



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

)
)
)
)
)

ISCR Case No. 24-01289

Applicant for Security Clearance

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2025

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guidelines H (drug involvement and substance misuse) and J (criminal conduct) are mitigated; however, Guideline E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCA) on June 6, 2021, and July 23, 2023. (Government Exhibits (GE) 2; GE 1) On October 24, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, J, and E. The DCSA acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On January 15, 2025, Applicant answered the SOR and requested a hearing before an administrative judge. On June 18, 2025, Department Counsel issued an amended SOR and added SOR ¶ 3.c. Applicant did not provide a response to SOR ¶ 3.c. On February 2, 2025, Department Counsel was ready to proceed, and on June 18, 2025, the case was assigned me. On July 3, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on August 5, 2025. The hearing was convened as scheduled. On August 15, 2025, DOHA received the transcript of the hearing. The record closed on October 7, 2025. (Tr. 55) This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Department Counsel offered six exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 15-17; GE 1-GE 6) The record was held open until October 7, 2025, to enable Applicant to submit documentary evidence. (Tr. 10, 56-57) Applicant did not submit any post-hearing documentation.

Statement of Facts

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 2.a, 3.a, and 3.b with explanations. He did not admit or deny SOR ¶ 3.c. His admissions are incorporated in my findings of fact.

Applicant is a 25-year-old software and test engineer who has worked for a government contractor for 30 months (starting in May 2023). (Tr. 6-7, 20-21; GE 1 at 11) In 2018, he graduated from high school, and in 2023, he received a bachelor's degree with a major in computer science. (Tr. 6) He has not served in the military. (Tr. 6, 20) He has never married, and he does not have any children. (Tr. 7, 20) He does not hold a security clearance. (Tr. 22) He requires a security clearance to maintain his current employment. (Tr. 22)

Drug involvement, substance misuse, and criminal conduct

Applicant's employer does not permit use of illegal drugs. (Tr. 22) SOR ¶¶ 1.a and 1.b allege, from about November of 2019 to about April of 2022, Applicant used ecstasy with varying frequency, and from about October 2018 to about 2019, he used marijuana with varying frequency, respectively.

Applicant said he used ecstasy three times from about November of 2019 to about April of 2022. (Tr. 29-38) In his July 23, 2023 SCA he said he first used ecstasy in May of 2021 (shortly before completion of his June 6, 2021 SCA), and most recently, in April of 2022. Applicant described his ecstasy use as follows:

I took ecstasy multiple times spanning around 2021 to 2022. I have not done it since and will never touch it again, I realize that there were consequences to my actions and I have since learned the harmful implications of illegal

substances to society and my community. . . . I used it around once every four months from the middle of 2021 to the middle of 2022, so about four times total. (GE 1 at 45)

In his response to September 1, 2024 DOHA interrogatories, Applicant said he used ecstasy about once a year from November of 2019 to April of 2022. (GE 3 at 2)

At his hearing, Applicant initially said he used marijuana once in 2018 when he was 18 years old. (Tr. 23-24, 26) In his SOR response, he said, "I did it once and have not done marijuana since then." (HE 3) In his June 9, 2021 SCA, he said he used marijuana three or four times in September 2019. (GE 2 at 32) In his July 23, 2023 SCA, he said he used marijuana in September of 2019, and he explained:

I experimented with marijuana earlier in college which I did not enjoy nor did I make a habit. I regretted it and I don't intend on ever doing it again. It is not something I am particularly proud of. . . . I tried marijuana maybe three or four times in 2019, but it was not something that I enjoyed. (GE 1 at 44)

Later at his hearing after being confronted by the information in his SCA about three or four marijuana uses, he explained it was three or four hits off a bong at a single session. (Tr. 27-29)

SOR ¶¶ 1.c and 2.a allege in about July 2022, Applicant was arrested for and charged with Schedule I/II Sell/Give/Distribute, a Controlled Substance Classified in Schedule I or II (Ecstasy), a felony.

In April of 2022, Applicant purchased two ecstasy pills. (Tr. 38) He used half of one ecstasy pill and retained 1 ½ ecstasy pills. (Tr. 38) He cut one of the pills in half so that he had three half pills of ecstasy. (Tr. 39; GE 6) In July of 2022, Applicant provided ecstasy pills to an undercover police officer for \$90, and the officer arrested Applicant after the transaction. (Tr. 40; GE 3 at 7)

Applicant attended drug-related counseling, took some drug tests, and completed some classes when his criminal case was pending trial. (Tr. 42, 45) The drug-related counseling was once a month for three or four months. (Tr. 45-46) On February 1, 2023, he received deferred adjudication or a diversion to resolve the charge. (Tr. 43; GE 5) He believed his charge was dismissed in 2023; however, he did not provide documentation showing the charge was dismissed. (Tr. 48)

Personal conduct

SOR ¶ 3.a alleges Applicant falsified material facts on his June 9, 2021 SCA, in response to the following question: "Section 23 - Illegal Use of Drugs or Drug Activity Illegal Use of Drugs or Controlled Substances In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance?" Applicant only reported marijuana use and

deliberately failed to disclose that he used ecstasy within about one year of the completion of his June 9, 2021 SCA, as set forth in SOR ¶ 1.a, above.

In his SOR response to ¶ 3.a, Applicant said:

I admit to omitting the first usage of ecstasy when I was 18 as stated above in my 2021 e-QIP. I take full responsibility for this omission and acknowledge that it was a serious mistake. At the time, I was concerned about how my full disclosure might impact my opportunities, but I now realize that honesty and transparency [are] critical in this process. I deeply regret my actions and the lack of integrity I displayed. Moving forward, I am committed to being completely truthful and demonstrating accountability in both my personal and professional life. I have been completely honest in my current e-QIP.

SOR ¶ 3.b alleges the information in SOR ¶¶ 1.a, 1.b, and 1.c, above. Applicant admitted his use of marijuana and ecstasy in his SOR response and at his hearing.

Amended SOR ¶ 3.c alleges Applicant falsified material facts during a September 7, 2023, interview with an authorized investigator for the U.S. Department of Defense, when he described the circumstances of his felony arrest by stating he was solicited in a group chat to sell drugs to a mutual friend. In truth, he advertised himself as an ecstasy pill supplier, solicited his sale by social media, and arranged to meet an unknown buyer at his listed location.

Applicant's September 7, 2023 summary of personal subject interview (PSI) states:

The subject was in a group chat when someone [who] shared a mutual friend with the subject asked if anyone had drugs and the subject answered "Yes". Both arranged to meet at [a store] but somehow the police found out [and he was] arrested by [the police] there. The subject was charged with distributing drugs. (GE 3 at 7)

The police report indicates "Detective redacted made contact with an ecstasy pill supplier via social media who agreed to meet at a listed location and sell 3 pills for 90 dollars." (Tr. 41; GE 6)

Policies

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

national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, this decision should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Drug Involvement, Substance Misuse, and Criminal Conduct

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 ¶ 30 describes the security concern about criminal conduct, "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."

AG ¶ 25 provides conditions that could raise a drug involvement and substance misuse 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."

AG ¶ 31 provides two criminal conduct conditions that could raise a security concern and may be disqualifying in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

AG ¶¶ 25(a), 25(c), 31(a), and 31(b) are established. Discussion of the disqualifying conditions is in the mitigating section *infra*. AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse security concerns:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 32 lists four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

Applicant admitted that he possessed and used marijuana and ecstasy. He sold ecstasy to an undercover police officer. Marijuana and ecstasy are listed on Schedule I of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration (DEA) listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). His multiple possessions of marijuana and ecstasy and sale of ecstasy are federal crimes. Drugs listed as Schedule I Controlled Substances, have "no 'currently accepted medical use in treatment.' 21 U.S.C. § 812(a)(1)(B)." ISCR Case No. 24-01307 at 3 (App. Bd. July 17, 2025). See DEA website, *supra*.

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possessions and use:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence's Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant's state-compliant marijuana use and use of other illegal drugs, holding that such differences are an important aspect of the case that a reasonable person would expect to be addressed. See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications the Appeal Board cited states as follows:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that 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.

SecEA Guidance at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board has 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.”). The landscape concerning possession and distribution of ecstasy has not evolved, and possession and distribution of ecstasy violates state and federal law.

The Appeal Board has “never established a ‘bright line’ rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole.” See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See also ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Several factors are important in the assessment of mitigation of possession and use of illegal drugs: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; types of other illegal drugs used; continued association with drug users; broken promises not to use in the future; and promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; and used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use were not illegal under state law; no marijuana use after notice that marijuana use was federally illegal; and no evidence of broken promises not to use marijuana).

Applicant used marijuana three or four times in September of 2019. In his response to September 1, 2024 DOHA interrogatories, Applicant said he used ecstasy about once a year from November of 2019 to April of 2022. In July of 2022, he sold ecstasy to an undercover police officer.

Applicant provided some important mitigating information. He eventually disclosed his involvement with illegal drugs during the security clearance process. His possessions and uses of marijuana, and his possessions and uses of ecstasy before July of 2022 were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. His possession and sale of ecstasy occurred in July of 2022. His most recent involvement with illegal drugs occurred **before** he was employed by a DOD contractor and **before** he held a security clearance; however, it occurred after he completed his SCA in 2021. At his hearing, he promised not to use illegal drugs in the future. He understands that any future involvement or misuse of drugs is grounds for revocation of national security eligibility.

AG ¶¶ 26(a) and 32(a) apply. Applicant has established a sufficient period of abstinence from involvement with illegal drugs and criminal activity relating to illegal drugs. See ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025). The time between Applicant's most recent involvement with illegal drugs and criminal activity and his hearing was about 37 months (July 2022 to August 2025). This period is sufficient to establish a pattern of abstinence under all the circumstances. Future illegal involvement with illegal drugs "is unlikely to recur [and] does not cast doubt on his current reliability, trustworthiness, [and] good judgment." Guidelines H and J security concerns are mitigated.

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:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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; 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 eventually disclosed more complete information about his history of involvement with illegal drugs to security officials after he was arrested for the sale of ecstasy. He could not be coerced by his history of illegal drug involvement because security officials and law enforcement are aware of his involvement with illegal drugs. AG ¶ 16(e) does not apply.

SOR ¶ 3.c alleges Applicant provided a false statement to the investigator during his PSI about his role in the attempted sale of ecstasy. It is unclear from the summary of interview what Applicant said to the undercover police officer. The undercover police officer was on the website to see if anyone would sell illegal drugs to him. Applicant was on the website to see if he could sell ecstasy. The record is unclear about why the undercover officer believed he could purchase ecstasy from anyone on the website. It is also unclear from the police report whether one of Applicant's friends introduced the undercover police officer to Applicant. The summary does not indicate who originated the discussion of ecstasy, Applicant or the undercover officer. The record does not contain substantial evidence that Applicant intentionally lied during his PSI. AG ¶ 16(b) and the allegation in SOR ¶ 3.c is refuted.

AG ¶ 16(a) is established for the allegation in SOR ¶ 3.a. Applicant admitted that he intentionally chose not to disclose his involvement with ecstasy on his 2021 SCA. He said in his SOR response that at the time of his completion of his 2021 SCA, he "was concerned about how [his] full disclosure might impact [his] opportunities," and based on this concern he did not disclose his recent use of ecstasy. Consideration of AG ¶ 17, which lists conditions that could mitigate personal conduct security concerns, is required:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

SOR ¶ 3.b cross alleges the same conduct as alleged in SOR ¶¶ 1.a, 1.b, and 1.c, and indicates the conduct also raises personal conduct security concerns. SOR ¶ 3.b is mitigated for the same reasons that SOR ¶¶ 1.a through 1.c are mitigated.

In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

Applicant omitted information from his June 6, 2021 SCA about his ecstasy possession and use. He used ecstasy before and after he completed his June 6, 2021 SCA, and he sold ecstasy in July 2022 after completion of his 2021 SCA. In his SOR response, he admitted that at the time he completed his June 6, 2021 SCA he intentionally omitted information about his ecstasy involvement to conceal information that might hurt his career.

No mitigating conditions apply to the falsification of Applicant's June 6, 2021 SCA. His false statement casts doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not 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 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, J, 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 25-year-old software and test engineer who has worked for a government contractor for 30 months (starting in May 2023). In 2023, he received a bachelor's degree with a major in computer science. He does not hold a security clearance.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse, criminal conduct, and personal conduct sections, *supra*. The reasons for denying Applicant's security clearance are more persuasive than the reasons for granting his security clearance.

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

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence, to the facts and circumstances in the context of the whole person. Drug involvement and substance misuse and criminal

conduct security concerns are mitigated; however, personal conduct security concerns arising from his falsification of his June 9, 2021 SCA are not mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	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.

Mark Harvey
Administrative Judge