



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



In the matter of:)
)
) ISCR Case No. 24-02303
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

01/21/2026

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline H (drug involvement and substance misuse) 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 (SCAs) on November 7, 2022, and on October 27, 2023. (Government Exhibit (GE 1); GE 2) On May 9, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H. (Hearing Exhibit (HE) 2) 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 June 28, 2025, Applicant answered the SOR and requested a hearing before an administrative judge. On July 16, 2025, Department Counsel was ready to proceed, and on July 21, 2025, the case was assigned me. On September 10, 2025, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on October 10, 2025. (HE 1A) All administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On November 26, 2025, DOHA rescheduled the hearing for December 19, 2025. (HE 1B) The hearing was convened as rescheduled. Department Counsel offered four exhibits; Applicant offered 12 exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 10-12; GE 1-GE 4; Applicant Exhibit (AE) A-AE L) On January 9, 2026, DOHA received the transcript of the hearing. Applicant did not request that the record remain open after the hearing.

I took administrative notice of Executive Order, *Increasing Medical Marijuana and Cannabidiol Research* (December 18, 2025). (Tr. 6-7; AE L) This Executive Order states:

Marijuana is currently controlled under Schedule I of the Controlled Substances Act (CSA). In 2023, the Department of Health and Human Services (HHS) recommended to the Drug Enforcement Agency that marijuana be controlled under Schedule III of the CSA. Schedule I drugs are defined as drugs with no currently accepted medical use, a high potential for abuse, and a lack of accepted safety for use of the drug under medical supervision. Schedule III drugs are classified as having a potential for abuse less than the drugs or other substances in Schedules I and II, a currently accepted medical use in treatment in the United States, and a potential for moderate or low physical dependence or high psychological dependence in the event of drug abuse.

The recommendation from HHS included a determination that medical marijuana has a currently accepted medical use. That determination was based in part on a finding by the HHS Office of the Assistant Secretary of Health that more than 30,000 licensed healthcare practitioners across 43 United States jurisdictions are authorized to recommend the medical use of marijuana for more than 6 million registered patients to treat at least 15 medical conditions. It was also based on a finding by the FDA of credible scientific support to substantiate the use of marijuana in the treatment of pain, anorexia related to certain medical conditions, and nausea and vomiting induced by chemotherapy. The National Institute on Drug Abuse concurred with the FDA's recommendation that marijuana be rescheduled from Schedule I to Schedule III of the CSA. In May 2024, the Department of Justice issued a proposed rule to reschedule marijuana to Schedule III. The proposed rule received nearly 43,000 public comments and is currently awaiting an administrative law hearing. . . .

The Attorney General shall take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the CSA in the most expeditious manner in accordance with Federal law, including 21 U.S.C. 811. . . .

This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Statement of Facts

In Applicant's answer to the SOR, he denied the allegations in SOR ¶¶ 1.a and 1.b with explanations. (HE 3)

Applicant is a 48-year-old project manager in development of highly technical communication equipment for DOD. (Tr. 15; AE C) He has a bachelor's degree in economics and a master's degree in business administration with a concentration in finance and economics. (Tr. 13) He worked for his current employer from July of 2021 to July of 2023; he was laid off from July of 2023 to October of 2023, and he returned to working for his current employer from October of 2023 to present. (Tr. 14-15; AE C) His resume provides additional details concerning his professional background and accomplishments. (AE C)

Drug involvement and substance misuse

SOR ¶ 1.a alleges from about January 2013 through at least May 2024, Applicant used marijuana with varying frequency. SOR ¶ 1.b alleges from about January 2023 through at least May 2024, he used marijuana while employed in a sensitive position, i.e. one requiring a security clearance.

Applicant's November 7, 2022, and October 27, 2023 SCAs asked about his drug involvement. The SCAs included the statement, "The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity **in accordance with Federal laws, even though permissible under state laws.**" (GE 1 at 49; GE 2 at 50 (emphasis added)) The SCAs asked for information about his possession or use of illegal drugs in the previous seven years and Applicant answered, "No." (GE 1 at 49; GE 2 at 50) In the optional comment on both SCAs, he said that marijuana is legal in his state of residence. (GE 1 at 49; GE 2 at 50)

On July 26, 2024, a DCSA investigator conducted an enhanced interview of Applicant. (GE 2 at 7) The summary of interview states:

Subject was asked about the meaning of his optional comment that marijuana is legal in [his state of residence]. Subject first began using marijuana edibles in spring 2020. Subject does not have the specific instances of each use **within the last four years**. Subject did use with others than just his wife, but Subject was unable to recall who. [J] uses with Subject when [M] visits. Subject would use marijuana edibles with his wife. Subject would usually use at home and would sometimes leave and go on outings. Subject's wife purchased the drug from the store. Subject's frequency of use was about every two weeks. **Subject's last use was**

05/2024 as Subject and [his wife] are doing IVF, invitro fertilization, all use has stopped. . . .

When asked was your use while possessing a security clearance, Subject replied in the negative. Subject was informed of his 01/2023 DOD clearance. Subject verified that he did use marijuana while possessing a security clearance.

Subject would use marijuana edibles when he was wanting to unwind, just like with a drink. Subject has not had drug counseling or treatment. Using marijuana edibles makes Subject calmer. Subject's drug use did not contribute to any problems for Subject. Subject does not socialize or associate with people that do drugs illegally statewide. Subject does socialize or associate with people that do drugs that are federally illegal. The likelihood that Subject will ever use or be involved with drugs again in the future is probably pretty high. Subject intends to use in the future at a lower frequency than his previous use as they have a child now. Subject has not made any changes to ensure he does not use or does not get involved with drugs again in the future. Subject's drug use cannot be used against him for blackmail or coercion. Subject's listed references and wife are aware of Subject's drug use. Subject was aware that the drug use was illegal federally in the sense that he could not take it on a plane.

Subject did not list the drug use as he thought he did not need to as it is legal in Illinois.

* * *

Subject is willing to make changes to his drug use if required to maintain his employment. Subject knows that drug use is federally illegal, but intends to continue to use in the future because the drug use is legal in [his state of residence]. (GE 3 at 7, 11 (emphasis added))

On July 26, 2024, Applicant responded to DOHA interrogatories, and he did not make any amendments or changes to the DCSA summary of interview. (GE 3 at 13) The last page of the DOHA interrogatories bears his signature below the following statement:

I swear (or affirm) that I have read the enclosed the report of the interview conducted on July 26, 2024, (with follow ups on September 18, 2024, and October 22, 2024) and I either found the report to be accurate or I have amended the reports so they are now accurate. I understand a knowing and willful false statement on this form or attachments can be punished by fine or imprisonment or both. (Section 1001 of Title 18, United States Code). (GE 3 at 13)

The DOHA interrogatories included a table with a request for his most recent marijuana use and frequency of marijuana use. (GE 3 at 14-15) He indicated the date of

his first marijuana use was on January 1, 2013; the date of his last marijuana use on January 1, 2023; his frequency of purchase and use was “rare”; and he did not intend to use marijuana in the future. (Tr. 31; GE 3 at 14) He signed the last page of the DOHA interrogatories. (GE 3 at 17)

DCSA records indicate Applicant signed a non-disclosure agreement on December 12, 2022. (Tr. 45; GE 4) Applicant said he did not remember signing the non-disclosure agreement. (Tr. 45) A copy of the non-disclosure agreement is not part of the record. He said no one told him his security clearance was approved. (Tr. 45) He was unsure about when his security clearance was approved. (Tr. 17) He suggested he may have needed to fill out two SCAs because his clearance may be getting upgraded from Secret to Top Secret or his employer’s security officer may have changed. (Tr. 17) He said that the first time he was aware that he had a security clearance was during his DCSA interview on July 26, 2024. (Tr. 18)

When Applicant completed his SCAs, he said he believed the drug questions were not applicable to him because his marijuana use occurred in a state where marijuana use is legal. (Tr. 25-26) He did not think about whether his marijuana use was illegal under state law because he did not have a marijuana prescription at the time he was completing his SCA. (Tr. 41)

Applicant said he did not read the DCSA investigative summary carefully before he certified that he read it in his response to interrogatories and agreed with its contents. (Tr. 37, 43-44) He said the second IVF was in May of 2024, and a physician advised him that he should not use THC when his spouse is undergoing IVF. (Tr. 42-43, 49, 52-53) He did not provide medical records showing his spouse was undergoing IVF in May 2024. He did not notice the May of 2024 date as his most recent marijuana usage in the DCSA investigative summary. (Tr. 37-38, 43-44) He was certain that his most recent marijuana use was in 2022. (Tr. 49-50) His spouse’s most recent use of THC edibles was about a year before his hearing. (Tr. 51) He does not currently have THC gummies in his residence. (Tr. 53)

At his hearing, Applicant initially said his first use of marijuana gummies was in the spring of 2020, which is consistent with his DCSA investigative summary. (Tr. 37) He clarified that he used THC gummies once or twice a year from 2013 to 2020, which is consistent with his response to DOHA interrogatories, but not with the DCSA investigative summary. To explain the date inconsistency, he said, “I guess it depends on what your definition of using is.” (Tr. 38-40) His marijuana use between 2013 and 2020 was illegal under state law because he did not have a marijuana prescription. (Tr. 39)

Applicant mostly consumed marijuana edibles to relax or help him sleep. (Tr. 20) He denied that he went to work or worked under the influence of THC gummies. (Tr. 21) He did not believe that his consumption of THC gummies adversely affected him. (Tr. 21) He said he stopped using THC gummies shortly after his daughter was born in September of 2022. (Tr. 23-24) His “best guess” was that his most recent consumption of a THC gummy was in November of 2022. (Tr. 24, 30) His employer prohibits use of illegal drugs

at work; however, his employer's policy does not specifically prohibit use of illegal drugs when not at work. (GE 3)

A hair follicle drug test on a hair sample Applicant provided on August 5, 2025, was negative for illegal substances. (AE A) Applicant provided a written statement which said:

I pledge to continue to remain free from all drugs, including marijuana, as well as refrain from any and all substance abuse. Furthermore, I fully acknowledge, understand, and embrace that any future involvement with drugs or misuse of the same will be grounds for revocation of my security clearance and any national security eligibility. (AE B)

Applicant said he does not intend to use marijuana in the future so long as it is prohibited under security rules. (Tr. 30) He is not worried about anyone knowing his history of THC use. (Tr. 25)

Applicant does not believe he is in a sensitive position in his employment. (Tr. 55) His project is mostly open source. (Tr. 56) However, he conceded he has access to materials that might be useful to a foreign adversary of the United States. (Tr. 55) He implements aspects of products used by warfighters. (Tr. 56) He currently has a security clearance, and he is doing the same work now that he was doing in 2024. (Tr. 57) Applicant's former supervisor where he is currently employed said in May of 2024, Applicant needed a security clearance because he works on some classified contracts. (Tr. 61-62, 68) He does not see classified materials; however, his position may be sensitive. (Tr. 64-67)

Character Evidence

The general sense of the six character statements including from his former supervisor, coworkers, and friends is that Applicant is diligent, trustworthy, productive, professional, and intelligent. (Tr. 63; AE G-AE K) He is well educated particularly in information technology. (AE C; AE E; AE F) He was awarded multiple technical certifications. He received an excellent performance review from his current employer. (AE D)

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 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 drug involvement and substance misuse security concern and may be disqualifying in this case: "(a) any substance misuse (see above definition)"; "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia"; and "(f) any illegal drug use while granted access to classified information or holding a sensitive position."

AG ¶¶ 25(a), 25(c), and 25(f) 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.

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 at his hearing that he possessed and used marijuana starting in January of 2013. He admitted in his DCSA investigative interview that he used marijuana until May of 2024. Marijuana is currently 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 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*; Executive Order, *Increasing Medical Marijuana and Cannabidiol Research* (December 18, 2025). The scheduling of marijuana is under DEA review, and it may be downgraded from Schedule I to Schedule III, which would permit marijuana possession and use based on prescriptions. *Id.* Applicant used marijuana without a marijuana prescription.

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 Security Executive Agent (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 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 from January 1, 2013, to May of 2024. He made some inconsistent statements about when he started using marijuana and when he stopped using marijuana. The most credible statement about when he started using marijuana was at his hearing when he verified his previous statement that he started using marijuana in January of 2013. The most credible statement of when he stopped using marijuana was made on July 26, 2024, to a DCSA investigator when he said he used marijuana until May of 2024. The end of his marijuana use was only about two months before the DCSA enhanced subject interview. He also mentioned four years of marijuana use from 2020 during the DCSA enhanced subject interview, and he indicated his intention to continue to use marijuana.

“The [DOHA Appeal] Board has ‘long held that applicants who use marijuana [or other illegal drugs] 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). Applicant used marijuana after completion of two SCAs and signing a nondisclosure agreement.

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 held a sensitive position, which required a security clearance, as discussed, *supra*, when he possessed, and used marijuana in 2024. AG ¶ 25(f) adds a significant security element to this drug-involvement security assessment.

Applicant provided some important mitigating information. He initially disclosed his involvement with marijuana during his DCSA interview. His possessions and uses of marijuana were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. His marijuana involvement did not include selling marijuana, and he does not currently possess illegal drugs. He promised not to use illegal drugs in the future, and he provided a statement of his intention. He is credited with not using any marijuana after May of 2024.

None of the mitigating conditions fully apply because Applicant has not established a sufficient period of abstinence from marijuana possession and use. His decisions to possess and use illegal drugs, while occupying a sensitive position, after completion of two SCAs, and while having a security clearance may indicate he lacks the qualities expected of those with access to national secrets and continue to cast doubt on his current reliability, trustworthiness, and judgment. Guideline H 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 Guideline H are

incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 48-year-old project manager who is involved in development of highly technical communication equipment for DOD. He has a bachelor's degree in economics and a master's degree in business administration with a concentration in finance and economics. The general sense of his six-character statements, including from his former supervisor, coworkers, and friends is that Applicant is diligent, trustworthy, productive, professional, and intelligent. He is well educated particularly in information technology. His resume indicates a series of highly technical employments. He was awarded multiple technical certifications. He received an excellent performance review from his current employer.

The disqualifying and mitigating information is discussed in the drug involvement and substance misuse analysis section, *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 security concerns are not mitigated.

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
Subparagraphs 1.a and 1.b:	Against 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