



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



In the matter of:)
)
) ISCR Case No. 24-00482
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Anthony J. Kuhn, Esq.

08/21/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 30, 2022, in connection with his employment in the defense industry. On May 9, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued him a Statement of Reasons (SOR) detailing security concerns under Guideline H. The DCSA issued the SOR under Executive Order 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 20, 2024, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 9, 2024. On May 15, 2025, following consultation with the parties, DOHA issued a notice scheduling the hearing for May 22, 2025. The hearing was to take place virtually through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified and submitted Applicant Exhibits (AE) A through Q, which had been submitted with his Answer to the SOR. All these exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 2, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Procedural Issue

During the hearing, the Government withdrew the allegation in SOR ¶ 1.c. Applicant's counsel had no objection. (Tr. 71)

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. Applicant's admissions are accepted as findings of fact.

Applicant is a 32-year-old employee of a DOD contractor. This is his first time applying for security clearance. He has no military service. He has worked for his current employer since November 2022. His highest level of education is a doctorate which he earned in 2022. He is married and has no children.

The SOR alleges under Guideline H that Applicant used marijuana with varying frequency from about May 2014 to about April 2024 (SOR ¶ 1.a: GE 1 at 43-44; GE 2 at 5, 12); he purchased marijuana with varying frequency from about May 2014 to about April 2024 (SOR ¶ 1.b: GE 1 at 44-45; GE 2 at 12); and Applicant expressed an intent to use marijuana in the future. (SOR ¶ 1.d: GE 2 at 13)

Applicant started using marijuana in approximately May 2014, when he was a 22-year-old college student. He used marijuana with his two college roommates. He discovered that his marijuana usage helped him with his anxiety symptoms. In 2019, marijuana was legalized for medical purposes in State A, the state where he resided at

the time. Applicant sought treatment from a provider about his anxiety. In 2020, he was prescribed marijuana for medical purposes and obtained a medical marijuana card. He used medical marijuana from March 2020 until he left State A in October 2022. (Tr. 28-29; AE G; AE H)

In October 2022, he moved to State B where he currently resides in order to start his new job with the DOD contractor. He was aware that his State B legalized the recreational use of marijuana. He did not need to get a medical marijuana card because the use of marijuana was legal for people over the age of 21. (Tr. 31, 34-35)

In response to interrogatories, Applicant indicated that he first learned marijuana was illegal under federal law in 1999. In response to a question about his future use of marijuana, Applicant indicated that he would use marijuana in the future if it was medically recommended. (Tr. 33-35. GE 2 at 13) During the hearing, Applicant testified that things changed when various states started to legalize marijuana. He mistakenly believed that state law superseded federal law. He did not learn that marijuana remained illegal under federal law even though it was legal under state law until March 2025 when he completed a drug awareness course. (AE L, actual date of completion is April 5, 2025)

After Applicant moved to the state where he now resides, he used marijuana on various occasions from April 2023 to December 2024 to treat anxiety caused by marital issues. His wife was attending school and lived in another state, so they had a long-distance relationship early in their marriage. He described his rate of marijuana usage from August 2023 to December 2024 varying from two to six times a week. His marijuana use declined in 2024. He estimated that he used marijuana approximately between once or twice a week to approximately once a month. Applicant's last use of marijuana was in December 2024. He does not intend to use marijuana in the future. On April 2, 2025, he signed a Statement of Intent attesting to his intention to abstain from all illegal drug use to include marijuana. He acknowledged that any future illegal drug involvement would likely revoke his access to classified information. (Tr. 36-37, 52-55; AE I)

In late 2023, Applicant started therapy to treat his anxiety. He met with a therapist on a regular basis. His therapist taught him other methods to manage his anxiety. When his therapist left the practice in March 2025, they concluded he did not need to be transferred to another therapist because his symptoms had significantly improved. He also meets with JA, a psychiatric advanced nurse practitioner, every six to eight weeks to help him manage his anxiety. He started seeing JA on June 27, 2023. He has been under JA's care for medication management since July 10, 2023. JA's diagnoses of Applicant included Attention Deficit Hyperactivity Disorder and Major Depressive Disorder. He noted that Applicant is compliant with his current medication and treatment plan. (Tr. 37-38; AE Q)

On April 17, 2025, and April 25, 2025, Applicant underwent a psychological evaluation by Dr. JR, a clinical psychologist. His diagnostic impressions and prognosis were that Applicant presently attends psychiatric treatment for his anxiety and attention issues. He currently takes sertraline (Zoloft) and Vyvanse. He has responded extremely well to these medications. He has been abstinent from cannabis for the last five months. Based on his own self reporting, he has never been a heavy user of cannabis or alcohol. When he used cannabis in the past, it was for medicinal purposes. Dr. JR's diagnoses are Generalized Anxiety Disorder, in full remission; Persistent Depressive Disorder in full remission; and Attention Deficit Disorder, inattentive, mild, partial remission. Prognosis: very good, with consistent treatment. Dr. JR concludes that Applicant does not presently have a condition that could negatively impact his judgment, reliability, and trustworthiness. (AE E)

On April 23, 2025, Applicant provided a urine sample to test for illegal drugs. His test result was negative. (AE K) He completed a four-hour drug and alcohol awareness class on April 5, 2025. (AE J)

Applicant's mother testified on his behalf during the hearing. She is aware of the allegations in the SOR. When Applicant was in college, she encouraged him to get a medical marijuana card in State A because he had anxiety in school. He used marijuana for anxiety and to help him focus and relax. He did not need to obtain a medical marijuana card when he moved to State B in October 2022 because State B legalized both medical and recreational marijuana use. She does not believe Applicant suffered any negative effects from his marijuana use. She believes that it helped him with his mental health and with life in general. She has never seen him over-indulge marijuana. She works in the medical field and sees a lot of patients who have used too much marijuana. In comparison, her son has never used marijuana to excess. Her son is very honest and trustworthy. After he moved to State B, he started volunteering with different organizations in his spare time. He has a good, moral and outstanding character. (Tr. 18-23)

Whole-Person Factors

Dr. WR interviewed and hired Applicant. He is his direct supervisor. He notes Applicant has made "a positive and lasting impact from his hard work, thoroughness, reliability, and technical proficiency. He demonstrates excellent judgment, discretion, collegiality, honesty, and trustworthiness." Applicant told him about his use of medical marijuana and that it raised issues with his security clearance. Applicant told him verbally and in writing that he (1) went to therapy to help with his anxiety; (2) has a medication management program to treat his anxieties; (3) completed a drug and alcohol awareness course; and (4) worked on his marital issues and is committed to not using marijuana while maintaining his security clearance. The steps taken by him reaffirms Dr. WR's confidence in his trustworthiness, approach and judgment. He supports Applicant's request for a security clearance. (AE L at 49-50)

KT is one of Applicant's technical leaders and supervisors at his place of employment. He met Applicant in the fall of 2022. He became Applicant's supervisor in January 2023. Applicant has impressed him with his dedication to learning many aspects of his career field. KT has relied on his assistance on many occasions to resolve problems. Applicant is a key member of the team. He is dedicated to self-improvement and responds positively to feedback. KT would like to use his expertise to work in a classified environment. He finds Applicant trustworthy, honest and reliable. KT recommends him for a security clearance. (AE L at 44-45)

Since 2022, RM has worked as a colleague and a task lead of Applicant. He is impressed with "his aptitude and drive when faced with difficult problems." He is reliable and diligent. He is aware of the issues in Applicant's case. Despite the issues, he is honest, and hardworking. He is aware of several steps Applicant has taken to mitigate the concerns. He recommends him for a security clearance. (AE L at 46)

WO was one of Applicant's professor's when he was in graduate school. He has known him over seven years. Applicant has impressed him with his ability to understand complex issues and methods. He not only demonstrated excellent skills, but also was a great team member on projects and mentored younger students in their group. WO is aware of the security issues related to medical marijuana. Applicant told him that he has gone through treatment to address his anxiety. WO finds him trustworthy, honest and reliable. He recommends Applicant for a security clearance. (AE L at 47)

MC also wrote a letter on Applicant's behalf praising his duty performance, trustworthiness, and reliability. He recommends Applicant for a security clearance. (AE L at 48) Applicant provided copies of his resume, academic credentials, and documentation of his extensive volunteer service in the community. (AE F; AE M; AE N)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the

national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and

distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly, and convincingly commit to discontinue such misuse.

The record evidence shows Applicant used, purchased and distributed marijuana on various occasions from at least May 2014 to about April 2024. While medical marijuana was legal in the state where he went to college and both medical and recreational marijuana are legal in the state where he currently resides, the use and purchase of marijuana remain illegal under federal law. AG ¶ 25(a) and ¶ 25(c) apply.

AG ¶ 25(g) applies because in his April 2024 response to DOHA interrogatories, Applicant mentioned that he would continue to use marijuana if it was medically recommended. He previously indicated on his September 2022 SCA that he had no intention to use marijuana in the future, yet he used marijuana after submitting his SCA, from August 2023 to December 2024, which raised questions about his intentions to discontinue marijuana use in the future.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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; and

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

AG ¶ 26(a) applies. Applicant's character references attest to his reliability, trustworthiness and good judgment. He disclosed his past marijuana use to everyone who wrote a letter on his behalf. Applicant's last use of marijuana was in December 2024, over eight months ago. He has sought professional help to assist him with finding other positive ways to cope with his anxiety.

AG ¶ 26(b) applies. Applicant acknowledged his past illegal drug involvement and substance abuse. He sought out therapy to deal with his anxiety issues. He is being treated by a psychiatrist for his anxiety who has prescribed medication other than marijuana. He has not used marijuana for over a year and four months. On April 4, 2025, he signed a Statement of Intent to refrain from illegal drug use and substance misuse to

include marijuana. He acknowledged that any future illegal use will likely result in the revocation of his security clearance. AG ¶ 26(b) applies.

While Applicant began to use marijuana before it became legal in the state where he resided during college and graduate school, he followed the procedures to obtain a medical marijuana card when it became legal in State A in 2019. His mother testified that she recommended that he seek out a medical marijuana card to deal with his anxiety issues. After he received his doctorate, Applicant moved to State B where marijuana was legal recreationally. He did not need to apply for a marijuana card. Applicant believed that if a state legalized marijuana this would negate the federal law. He was not fully aware that marijuana use remained illegal under federal law. The average person is not familiar with the distinction between federal and state law. Based on his testimony, I find Applicant's testimony to be credible. He fully disclosed his past marijuana use during his security clearance background investigation. Once he fully realized that marijuana use remained illegal under federal law, he signed a Statement of Intent to abstain from marijuana use. He took significant steps to address his anxiety issues without using marijuana. For these reasons, Applicant mitigated the security concerns raised under Drug Involvement and Substance Misuse.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

I considered that Applicant has been employed by a DOD contractor since November 2022. I considered the highly favorable statements made by his superiors and coworkers. I considered the testimony of his mother. I considered that he and his wife lived in different locations and now live in the same location. I considered Applicant provided full disclosure about his illegal drug use on his March 2023 SCA, during his background investigation interview, and in response to interrogatories.

I considered that Applicant initially expressed an intent to use marijuana in the future if it was medically recommended. Applicant experienced some confusion about the differences between state laws which made marijuana legal and the fact that marijuana remains illegal under federal law. I considered that Applicant used marijuana on various occasions up until December 2024. While concerning, he gradually realized that using marijuana is not compatible with holding a security clearance. He sought out therapy and alternative treatments for his anxiety from a psychiatrist. I considered that he submitted a formal statement of his intent to refrain from all illegal drug involvement in April 2025. His actions have demonstrated that he is serious about his intention to refrain from illegal drug involvement in the future. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude that Applicant mitigated the security concerns raised by his conduct under Guideline H. He is warned that future illegal drug involvement will likely result in the revocation of his security clearance and national security eligibility.

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, 1.d:	For Applicant
Subparagraph 1.c:	Withdrawn

Conclusion

Based on the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge