



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 25-00397

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2025

Decision

MURPHY, Braden M., Administrative Judge:

Applicant used marijuana after reporting previous marijuana use on a security clearance application in February 2021 and declaring he would not do so again. His subsequent marijuana use occurred while in a sensitive position. His illegal drug use under these circumstances is too recent for him to provide sufficient evidence to mitigate security concerns under Guideline H, drug involvement and substance misuse. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on February 10, 2021, and January 11, 2024. On March 27, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DOD issued the SOR under Executive

Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 June 8, 2017.

When Applicant answered the SOR on January 23, 2025, he admitted both allegations and requested a decision based on the administrative (written) record, without a hearing, before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On May 28, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 7. The FORM was mailed to Applicant the next day. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant received the FORM on June 6, 2025, and he responded to the FORM on July 14, 2025. (FORM Response) Neither party noted any objections.

The case was forwarded to the DOHA Hearing Office for assignment to an administrative judge on or about July 18, 2025, and it was assigned to me on September 8, 2025. Government Items 1 and 2 are the SOR and Applicant's answer to the SOR (Answer). The Answer includes a letter from his psychologist that I have marked as Applicant's Exhibit (AE) A. Government Items 3 through 7 are admitted into evidence without objection, as are AE A and Applicant's FORM Response.

Findings of Fact

In his Answer, Applicant admitted both allegations in the SOR (¶¶ 1.a-1.b) and provided a narrative explanation. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 35 years old. He married in 2017, and he and his wife separated in January 2023. In his FORM Response, he references a divorce and a three-year-old son. (Item 4, Item 7 at 10; FORM Response)

Applicant earned an associate degree in 2014 and a bachelor's degree in 2017. Between 2017 and August 2023, he worked as a cybersecurity engineer for Company M and its predecessor. After a brief period of unemployment, he began working for Company A as an engineer in November 2023. His current clearance sponsor is a subsequent employer, Company S. (Items 3, 4)

When Applicant first submitted an SCA in February 2021, he disclosed that he had used marijuana between approximately May 2015 and December 2020 and that he had used it “[recreationally] a handful of times.” He also said, “I am not interested in using it any longer.” He also disclosed that he purchased marijuana from a local dispensary in December 2020 for personal recreational use because he wanted to try it. (Item 4 at 46, 47)

Applicant reported on his January 2024 SCA that he was granted a clearance in about December 2020. (Item 3 at 51). The Government provided information from the Defense Information System for Security (DISS) showing that this investigation for a secret clearance ended favorably, apparently in February 2021. (Item 5) Applicant signed a non-disclosure agreement pertaining to classified information in April 2022. (Item 6)

In Applicant’s January 2024 SCA, he disclosed using marijuana between approximately May 2015 and July 2023, again “[recreationally] a handful of times.” (Item 3 at 48) He reported that between December 2020 and December 2023, he purchased “a small amount of THC product from a local dispensary for use at home.” He said he used it “to relax at home.” He also answered “YES” to the question, “Was your involvement while in possession of a security clearance?” He said again that he did not intend to engage use illegal drugs in the future. (Item 3 at 49)

According to DISS, Applicant was granted an interim top-secret clearance on or about January 18, 2024. (Item 5) In his September 2024 background interview, he said he last used marijuana in July 2023, rather than December 2023 as listed on his SCA and, he said, it was definitely before starting his new job in November 2023. (Item 7)

The March 2025 SOR alleges Applicant’s marijuana use with varying frequency from May 2015 and July 2023 (SOR ¶ 1.a), including use while in a sensitive position from December 2020 to July 2023. (SOR ¶ 1.b)

In his Answer to the SOR, Applicant admitted both allegations and said he was navigating the end of his marriage and divorce, as well as being laid off from his job. His treating psychologist, Dr. C, documented that Applicant self-reported for treatment in November 2022 due to difficulties adjusting to “multiple major life transitions.” Applicant was diagnosed with adjustment disorder. Dr. C confirmed he engaged consistently and regularly, demonstrated significant progress, learned coping skills, and that his treatment was terminated in late September 2024. (Item 2; AE A) (How much his drug use was addressed in therapy is not known, as the treatment’s focus was on coping with his multiple major life events).

In his FORM Response, Applicant accepted responsibility for making “a serious mistake” by using marijuana while holding a clearance and after agreeing not to use

drugs. He noted his multiple life stressors, including his divorce, job loss, a family member's serious medical condition, and raising his young son. He recognized that he should have used better coping strategies. He is now more focused on fitness and being a good role model and single father to his young son. He said he has learned from his mistakes. He said he has not used marijuana since July 2023. He is willing to submit to random drug testing and said, "I understand that any positive test should result in the automatic revocation of my clearance." (FORM Response)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 several 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 national security eligibility 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

The Controlled Substances Act (CSA) makes it illegal under federal law to manufacture, possess, or distribute certain drugs, including marijuana. 21 U.S.C. § 801, 844 et seq. All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§ 811, 812. Marijuana is classified as a Schedule I controlled substance, § 812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. § 812(b)(1). See *Gonzales v. Raich*, 545 U.S. 1 (2005).

Further, in October 2014, the Director of National Intelligence (DNI) issued a memorandum entitled "*Adherence to Federal Laws Prohibiting Marijuana Use*," (2014 DNI Memo) which makes clear that changes in the laws pertaining to marijuana by the various states, territories, and the District of Columbia do not alter the existing National Security Adjudicative Guidelines, and that Federal law supersedes state laws on this issue:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines. . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The DOHA Appeal Board has cited the 2014 DNI Memo in holding that "state laws allowing for the legal use of marijuana in some limited circumstances do not pre-empt provisions of the Industrial Security Program, and the Department of Defense is not bound by the status of an applicant's conduct under state law when adjudicating that individual's eligibility for access to classified information." ISCR Case No. 14-03734 at 3-4 (App. Bd. Feb. 18, 2016).

The current National Security Adjudicative Guidelines went into effect on June 8, 2017, after the 2014 DNI memo was issued. Nevertheless, the principle continues to apply.

Moreover, on December 21, 2021, then-DNI issued a memorandum entitled, *"Security Executive 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."* (2021 DNI Memo) The memo incorporates the AGs (at reference B) and the 2014 DNI Memo (at reference G) among various other relevant federal laws, executive orders, and memoranda. I take administrative notice of the 2021 DNI memo here, given its relevance to this case, its reliance on the AGs, and its recency.

The 2021 DNI memo specifically notes that "under policy set forth in SEAD 4's adjudicative guidelines, the illegal use or misuse of controlled substances can raise security concerns about an individual's reliability and trustworthiness to access classified information or to hold a sensitive position, as well as their ability or willingness to comply with laws, rules, and regulations." Thus, consistent with these references, the AGs indicate that "disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position." (2021 DNI Memo)

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

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana between May 2015 and July 2023. This establishes AG ¶ 25(a). This timeframe of use includes the period between December 2020 to July 2023, when he held a security clearance. It is not clear that he had actual “access to classified information” during this period, though he signed an NDA regarding classified information in April 2022. However, his submission of an SCA in 2021, his signed NDA in April 2022, along with his own statement in his second SCA that he had been granted a clearance in December 2020, established evidence that is sufficient to establish that he used marijuana while “holding a sensitive position” under AG ¶ 25(f).

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

- (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
- (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 is grounds for revocation of national security eligibility.

Applicant used marijuana from 2015 to 2023. His frequency of use during this period is unclear, though he disclosed using marijuana for recreational purposes “a handful of times” on both SCAs. He said he used marijuana “to relax at home.” He acknowledged multiple life stressors, including divorce, job loss, a family member's serious medical condition, and raising a young son. He also went to a psychologist, for about two years, from late 2022 to late 2024, with apparent success. He used marijuana up to July 2023, while this therapy was ongoing. Applicant accepted that future drug use would be grounds for automatic revocation of his clearance. I accept this statement as sufficient to apply AG ¶ 26(b)(3).

Applicant used marijuana after submitting his 2021 SCA, where he indicated that he would refrain from future use; after being granted a clearance; after signing an NDA related to classified information; and while holding a sensitive position. His use was recreational, recent, and not isolated.

Since Applicant elected a decision on the written record in lieu of a hearing, I did not have the opportunity to ask him questions about his conduct. I also had no opportunity to observe his demeanor to assess his credibility beyond the documentary record. The fact that I cannot assess his credibility undercuts the strength of his case in mitigation. The recency of his most recent use, and its circumstances, preclude full application of either AG ¶ 26(a) or AG ¶ 26(b).

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 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 under all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Considering the frequency and recency of his marijuana involvement, particularly after having pledged to abstain in his 2021 SCA, I conclude Applicant did not provide sufficient evidence to mitigate the security concerns about his drug involvement and substance misuse. This is not to say that, given more time, Applicant might again be determined a suitable candidate for access to classified information, were he to establish a longer track record of abstinence. But overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

Formal Findings

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

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraphs 1.a-1.b: Against Applicant

Conclusion

Under all the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge