer application to access the dark web to obtain drugs. (Tr. 133-135) He paid about \$100 to purchase cocaine and about \$100 to purchase fentanyl. (Tr. 135-136) The dark web is encrypted so that law enforcement and others are unable to “snoop on what you are doing.” (Tr. 133) He did not use the dark web after April of 2022. (Tr. 134-135) He knew possession of cocaine and fentanyl violated federal laws. (Tr. 86) Aside from the purchases of cocaine and fentanyl, he did not use the dark web to make any other illegal purchases. (Tr. 137)

## Psychological Conditions

SOR ¶ 2.a alleges on August 15, 2019, Applicant reported to his treatment providers at company M that he was experiencing suicidal ideations with a plan to “go out into the woods.” He lied to treatment providers at company M when he denied using any illegal substances within the last year. Treatment providers at company M diagnosed him with major depressive disorder, single, unspecified, and prescribed him Lexapro.

SOR ¶ 2.b alleges on August 22, 2019, Applicant was hospitalized at L’s emergency department after his roommate discovered him unconscious following his suicide attempt by fentanyl use, as set forth in subparagraph 1.e., above. During treatment, he lied to his treatment providers about the drug he used to attempt suicide and denied using THC for approximately 4-5 years.

SOR ¶ 2.c alleges from August 23 through August 29, 2019, Applicant was involuntarily hospitalized at a hospital following his suicide attempt. During treatment, he indicated that he had been planning his suicide for about one year, during which he had been purchasing opiates and drafted a will. He was diagnosed with major depressive disorder, single episode, unspecified, and his Lexapro prescription was increased to 20mg daily. Upon discharge from the hospital, treatment providers recommended to him that he follow up with a counselor and a psychiatrist for medication management.

SOR ¶ 2.d alleges in or around September 2019, Applicant purchased and used cocaine with the intent to commit suicide. SOR ¶ 2.e alleges in or around October 2019, Applicant purchased cocaine due to suicidal ideation.

SOR ¶ 2.f alleges from about August 30, 2019, through about February 4, 2020, Applicant received outpatient treatment from treatment providers at company M. During this period, he reported concerning behaviors and symptoms, including recurring suicidal ideations, prior homicidal ideations, thoughts about purchasing a firearm, alcohol, marijuana, and cocaine abuse. Throughout his treatment with treatment providers at company M, he failed to consistently follow treatment recommendations to include failing to consistently take his psychiatric medications and failing to attend all recommended psychotherapy sessions.

SOR ¶ 2.g alleges from approximately July 2021 through November 2022, Applicant received outpatient treatment from treatment providers in state I for his ongoing depressive symptoms and marijuana abuse. On at least one occasion, he endorsed worsening depressive symptoms and the feeling that he would be better off dead. His treatment provider recommended that he cease marijuana usage in part because it would decrease motivation, worsen depression, and cause greater fatigue. He failed to follow those treatment recommendations by continuing to use marijuana through at least July 2023, as set forth in subparagraph 1.a., above. As a result of his continued marijuana use, his treatment provider found that he had minimal insight capabilities due to his difficulty acknowledging the presence of his substance abuse problems.

### **Applicant's discussion of his psychological conditions**

Applicant began to feel suicidal ideations in mid to late 2018. (Tr. 84, 141) His thoughts of suicide became more pronounced in January and February of 2019. (Tr. 84) He was feeling stress from overwork, the absence of a relationship with a girlfriend, and concern about the possibility of being laid off from his employment. (Tr. 85) He was also working on a master's degree program. (Tr. 85) Around August 10, 2019, he sought help from medical personnel at company M. (Tr. 139) He disclosed that he had suicidal thoughts for 12 to 18 months, and he had a plan to commit suicide in the woods. (Tr. 140; GE 2 at 78-79) In August 2019, he was diagnosed with major depressive disorder. (Tr. 141; GE 2 at 80)

As indicated previously, in 2019, Applicant purchased cocaine and fentanyl on the dark web because he intended to use them to kill himself. (Tr. 86-87) He wrote a will. (Tr. 144) In August 2019, he used fentanyl to attempt to kill himself. (Tr. 87) He was taken to the emergency room, and after he was revived, he told the treatment provider that he had overdosed on heroin. (Tr. 87) He said it was heroin because he believed possession and use of fentanyl might result in his arrest, and the medical providers would be more aware of the treatments for a heroin overdose. (Tr. 88) He was involuntarily committed to the hospital for five days. (Tr. 89) While he was an inpatient, he learned coping mechanisms to help with stress and depression. (Tr. 90) He went back to work four days after he was discharged from the hospital. (Tr. 90) He received outpatient therapy about once a week or every other week and medication from August of 2019 to February of 2020. (Tr. 91) He missed some appointments because he was not feeling better, and he believed the therapy was not working. (Tr. 92, 142)

Around October of 2019, Applicant purchased cocaine on the dark web. (Tr. 92-93) He purchased the cocaine because he intended to use it to kill himself. (Tr. 92) He used the cocaine; however, when he used it, he did not intend to kill himself with cocaine. (Tr. 93) His only attempt to kill himself was when he used fentanyl in August 2019. (Tr. 93) He only purchased cocaine once. (Tr. 94)

Treating medical personnel asked Applicant about using illegal drugs, and he denied that he used illegal drugs. (Tr. 142; GE 2 at 79-83) One of the doctors where he was receiving treatment suggested that he live closer to family. (Tr. 100)

A January of 2020 medical note indicates Applicant said he had "thoughts of wanting to harm someone. However, there were no identified victims." (Tr. 154; GE 2 at 64) Applicant said he was "experiencing withdrawal symptoms" from being abstinent from marijuana and had feelings of aggression. (Tr. 154)

In February of 2020, Applicant quit his job at company M, and he moved to state I where he attended high school and was an undergraduate. (Tr. 99) In the summer of 2020, he enrolled as a full-time graduate student in state I. (Tr. 100) He did not continue with therapy in state I because he was feeling better, and he did not have health insurance. (Tr. 101) He occasionally saw a physician. (Tr. 102) In the spring of 2022, he

received a prescription for Prozac, an antidepressant. (Tr. 103-104) His mental-health prescription has remained the same for the past three years. (Tr. 103)

Currently, Applicant continues to live in state I. He sees a physician for a checkup every six months. (Tr. 105) He is not receiving any therapy. (Tr. 105) He has good coping skills and believes he can recognize when he might need an adjustment in his prescription. (Tr. 106) He is currently in a relationship. (Tr. 162) He enjoys his current employment, and he is excited about his work. (Tr. 162, 167) He is near family members who support him. (Tr. 110) He said he is doing well, uses exercise to help with his mood, enjoys his dog and bicycle, and does not see the need for therapy or additional mental-health appointments. (Tr. 105-108) He also engages in running and swimming for exercise. (Tr. 108) He paces himself at work; he ensures that he does not work excessively; and when he comes home, he enjoys hobbies and relaxing. (Tr. 109-110) He will seek additional medical appointments on an as needed basis. (Tr. 106)

On April 17, 2025, Applicant's current primary care physician said, "I would like to mention that [Applicant's] depression is well controlled with medications." (AE G)

#### **Dr. E's statement about Applicant's psychological conditions**

Dr. E received a Ph.D. in counseling psychology in 2000; he is board certified in counseling psychology; and he has 30 years of psychological clinical experience. (Tr. 9-11) His curriculum vitae provides additional details about his professional background. (Tr. 10; AE B) He is in the Army Reserve, and he was deployed at the time of the hearing. (Tr. 11) He has held a top-secret clearance with access to sensitive compartmented information since 2013. (Tr. 12) He specializes in security clearance cases. (Tr. 12) He has provided psychological evaluations for the DCSA. (Tr. 36)

Dr. E conducted a 90 to 120 minute video interview and evaluation of Applicant in September 2024. (Tr. 13, 37) He reviewed Applicant's mental-health records, administered psychological testing, and reviewed the SOR. (Tr. 14, 21-23) Dr. E concluded Applicant was credible about his descriptions of his mental-health history and use of illegal drugs. (Tr. 29-30) Applicant advised Dr. E that in 2019 he was living in a different state and far from family and friends. His employment was stressful, and he was in graduate school. (Tr. 15) Applicant was considering or planning to commit suicide starting about three months before his suicide attempt in August 2019. (Tr. 39, 60) He was prescribed Lexapro shortly before his suicide attempt, which can increase the risk of suicide for some patients. (Tr. 17-18) The risk of suicide after taking Lexapro is greater during the first two months of use and for patients of Applicant's age. (Tr. 17-18) Applicant told Dr. E, that he purchased fentanyl in about June of 2019 with the intention of using it to commit suicide. (Tr. 41) He also told Dr. E that he used marijuana prior to his suicide attempt in August 2019 to address his depression. (Tr. 40) Marijuana could interact with the Lexapro he was taking and make his depression more severe. (Tr. 41-42)

Applicant had a major depressive episode and attempted suicide with fentanyl. (Tr. 15) Emergency medical services administered Narcan and took him to a hospital. (Tr. 16, 145; GE 2 at 40) He was involuntarily admitted to the hospital. (Tr. 16) The diagnosis on

admission was major depressive disorder, single episode. (Tr. 146; GE 2 at 51) He told the treating medical personnel he had overdosed on heroin. (Tr. 16) He was hospitalized for about five days. (Tr. 16) He told medical personnel that he attempted suicide because a colleague was doing a better job than he was doing, and a relationship consisting of about three dates ended. (Tr. 145, 160; GE 2 at 47)

After his discharge from the hospital, he received outpatient treatment. (Tr. 16) He left his stressful employment and moved back to state I where he could be closer to family and friends. (Tr. 19) He found a medication which was more effective for him and his "symptoms were basically alleviated." (Tr. 19-20) His medical records reflect that he has been stable with good symptom control since 2023. (Tr. 20) As of April 2024, he was taking prescribed medications and doing well. (Tr. 20) His current diagnosis is major depressive disorder in remission. (Tr. 21) Applicant described a history of depression and exhibited social anxiety. (Tr. 22) He also showed ADHD symptomatology. (Tr. 22)

Applicant had a relatively high "T scale" in the personality assessment inventory (PAI), which is an indicator that he may feel isolated, misunderstood, or alienated. (Tr. 49-50) Dr. E said that in Applicant's case, he exhibited some difficulties assessing social cues from others. He lacked social skills, which make it difficult for him to make friends, and he had "social oddities." (Tr. 23-24) He has difficulty interacting with others, and he has problems understanding the emotions of others. (Tr. 25) Dr. E said in his report that individuals "Who score as he did [on the T scale] often exhibit problems with concentration, decision-making, associational processing, and trouble expressing themselves." (Tr. 51; AE B at 7) Applicant was also elevated on the PAI's anxiety scale, which means he "may be tense most of the time and ruminative about anticipating misfortune, nervous, timid, [and] dependent." (Tr. 52)

Applicant enjoys his current employment. (Tr. 25) He has support from a cohabitant, family, and friends. (Tr. 26) His providers have found a medication regimen that works for him. (Tr. 26) Dr. E believes he is "compliant with his treatment," and this is a "really good prognostic indicator." (Tr. 26) He was not concerned that Applicant was not routinely attending ongoing therapy because Applicant is stable. (Tr. 28)

Applicant is not diagnosed with a substance use disorder, and he is diagnosed with depressive disorder single episode in full remission. (Tr. 31, 65-66) He also has ADHD predominantly inattentive and social anxiety controlled with his medication regimen. (Tr. 31, 65) His symptoms are "controlled with his medication regimen." (Tr. 31) Dr. E does not have any concern that Applicant has a psychological or substance use condition that would negatively impact his reliability, trustworthiness, or judgment. (Tr. 34)

Applicant is "at greater risk" than someone who has never had a major depressive episode. (Tr. 58) He is also "automatically at higher risk for future depressive episodes, which could then impede -- impair his judgment and reliability, his trustworthiness, et cetera." (Tr. 58) It is important that he maintain structures in his life. (Tr. 58) "He's got to stay in treatment as long as his providers judge that he needs it, you know, in concert with him." (Tr. 58) He needs to stay connected to other people, maintain stress management, get exercise, and use coping skills that he has learned through therapy.

(Tr. 58-59) The absence of a major depressive episode for several years “is a very good prognostic indicator” and his “prognosis is very favorable.” (Tr. 64)

Dr. E believed Applicant stopped using marijuana in December 2019, and then he resumed marijuana use on one occasion in July 2023. (Tr. 44, 115) He used marijuana about three months after he completed his SCA. (Tr. 115) However, Dr. E said he might not have accurately recorded the information Appellant provided about his marijuana use in 2023. (Tr. 47, 62)

Dr. E concluded that the mitigating conditions in AG ¶¶ 29(a) through 29(e) all apply to Applicant’s psychological conditions. (Tr. 69-70) He concluded:

In the end, taking all the data together, I did not feel like he had a condition that would impact his ability to handle classified information, or to be trustworthy, to be reliable, to exercise good judgment, at -- and that’s at the time that I evaluated him. He seemed to be healthy, free of drug use, focused on career, relationships, positive things. So I did not have a concern from a psychological standpoint at that point in time. (Tr. 63)

## **Personal Conduct**

SOR ¶ 3.a cross alleges under the personal conduct guideline that information set forth in subparagraphs 1.a. through 1.f., above. SOR ¶ 3.b cross alleges under the personal conduct guideline that information set forth in subparagraphs 2.a. through 2.g., above.

## **Character Evidence**

Applicant’s supervisor for the previous two years before his hearing said:

I can assert that [Applicant’s] performance and attendance have been nominal (sic). Moreover, I am not aware of [his] exhibiting any performance issues at work. [He] has demonstrated dependability (he works during expected work hours and reached out to let me know if he was ill), trustworthiness (his teammates consider [him] to be reliable and he expressly adhered to company rules such as accurate, timely time charging), and an agreeable demeanor (his teammates enjoy working with [him] and consider him to be a team player, even during what others may consider to be stressful situations such as when a deadline approaches). He expressed interest in thoroughly understanding company rules and policies and paid meticulous attention to ensuring his compliance, asking clarifying questions when a policy element might have been unclear.

I have seen no negative impacts of potential mental health/depression issues on [Applicant’s] conduct or performance at work. [He] also kept me informed of his participation in the security clearance investigation process, and as best as I can tell, he has gone to great lengths to ensure that the

Government has all the information they need to objectively adjudicate. For example, I followed along as [he] worked for many weeks to ensure that a statement could be provided by a past doctor to the Government investigators, so that they could have accurate information from a trustworthy source. For all these reasons, I would recommend that [Applicant] be granted a Top Secret security clearance. (AE J)

## **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, 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 Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v.*

*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Psychological Conditions**

AG ¶ 27 articulates the security concern for psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 provides psychological conditions that could raise a security concern and may be disqualifying in this case:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability,

reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The record establishes AG ¶¶ 28(a), 28(c), and 28(d). Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 29 lists psychological conditions mitigating conditions which are potentially applicable:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

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).

From August 23 through August 29, 2019, Applicant was involuntarily hospitalized at a hospital for mental-health treatment following his suicide attempt. He had been planning his suicide for about one year, during which he purchased fentanyl and cocaine

and drafted a will. He consumed fentanyl and cocaine. His mental illness contributed to his decisions to possess and use illegal drugs. He was diagnosed with major depressive disorder, single episode, unspecified. Upon discharge from the hospital, treatment providers recommended to him that he follow up with a counselor and a psychiatrist for medication management. Applicant failed to attend all recommended counseling sessions during September to November 2019. These facts are sufficient to establish AG ¶¶ 28(a), 28(c), and 28(d).

AG ¶¶ 29(b) and 29(c) apply. Dr. B, an Army National Guard psychologist, who has provided mental-health assessments for DCSA for security clearances, said Applicant voluntarily entered a counseling or treatment program. He was diagnosed with major depressive disorder, single episode; his condition is amenable to treatment; and Applicant is receiving medication to treat his depression. Dr. B said Applicant's depression is under control or in remission, and has a low probability of recurrence or exacerbation. He has a favorable prognosis from Dr. B.

Dr. B's opinion is credible, supported by the facts, and there is no contrary opinion indicating Applicant's depression compromises his ability to protect classified information. Psychological conditions security concerns are mitigated.

## **Drug Involvement and Substance Misuse**

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; and "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." The record establishes AG ¶¶ 25(a) and 25(c). AG ¶ 25(f), which states, "(f) any illegal drug use while granted access to classified information or holding a sensitive position," is not alleged in the SOR and is not considered an applicable disqualifying condition in this case because of lack of notice to Applicant. Additional discussion of the disqualifying conditions is in the mitigation section, *infra*.

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.

Applicant admitted that he possessed and used marijuana, fentanyl, and cocaine. Marijuana and LSD are listed on Schedule I, and cocaine and fentanyl are listed on Schedule II, of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration listing at <https://www.dea.gov/drug-information/drug-scheduling>. His possession of these four substances is a federal crime. His possession and use of the LSD, cocaine, marijuana, and fentanyl which occurred prior to 2020 were infrequent, are not recent, and are unlikely to recur. AG ¶¶ 26(a) and 26(b) apply to his possessions and uses of these four controlled substances before 2020.

### **THC possession and use**

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications as follows:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a few variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by

signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

*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* (Dec. 21, 2021) at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

SOR ¶ 1.a alleges, and Applicant admitted, he used THC in various forms with varying frequency from about June 2012 to about July 2023. His hearing was on April 23, 2025. He used substances containing THC on numerous occasions. He had about 21 months of abstinence from marijuana possession and use at the time of his hearing. He is credited with disclosure of his marijuana involvement during the security clearance process. His use of marijuana was not discovered through a polygraph test, investigative efforts, or a urinalysis test. He avoids persons and environments where illegal drugs are used or likely to be used. He promised not to use illegal drugs in the future. 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. He is credited with not using THC for 21 months at the time of his hearing.

However, he used marijuana while employed in his current position. His position is somewhat sensitive. He had access to CUI information and ITAR technology. He worked on software for military equipment. He used marijuana after completion of his SCA and his OPM interview. He promised not to use marijuana in the future on his SCA and during his OPM interview. He did not comply with these promises, which were made in a security context.

In ISCR Case No. 22-02623 at 4 (App. Bd. Jan. 24, 2024), the DOHA Appeal Board discussed the term of “holding a sensitive position” as follows:

For purposes of national security eligibility determinations, the Directive defines “sensitive position” as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor.

SEAD 4, ¶ D.8. We have previously held that this broad language is “designed to be inclusive and encompass a wide range of positions, including those that require eligibility for access to classified information (i.e., a security clearance).” ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023). The term “sensitive position” is not so broad, however, to encompass any and all employment with a defense contractor.

Applicant may have held a sensitive position when he was using marijuana. This issue was not alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This non-SOR component (whether he held a sensitive position under the adjudicative guidelines when he was using marijuana) will not be considered except for the five purposes listed above.

The DOHA Appeal Board cited the importance of consideration of “the changing landscape of marijuana law and . . . of the Director of National Intelligence’s *Clarifying Guidance Concerning Marijuana*.” ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the “evolving landscape of marijuana law and policy,” “the resulting increasing prevalence of marijuana use,” and in some instances “recreational marijuana use deserves less, or even no negative inference on judgment.”).

Several factors are important in assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; company policy; use after completion of an SCA; holding a sensitive position; and promises not to use. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use was not illegal under state law; no use after notice that marijuana use was federally illegal).

Applicant promised to stop using marijuana on his SCA. At that point, he was adequately placed on notice that he needed to stop using marijuana for security clearance

purposes. “The Board has ‘long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.’” ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (quoting ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021)). See *also* ISCR Case No. 24-00468 at 6 n.7 (App. Bd. Apr. 16, 2025).

AG ¶¶ 26(a) and 26(b) do not fully apply because Applicant has not fully established a pattern of abstinence of marijuana possession and use. His knowing purchase of items containing THC in a state where purchase of such products is legal and taking such products back home to state I where it is not legal, shows a lack of judgment and a conscious choice to violate state I’s laws. His decisions to possess and use marijuana while holding a somewhat sensitive position and after completion of his SCA are indications he lacks the qualities expected of those with access to national secrets. The time between Applicant’s involvement with marijuana and his hearing was about 21 months and is insufficient under all of the circumstances. His relatively recent involvement with marijuana continues to cast doubt on his current reliability, trustworthiness, and judgment. 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 lists personal conduct disqualifying conditions that are potentially relevant in this case as follows:

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

(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.

Applicant's marijuana possession and use are sufficient for an adverse determination under Guideline H. AG ¶¶ 16(c) and 16(d) do not apply. Applicant disclosed all mental health issues and possession and use of illegal drugs to security officials, and at his hearing. His employer is aware of these issues. AG ¶ 16(e) does not apply. He has refuted all personal conduct security concerns.

### **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, I, 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 30-year-old software specialist. In 2017, he received a bachelor's degree in electrical engineering. In 2021, he received a master's degree in computer science. His supervisor provided a compelling description of his diligence, dedication, and responsibility. This statement supports approval of Applicant's access to classified information.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse and psychological conditions analysis sections, *supra*. The reasons for denial of Applicant's access to classified information relate to his recent marijuana possession and use, and those reasons are more persuasive at this time.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated psychological conditions security concerns. He refuted personal conduct security concerns. However, he failed to mitigate drug involvement and substance misuse security concerns because of his relatively recent possession and use of marijuana.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.f:	For Applicant
Paragraph 2, Guideline I:	FOR APPLICANT
Subparagraphs 2.a through 2.g:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraphs 3.a and 3.b:

For Applicant

### **Conclusion**

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

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Mark Harvey  
Administrative Judge