



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01114

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

08/04/2025

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline H (drug involvement and substance misuse) are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On July 17, 2023, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or a security clearance application (SCA). (Government Exhibit (GE) 1) On September 17, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline H. (HE 2) On October 15, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On December 10, 2024, Department Counsel was ready to proceed.

On April 3, 2025, the case was assigned to me. On April 7, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 20, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered three exhibits into evidence; Applicant did not provide any exhibits; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 17-18; GE 1-GE 3) On June 2, 2025, DOHA received a transcript of the hearing. Applicant provided three exhibits after his hearing, and all exhibits were admitted without objection. (Applicant Exhibits (AE) A-AE C) The record closed on July 21, 2025. (Tr. 31-33)

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

Findings of Fact

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

Applicant is a 41-year-old project planner and scheduler who is an employee of a government contractor. (Tr. 6, 20) He has worked for the government contractor since July of 2023. (Tr. 20-21) In 2002, he graduated from high school, and in 2006, he was awarded a bachelor's degree. (Tr. 6; GE 1) In 2019, he received a Master of Business Administration degree. (GE 1 at 14) In May of 2006, he joined the Army, and in July of 2017, he was honorably discharged from the Army. (Tr. 6; AE A) He held a security clearance when he was in the Army from 2007 to 2012. (Tr. 21) He has never been accused of a security violation. (Tr. 21) He was commissioned in the Armor branch, and then he branch transferred to Special Forces. (Tr. 7) He served tours in Iraq, Afghanistan, and Syria/Jordan. (Tr. 7, 30; GE 1) When he left active duty, he was a captain. (Tr. 8) He served in the Army inactive ready reserve (IRR) until 2021, and he left the Army as a major. (Tr. 8) He has an 80 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 31) In 2016, he married, and his daughter is seven years old. (Tr. 9)

Drug Involvement and Substance Misuse

SOR ¶¶ 1.a and 1.b allege, and Applicant admitted, he used THC with varying frequency from about March of 2018 to about May of 2019, and from about June of 2021 to about April of 2023, respectively. (HE 3)

In Applicant's SOR response, he said:

I admit to using THC with varying frequency from about March 2018 - May 2019 and from about June 2021 - April 2023. I was living in areas of the country where recreational use of THC is legal according to state law. The use was in the privacy of my own residence, and I purchased THC only from licensed dispensaries. I have never tried or experimented with any narcotic or controlled substance. I fully understand the responsibilities that come with having a security clearance.

During my ten years as an active-duty Army Officer, I never used THC, especially while serving as a Special Forces Green Beret, with a TS/SCI clearance. During the winter of 2023, I wanted to change careers and focused on a path with [his employer], which is a drug-free corporation. I passed my pre-employment drug screening and have not used THC (or any other controlled substances) in over 18 months. Due to my background, I was assigned to work that requires a security clearance. I was truthful on my SF-86, and I was truthful with the background investigator. . . . I do not associate with individuals who use drugs or hang-out in areas where drugs are used. Additionally, I intend to abstain from all drug involvement, to include THC, and I acknowledge that any future involvement or misuse is grounds for revocation of national security eligibility. (Tr. 19; HE 3)

Applicant submitted an SCA on July 12, 2018, and an Office of Personnel Management investigator interviewed him in July of 2019. (GE 1 at 46) When he was discharged from the Army IRR his security clearance was still in adjudication. (GE 1 at 46) The SOR does not allege he used marijuana while holding a security clearance or occupying a sensitive position.

In 2018, Applicant received a medical marijuana prescription. (Tr. 23) All of Applicant's marijuana purchases and uses were legal under state law. (Tr. 23) He used marijuana one to three times a week. (Tr. 25) He used marijuana to relax and to assist with alleviation of pain from service-connected disabilities. (Tr. 26)

When Applicant started his current employment, he received a drug test, which he passed. (Tr. 22) His employer requires employees to submit to random urinalysis testing for use of illegal drugs; however, Applicant has not been randomly selected for testing for use of illegal drugs. (Tr. 22) His most recent marijuana use was in April of 2023. (Tr. 27) He understands that marijuana possession is federally illegal and marijuana use violates security rules; he reiterated the accuracy of his SOR response, *supra*; and he promised not to use marijuana in the future. (Tr. 19, 26-27, 29)

Character Evidence

Applicant's DD Form 214, Certificate of Release or Discharge from Active Duty, reflects the following medals and badges: Afghanistan Campaign Medal with Campaign Star; Bronze Star Medal; Army Commendation Medal (2nd Award); Army Achievement

Medal (3rd Award); National Defense Service Medal; Global War on Terrorism Service Medal; Global War on Terrorism Expeditionary Medal; Iraq Campaign Medal with Campaign Star; Army Service Ribbon; Overseas Service Ribbon; NATO Medal; Combat Infantryman Badge; Special Forces Tab; Combat Action Badge; and Parachute Badge. (AE A) He completed numerous Army training courses. (AE A)

Applicant received excellent performance evaluations. (AE C) He provided five character statements, which support his access to classified information. (AE B) A senior manager where he is currently employed said:

In discussing [Applicant's] character, it is important to note that he has previously tried marijuana in states where it is legal. He has always been open about his background, which has not impacted his performance. [His current employer] has a thorough screening process, including drug testing, and I can confidently say that [Applicant] has consistently excelled in his role. He is one of the most impressive employees I have encountered, consistently delivering high-quality work and demonstrating unwavering commitment to his responsibilities.

In addition to his leadership skills, [Applicant] strongly advocates for continuous improvement. He actively seeks feedback and constantly looks for ways to enhance processes and outcomes. His commitment to excellence and proactive nature make him an invaluable asset to any organization. (AE B at 1)

A Special Forces lieutenant colonel who has known Applicant for more than 15 years said:

I am aware that [Applicant] has, in the past, used THC in a legal and recreational context. This use was limited, infrequent, and fully compliant with state laws where such use is permitted. More importantly, [he] has been forthright about this aspect of his personal history and has shown a clear understanding of the responsibilities and expectations that come with holding a security clearance. He has made it clear that he respects federal guidelines and has no intention of engaging in any conduct that could jeopardize his professional standing or obligations.

Based on my years of close acquaintance with him, I am confident that [Applicant's] past conduct does not reflect a pattern of behavior that would call into question his loyalty, trustworthiness, or ability to safeguard sensitive information. If anything, his openness and candor further underscore the integrity and maturity he brings to all aspects of his life. (AE B at 2)

A Special Forces Soldier who served with Applicant in combat said:

[Applicant] is the essence of a man of his word. If he says he's going to do something, he does it. If he says he's not going to do something, he doesn't

do it. While we were in the service, I never saw him act inappropriately or remotely entertain putting himself in a situation that could eventually reflect poorly on himself, his family, the Army, or the U.S. Government. I know [he] has used marijuana since leaving the military, but I also know that it was never used outside of applicable state laws, never used when prohibited by an employer, and he stopped use when he decided to pursue a career in the defense industry. Since that time, I have never seen, or heard of, [Applicant] being anywhere near illicit substances. There isn't anything I wouldn't trust [him] with. . . . I wholeheartedly recommend granting him [a] security clearance without reservations. Our country is stronger, and our secrets safer the more we can involve [him]. (AE B at 5)

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 security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition);” and “(c) illegal possession of a controlled substance” The record establishes AG ¶¶ 25(a) and 25(c). Additional discussion of the disqualifying conditions is in the mitigation 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 that he possessed and used marijuana. Marijuana is listed on Schedule I, of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). His possession of marijuana is a federal crime.

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

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

that requires them to use a “whole-person concept.” This requires adjudicators to carefully weigh a few variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (Dec. 21, 2021) at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

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

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

Applicant admitted that he used THC with varying frequency from about March of 2018 to about May of 2019, and from about June of 2021 to about April of 2023. He is credited with abstinence from involvement with marijuana from April of 2023 until May 20, 2025, which was the date of his hearing.

Applicant possessed and used marijuana after he completed an SCA in 2018 and had an OPM interview. “The 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 provided some important mitigating information. He disclosed his involvement with marijuana during the security clearance process. His possession and use of marijuana was not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. He did not use or possess marijuana in violation of company policy (his marijuana involvement preceded his current employment). He promised not to use illegal drugs in the future. He provided a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant’s marijuana involvement as detailed in SOR ¶¶ 1.a and 1.b was 25 months before his hearing. His marijuana possession and use are mitigated by the passage of time; his promise not to use illegal drugs in the future; his marijuana use was in a state where it is not prohibited; and no marijuana use occurred while he had access to classified information or held a sensitive position.

AG ¶¶ 26(a) and 26(b) apply because Applicant has established a sufficient pattern of abstinence of marijuana possession and use. I found Applicant to be a sincere and credible witness. His history of marijuana possession and use does not cast doubt on his current reliability, trustworthiness, and judgment. Guideline H security concerns are 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 41-year-old project planner and scheduler who is an employee of a government contractor. He has worked for the government contractor since July of 2023. In 2006, he was awarded a bachelor's degree, and in 2019, he received a Master of Business Administration degree. In May of 2006, he joined the Army, and in July of 2017, he was honorably discharged. He served tours in Iraq, Afghanistan, and Syria/Jordan. When he left active duty, he was a captain. He served in the Army IRR until 2021, and he left the Army as a major. He has an 80 percent VA disability rating. He received excellent performance evaluations from his current employer and numerous Army medals and badges. His five character statements laud his performance, integrity, reliability, and trustworthiness.

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 mitigated.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

Considering all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge