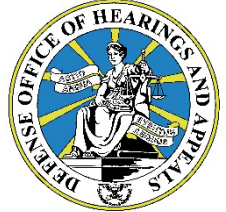




DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 25-00531

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: Grant Couch, Esq.

06/29/2026

Decision

HARVEY, Mark, Administrative Judge:

Security concerns under Guidelines H (drug involvement and substance misuse) and M (information technology systems) 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 an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA) on September 26, 2024. (Government Exhibit (GE 1)) On July 29, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines E, H, and M. (Hearing Exhibit (HE) 1) 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 November 13, 2025, Applicant answered the SOR and requested a hearing before an administrative judge. (HE 2) On January 15, 2026, Department Counsel was ready to proceed, and on March 12, 2026, the case was assigned to me.

On March 25, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on May 4, 2026. (HE 3) The hearing was convened as scheduled.

Department Counsel offered four exhibits; Applicant provided 11 exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 13-15; GE 1-GE 4; Applicant Exhibits (AE) A-AE K) On May 14, 2026, DOHA received the transcript of the hearing. Two post-hearing exhibits were received and admitted without objection. (AE L-AE M) On June 5, 2026, the record in this case for Applicant closed, and on June 15, 2026, it closed for Department Counsel. (Tr. 10, 87)

Statement of Facts

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b (in part), 1.c, 2.b, 3.a, and 3.b (in part). (HE 2) He denied the allegations in SOR ¶¶ 1.b (in part), 2.a, 3.b (in part), and 3.c. (HE 2) He did not admit that he deliberately falsified any of his answers on his SCA with intent to deceive. (HE 2) His admissions are accepted as findings of fact. He also provided extenuating and mitigating information. (HE 2)

Applicant is a 23-year-old software engineer who has been an employee of a Defense contractor since July of 2024. (Tr. 16-17, 70) In 2021, he graduated from high school. (Tr. 70) In May of 2025, he graduated from a university with a 3.5 grade point average. (Tr. 20; AE K) His bachelor of science degree was in computer engineering. (AE K) He was an intern with Defense contractors in the summers of 2021, 2022, and 2024. (Tr. 19) He has not served in the military. (Tr. 70) He has never married, and he does not have any children. (Tr. 70) His resume provides additional information about his professional background. (AE D; AE J)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges that beginning in June of 2022, Applicant reported to his medical provider that his past use of cannabis was at least 10 times per month. SOR ¶ 1.b alleges that in August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and meth (methamphetamine); and SOR ¶ 1.c alleges that in June of 2024, he used marijuana.

From the summer of 2021 to around June of 2022, Applicant dated a woman who was a marijuana user. (Tr. 20-21) She introduced him to using marijuana. (Tr. 20) He used marijuana from about June of 2021 to about June of 2022. (Tr. 21, 45) He may have used marijuana in the summer of 2021 or 2022, which was during the same time period that he was employed by a DOD contractor as an intern. (Tr. 55) He said that he does

“not associate with any individuals who use illegal substances, at least to my knowledge.” (Tr. 21)

Applicant’s psychiatrist prescribed Adderall and Prozac for his anxiety disorder, attention deficit/hyperactivity disorder (ADHD), and major depressive disorder. (Tr. 58) He said, on August 22, 2022, he accidentally overmedicated himself. (Tr. 58) That night he used LSD at a party, and then later in the evening the police arrested him outside of his apartment because he was running around his apartment screaming. (Tr. 24, 77-78; GE 4) The police report states that “subject did admit to taking weed, acid, and meth.” (Tr. 62; GE 4 at 22, .pdf 273) The police initially took Applicant to a hospital for a fitness determination. The record does not indicate whether he received a urinalysis test. Applicant said that he did not have a good memory of events because of the effects of the LSD. (Tr. 24) At his hearing, he denied that he was using marijuana and methamphetamine at that time. (Tr. 22) He said he was using Adderall at that time, and this substance will cause a positive urinalysis test for amphetamine. (Tr. 22-23; AE E)

When Applicant went to court, he received deferred adjudication. (Tr. 25) He was ordered to pay a \$781 fine and fees, to complete eight hours of community service, to complete a drug awareness course, and to complete a three-month probation. (Tr. 25; GE 4 at 27 at .pdf 278) He successfully completed all the court-imposed terms, and the charge was dismissed. (Tr. 25) He has not had any subsequent criminal charges. (Tr. 25) He has not used LSD after August of 2022. (Tr. 25-26)

Applicant admitted that he used marijuana in June of 2024. However, he said:

[W]e happened upon a house party, and we went in and there was apparently marijuana being used at the house party. And at that time, it was reported that I did use marijuana in that party. . . . I, myself, I do not concretely recall it. However, I would like to make it completely clear that if my memory is failing me, you know, memory can be fragile. And simply because I don’t personally recall it happening does not mean that it did not occur. And I completely take responsibility for this as a mistake that I made. I completely take ownership for this event. So I don’t want that to at all detract from the events as they’re being relayed here. (Tr. 27)

Numerous mental-health treatment notes reference cannabis use; however, the notes do not provide the dates of use. (GE 3) Applicant’s June 23, 2022, August 15, 2022, February 12, 2024, March 4, 2024, April 15, 2024 mental-health treatment notes state, “The patient has a history of using cannabis. The frequency was 10 days per month.” (GE 3 at 134, 149, 159, 164, 168 and .pdf 198, 213, 223, 228, 232)

Applicant does not intend to use illegal drugs in the future. (Tr. 27-28) 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. (AE A) On October 2, 2025, he submitted urine and hair samples for

drug testing, and the samples he provided were negative for illegal substances. (AE B) On November 6, 2025, he completed on-line courses called "The Truth About Drugs," "The Truth About LSD," and "The Truth About Marijuana." (AE C) He does not associate with people who use illegal drugs. (Tr. 28) He believes he has grown and matured, and he is not interested in using illegal drugs. (Tr. 29)

Information Technology Systems

SOR ¶ 2.a alleges that between approximately June of 2021 and August of 2021, Applicant introduced unauthorized hardware onto his work computer system while working for his employer. SOR ¶ 2.b alleges that between approximately June of 2021 and August of 2021, he removed his company laptop from the authorized work location while working for his employer.

Applicant's January 2, 2025 Office of Personnel Management (OPM) summary of interview states:

Subject was asked about plugging a personal USB Dongle into [his employer's] Laptop. Subject did not use a personal dongle it was one provided by [his employer] in the box of parts supplied by [his employer] for subject's project. Subject was asked why it was reported explicitly it was a personal dongle. What would he need it for? Subjects' project required more equipment than [his employer] provided. Subject brought some cables, USB hub and adapters from home to use on his project. Subject didn't recall using personal equipment, he was "fuzzy" on it. Subject was asked about the policy, and he was advised he was not to use personal equipment, but they weren't explicit on it. (GE 2 at 13)

In his SOR response, Applicant said he "used a provided Bluetooth dongle to connect my headphones in order to listen to music. I was told by a supervisor later that this was not allowed, and it never happened again." (HE 2 at 5)

For the allegation that Applicant introduced unauthorized hardware onto his work computer system while working for his employer, he said at his hearing:

And I think it's possible that one of the [employer's] kits may have been missing some pieces that were required for the work. I seem to remember having at least one difficulty where I was missing the correct cable to connect the hardware tool I was using to my laptop. So there may have been an instance where I brought an asset from home, like a cable, to use at that time to facilitate with that work. (Tr. 32)

Applicant did not receive disciplinary action for connection of the cable to his laptop. (Tr. 32) In 2021, he did not hold a security clearance. (Tr. 33)

For the allegation that between approximately June of 2021 and August of 2021, he removed his company laptop from the authorized work location while working for his employer, Applicant said:

So I got in the car and [Applicant and some coworkers] went to McDonald's, and I didn't realize my mistake [about taking his company-owned laptop computer out of the building] until we were already on the way out, but I realized like, oh, I just took my laptop out of the office environment. I don't think I'm allowed to do that. . . . And as soon as I realized my mistake, I immediately went back to the office. And once I returned back, [I] went to a mentor who was there to report what had happened. (Tr. 35)

Management discussed the issue of removal of the laptop from his building with him, and he did not receive any adverse action for taking his laptop outside the building without authorization. (Tr. 35-36) He subsequently received security training, which included 10 courses in 2024 and 2025. (Tr. 36, 69; AE G) He has not had any other security issues. (Tr. 37)

Personal Conduct

SOR 3.a alleges that Applicant falsified material facts on his September 26, 2024 SCA in response to "Section 27 – Use of Information Technology Systems, Unauthorized/Unlawful Use, In the last seven (7) years have you introduced, removed, or used hardware, software, or media in connection with any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines, or regulations or attempted any of the above?" He answered, "No" and deliberately failed to disclose that information set forth in SOR ¶¶ 2.a and 2.b, above.

Applicant explained the omission of the unauthorized use of a cable and taking his company's laptop outside the building as follows:

I didn't realize it included the specific instances that are referred to in the SOR, which are noted as me failing to disclose. I genuinely did not think that those instances would fall under these guidelines. I think primarily because I was reading the verbiage of illegally accessed information technology systems, illegally modified, destroyed, manipulated, et cetera, information on information technology systems. And at the time when I was filling this out, it made me think of like hacking, cybercrime, et cetera, falling under these. And I didn't think that was consistent with any of my past behavior. So really that's a failure on me to not further consider these and to get a clarification if it was needed that these need to be disclosed. But the second factor was really these simply did not come to mind at the time when I was filling out this e-QIP. It had been some years since that previous position. And I don't think I noted those specific instances in my mind as notable when I was filling this out. So it genuinely did not come to my

recollection when I was filling this out. And since I didn't think of them, I didn't realize any clarification may have been needed when I was filling that out. And that's a mistake that I made at that time. I did not mean to withhold it, however. (Tr. 38-39)

SOR ¶ 3.b alleges that Applicant falsified material facts on his September 26, 2024 SCA in response to "Section 23 – Illegal Use of Drugs or Drug Activity, 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." He failed to disclose his illegal drug usage as set forth in SOR ¶ 1.b (that in August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and meth (methamphetamine)); and in SOR ¶ 1.c (that in June of 2024, he used marijuana).

In Applicant's September 26, 2024 SCA, he disclosed his arrest for public intoxication, and he admitted that he used LSD in August of 2022. (GE 1 at 36, 38) In response to the request for the "nature of use, frequency, and number of times used, said, "I have once used LSD recreationally, which I received from a friend. This was a very negative experience, and I have never used drugs after this." *Id.* He did not disclose any marijuana or methamphetamine use.

Applicant's January 2, 2025 OPM summary of interview states:

Subject was asked if he had used any other illegal drugs [in addition to his LSD use in August of 2022], including marijuana or abused over the counter or prescription drugs. Subject replied no. Subject was then confronted with the developed use of marijuana while at a party approximately 06/2024. Subject was at a party in [location omitted] summer 2024 and marijuana was being used, smoked. He was drinking heavily and does not recall smoking marijuana. Subject was advised he was not asked if he recalled using marijuana but if he did use marijuana. Subject said no he does not recall using marijuana. (GE 2 at 10)

In response to his DOHA interrogatory about his use of illegal drugs, Applicant said that he used marijuana on June 2, 2024, on one occasion. (GE 2 at 2) At his hearing, he initially said he did not disclose his marijuana and methamphetamine use in August of 2022 on his SCA for the following reasons:

I did not disclose the marijuana or the methamphetamine because I did not use those substances at the time. At least to my own recollection, I did not use either of those two substances. The only substance that I used at that time for the August of 2022, that timeframe we're talking about, was LSD. And that is what I disclosed in complete on my e-QIP. . . . For the June of 2024 instance [of marijuana use], that was not disclosed on my e-QIP as it genuinely did not come to my recollection at that time when I was filling it

out. And I don't specifically have recollection of that event. The first time this was developed was in my interview, which was, I believe, December of 2024, was my interview where my investigator [who] asked about an event that happened in that timeframe of 2024, where it was reported that I used marijuana. (Tr. 39-41)

Later in his hearing, Department Counsel asked Applicant about his marijuana use from about June of 2021 to about June of 2022. (Tr. 21, 45) He said he did not disclose his marijuana usage from 2021 to 2022 for the following reason:

These instances genuinely did not come to my recollection when I was filling out my e-QIP, and it was something that had happened sometime in the past, which I didn't really -- I genuinely did not write it in my mind as something notable that happened in my life.

It's not something that I consciously thought about, and it genuinely did not come to my mind when I was filling out the e-QIP, and that is a lapse on my part. Completely that's a lapse on my part. I think it may have come down to I was trying my best to compile all other parts of the e-QIP, including completely disclosing the August 2022 incidents of usage of LSD and arrest record, that it may have slipped my recollection or it just was not fresh on my mind at that time to where I thought to disclose it.

But that is a lapse completely on my part. I did not at all intend to intentionally hide this information. I just did not -- it did not come to my recollection at that time for me to disclose it properly. (Tr. 46-47)

At the end of his hearing, Applicant said:

I did not recall those instances [of marijuana use in 2021 and 2022] to disclose them at the time of my e-QIP or at the time of my interview. I genuinely did not recall those instances until they were brought up as concerns in the SOR. And what I was saying in my response earlier was trying to kind of explain why I may have not recalled that. And those have been my personal reflections as I've genuinely asked myself, like, hey, why didn't you think about that? You really should have thought about that. You're supposed to answer these things completely. And if you had thought about that, you know, you could have cleared a lot of this up earlier. . . . I was not at all trying to minimize that past drug use and I was not trying to explain away my failure to disclose. The root of the matter is, I was not reminded of it until it was brought up in the SOR letter. And the reason for that may have been the sporadic use and it being in the past and me not associating it with my own lifestyle. That does not minimize or explain away the lack of disclosure at the beginning. But that is -- I believe that may have

been the reason why it did not come up until the time of the SOR. (Tr. 79-80)

At his hearing Applicant said that he learned from the background investigator that the investigator learned from Applicant's friend that he used marijuana at a party. (Tr. 41, 47) Applicant said he did not disclose his marijuana use from 2021 to 2022 to the Government investigator, for the following reason:

I don't think that it was -- I don't, like, I do remember that time. It's not that it's gone from my memory. I do remember that now that I'm looking back at it, but the -- it just, I was not reminded of it. It did not come to my mind at that time. And that's the reason for lack of disclosure for those specific events. (Tr. 47-48, 52)

He did not disclose his methamphetamine use because he has a prescription for Adderall. (Tr. 40-41)

SOR ¶ 3.c alleges that Applicant falsified material facts on his September 26, 2024 SCA in response to DOHA interrogatories when his response failed to disclose his illegal drug usage as set forth in SOR ¶ 1.b (that in August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and meth (methamphetamine)). As indicated previously, he disclosed the LSD but not the marijuana and methamphetamine use.

SOR ¶ 3.d cross alleges the allegations contained in SOR ¶¶ 1.a, 1.b, 1.c, 2.a, and 2.b, above under the personal conduct guideline.

Character Evidence

Applicant received an excellent performance evaluation from his current employer. (AE I) Three former managers and two coworkers at prior employments praised Applicant for his diligence, intelligence, positive attitude, and professionalism. (AE F; AE H) The manager when he was an intern in 2023 said:

[Applicant is articulate, dependable, and demonstrates a level of maturity and integrity that is truly remarkable. These qualities did not go unnoticed by our leadership team—in fact, our program manager saw such promise and potential in [Applicant] that he personally initiated the process to submit him for a Top Secret clearance. This decision was rooted in [his] ability to embody the trustworthiness, sense of responsibility, and dedication to excellence required for such a significant role. (AE H)

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 War 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 people 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 War, 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 lists conditions that could raise a drug involvement and substance misuse security concern and may be disqualifying in this case as follows: “(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 ¶¶ 25(a) and 25(c) 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 an 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).

SOR ¶¶ 1.a, 1.b, and 1.c allege and the record established that beginning in June of 2022, Applicant used marijuana at least 10 times per month for an unspecified period of time. In August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and methamphetamine. He admitted to the police that he used marijuana, LSD, and methamphetamine. In June of 2024, he used marijuana.

Marijuana and LSD are listed on Schedule I of the Controlled Substances Act (CSA). Methamphetamine is listed on Schedule II of the CSA. 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 single possessions of LSD and methamphetamine 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). "Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also

considered dangerous.” *Id.* 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.*

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possession 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 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).

Applicant eventually established some mitigation under AG ¶¶ 26(a) and 26(b) because he acknowledged his marijuana involvement, and he provided evidence of actions taken to overcome this problem by his abstinence since June of 2024. He indicated that he dissociated from his drug-using associates and contacts. 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.

AG ¶ 26(a) applies to the drug offenses alleged in the SOR. His most recent drug offense was marijuana possession and use in June of 2024, which was 23 months before his security clearance hearing. His possession and use of LSD and methamphetamine occurred in August of 2022, almost four years before his hearing. His drug offenses are not recent; and they “happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the [his] reliability, trustworthiness, [and] good judgment.” Drug involvement and substance misuse security concerns are mitigated.

Use of Information Technology

AG ¶ 39 indicates the use of information technology security concern as follows:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 lists conditions in this case that could raise use of information technology security concern and may be disqualifying as follows:

- (e) unauthorized use of any information technology system; and
- (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

AG ¶¶ 40(e) and 40(f) are established. Discussion of the disqualifying conditions is in the mitigating section *infra*. AG ¶ 41 lists conditions that could mitigate use of information technology security concerns:

- (a) so much time has elapsed since the 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 misuse was minor and done solely in the interest of organizational efficiency and effectiveness;
- (c) the conduct was unintentional or inadvertent and was followed by a prompt, good faith effort to correct the situation and by notification to appropriate personnel; and
- (d) the misuse was due to improper or inadequate training or unclear instructions.

Between approximately June of 2021 and August of 2021, Applicant introduced unauthorized hardware into his work computer system while working for his employer, and he removed his company laptop from his work location without authorization.

AG ¶¶ 41(a) and 41(d) apply. Applicant's violations of security rules occurred when he was an intern. He needed to be fully apprised of the importance of not plugging devices into his employer's computers, especially items that could compromise the integrity of security. Taking a laptop computer outside his building without permission could compromise the content on the computer. In addition, it could increase the risk that the computer could be stolen. In this instance, there is no evidence of loss of the employer's equipment or work product. He has received security training, and the rule violations "happened under such unusual circumstances, that [they are] unlikely to recur and does not cast doubt on the [his] reliability, trustworthiness, [and] good judgment." Use of information technology 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 provides two personal conduct conditions that could raise a security concern and may be disqualifying:

- (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; and
- (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; and
- (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.

The record evidence establishes AG ¶¶ 16(a), 16(b), and 16(c), requiring additional inquiry about the possible applicability of mitigating conditions. Additional discussion of the disqualifying conditions is contained in the mitigation section, *infra*. The personal conduct mitigating conditions under AG ¶ 17, which may be applicable in this case are as follows:

- (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.a alleges, and Applicant admitted, that he failed to disclose information about his violations of information technology rules on his September 26, 2024 SCA. Section 27 – Use of Information Technology Systems, Unauthorized/Unlawful Use, asked “In the last seven (7) years have you introduced, removed, or used hardware, software, or media in connection with any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines, or regulations or attempted any of the above?” He answered, “No” and failed to disclose that information set forth in SOR ¶¶ 2.a (he plugged a USB device into his employer's computer) and 2.b (he removed his employer's computer from the workplace without permission).

Applicant asserted at his hearing:

I genuinely did not think that those instances would fall under these guidelines. I think primarily because I was reading the verbiage of illegally accessed information technology systems, illegally modified, destroyed, manipulated, et cetera, information on information technology systems. And at the time when I was filling this out, it made me think of like hacking, cybercrime, et cetera, falling under these. And I didn't think that was consistent with any of my past behavior. So really that's a failure on me to not further consider these and to get a clarification if it was needed that these need to be disclosed. But the second factor was really these simply did not come to mind at the time when I was filling out this e-QIP. It had been some years since that previous position. And I don't think I noted those

specific instances in my mind as notable when I was filling this out. So it genuinely did not come to my recollection when I was filling this out. And since I didn't think of them, I didn't realize any clarification may have been needed when I was filling that out. And that's a mistake that I made at that time. I did not mean to withhold it, however. (Tr. 38-39)

Applicant is an intelligent individual with computer experience. The SCA question about use of information technology is easy to understand. He knew that his conduct with his computer violated protocols because he had a conversation with management about it afterwards. His claim that he did not understand the scope of the question is not credible and shows a lack of rehabilitation.

SOR ¶ 3.b alleges that Applicant falsified material facts on his September 26, 2024 SCA in response to Section 23 – Illegal Use of Drugs or Drug Activity, which asked, “In the last seven (7) years, have you illegally used any drugs or controlled substances?” He failed to disclose his illegal drug usage as set forth in SOR ¶ 1.b (that in August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and meth (methamphetamine)); and in SOR ¶ 1.c (that in June of 2024, he used marijuana).

SOR ¶ 3.c alleges that Applicant falsified material facts on his September 26, 2024 SCA in response to DOHA interrogatories, in which his response failed to disclose his illegal drug usage as set forth in SOR ¶ 1.b (that in August of 2022, he was arrested for public intoxication after consuming marijuana, acid (LSD), and meth (methamphetamine)).

Applicant told the police officer after his arrest in August of 2022 that he used LSD, meth, and weed. His subsequent claim that he remembered using LSD but did not remember using methamphetamine and marijuana is not credible. His disclosure to the police officer is more credible than his subsequent claim of a lack of memory of consuming these illegal drugs. He intentionally failed to disclose his use of methamphetamine and marijuana on his SCA and in his response to DOHA interrogatories. He also failed to disclose his marijuana use in June of 2024 on his SCA. His statement at his hearing that he did not remember using marijuana at the party is not credible and shows a lack of rehabilitation.

The SOR allegations in SOR ¶ 3.d cross allege the conduct in SOR ¶¶ 1.a, 1.b, 1.c, 2.a, and 2.b. SOR ¶ 3.d is mitigated under AG ¶ 17(c) for the reasons stated in the analysis under Guidelines H and M, *supra*. Applicant's poor judgment as indicated under the drug involvement and substance misuse and use of information technology guidelines are of limited relevance. SOR ¶ 3.d is mitigated.

The security concern under personal conduct is about his false statements about his illegal drug possessions and uses and violations of information technology rules. His prior instances of poor judgment in 2022 and 2024 relating to those issues continue to be

relevant as they show a pattern, but they are insufficient as independent security concerns to warrant a finding against Applicant.

Applicant possessed and used marijuana from the summer of 2021 to around June of 2022 with his girlfriend, who was a marijuana user. He failed to disclose this marijuana involvement on his September 26, 2024 SCA, during his follow-up OPM interview, and in his response to DOHA interrogatories. These omissions were intentional and made with intent to deceive. His marijuana use with his girlfriend and subsequent falsifications will not be considered for disqualification purposes because they were not alleged in the SOR. However, they will be considered in the mitigation, credibility, and whole-person analysis.

None of the mitigating conditions fully apply. 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, M, 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 23-year-old software engineer who has been an employee of a Defense contractor since July of 2024. In 2021, he graduated from high school. In May of 2025, he graduated from a university with a 3.5 grade point average. His bachelor's degree was in computer engineering. He was an intern with Defense contractors in the summers of 2021, 2022, and 2024. He has not served in the military. He has never married, and he does not have any children. His resume provides additional information about his professional background. He received an excellent performance evaluation from his current employer. Three former managers and two coworkers at prior

employments praised Applicant for his diligence, intelligence, positive attitude, professionalism, and contributions to his employer.

The disqualifying and mitigating information is discussed in the 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 and use of information technology system security concerns are mitigated; however, security concerns related to personal conduct are not mitigated at this time.

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