



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



In the matter of:

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ISCR Case No. 24-02201

Applicant for Security Clearance

Appearances

For Government: George A. Hawkins, Esq., Department Counsel

For Applicant: *Pro Se*

11/28/2025

Decision

MASON, Paul J., Administrative Judge:

Applicant's lengthy period of marijuana use and equivocal intentions about use of the illegal drug in the future have not been mitigated. His application for security clearance eligibility is denied.

Statement of the Case

On March 25, 2024, Applicant submitted a certified Electronic Questionnaires for Investigations Processing (e-QIP) as a part of his application for a security clearance required for his position with a defense contractor. On October 17, 2024, he provided his signature affirming his responses to interrogatories located at Government Exhibit (GE) 4 at 10. Included within his answers to interrogatories from DOHA (December 2024) is his personal subject interview (PSI, August 5, 2024) to an investigator from the Office of Personnel Management (OPM) (GE 5 at 7-11). The Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) could not render affirmative findings required to grant a security clearance and issued to Applicant a Statement of Reasons (SOR), dated January 24, 2025, detailing security concerns raised by the guideline for drug involvement (Guideline H). The action was taken under Executive Order (E.O.) 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), effective in the DOD on June 8, 2017. Applicant answered the SOR on February 21, 2025.

Applicant decided to have his case decided on the administrative record in lieu of a hearing. The Government issued a File of Relevant Material (FORM) on March 18, 2025, and advised Applicant that he had 30 days from the date of receipt of the FORM (April 18, 2025) to submit a response to the FORM raising any objections or providing any additional information for consideration by the administrative judge. He provided no response. I was assigned the case on July 11, 2025. This security clearance decision was delayed because all administrative judges were furloughed during a federal government shutdown from October 1 through November 12, 2025, due to a lapse in funding.

Summary of Allegations

The SOR alleges under Guideline H that Applicant used marijuana (THC) from 2005 to January 2024. (SOR ¶ 1.a) The second allegation identifies his use of Tetrahydrocannabinolic acid (THCA) a Federally illegal drug related to THC, from January to December 2024. (SOR ¶ 1.b) The third allegation indicates that he intends to continue using THCA in the future. (SOR ¶ 1.c) Applicant admitted the three allegations. His attached statement to his February 2025 answer to the SOR is addressed in the "Character Evidence" section of this decision.

Findings of Fact

Applicant is 38 years old. He received his high school diploma in May 2005 and his bachelor's degree in May 2009. He married in August 2018 and divorced in March 2024. (GE 1 at 10, 21-22) Since February 2024, he has been employed as a software engineer for a defense contractor. From January 2022 to January 2024, he was the Director of Engineering for a company. From March 2019 to January 2022, he was employed as a software engineer for other companies. (GE 1 at 11-19)

Drug Involvement

SOR ¶ 1.a – According to his March 2024 e-QIP (GE 3), his August 2024 PSI (appearing within GE 5 below), his October 2024 DCSA AVS answers to interrogatories (GE 4), and his December 2024 answers to DOHA interrogatories (GE 5), he provided information concerning his involvement with marijuana since 2005.

In his March 2024 e-QIP, he disclosed that he used marijuana from June 2005 to January 2024, then socially smoking the flower produced by the marijuana plant (Tetrahydrocannabinolic acid (THCA) a Federally illegal drug related to THC) on some weekends. As indicated in his August 2024 PSI below, he smoked marijuana between 2005 and 2024, when he switched to smoking the marijuana flower. He noted that the marijuana helped him cope with his anxiety. He stated that he intended to use the drug in the future until he was able to get better sway over his anxiety. He claimed that he never

purchased any drug in the last seven years. Applicant declared that he never had drug treatment. (GE 3 at 31)

In his August 2024 PSI (GE 5), Applicant reiterated his period of marijuana use began in June 2005 and ended in January 2024, coinciding with his last illegal purchase or use of the drug. (GE 5 at 8) Before he moved to the state A in 2019 where he currently lives, the marijuana that he used in state B was always provided to him at no cost. When he realized in January 2024 that he could legally purchase the marijuana flower in state A, he purchased the drug on the internet. (GE 5 at 8-9)

Applicant started smoking marijuana once a month in 2005. He ingested the drug through a pipe, a cigarette, or a bong. When he moved to state A in 2019, his use of marijuana increased as his relationship with his wife declined. The status of his marriage and discontent with some of his jobs created stress. He smoked the drug on a nightly basis, his current level of use in August 2024. (GE 5 at 9)

Applicant mentioned that he continued to use the marijuana flower because it is legal to purchase and use under state law. Though he did not know his employer's policy concerning the flower, he surmised that he could not appear at work under the drug's influence. He is not concerned about violating his employer's drug policy because he believes that he could find employment elsewhere. He has continued to use the drug because he needs the drug more than he needs his employment. If the use of the marijuana flower is prohibited by his employer, he would turn down a clearance before he abandons his use of the marijuana flower. (GE 5 at 9)

As Applicant noted in his March 2024 e-QIP and his August 2024 PSI, he has continued to use the marijuana flower because it eases his anxiety. In addition to consulting with a therapist, he is taking prescribed anti-depressant medication but uses the marijuana because medication does not completely block thoughts of a traumatic childhood. He predicted he would stop using marijuana when his therapy convinces him that he no longer needs the drug. Though he is unable to estimate a date when he would stop using marijuana, his circumstances have been improving since his divorce. He recalled periods when he abstained from using the drug. Marijuana has never interfered with any aspect of Applicant's life and has never impaired his judgment. (GE 5 at 9)

In his answers to DCSA AVS interrogatories dated October 2024 (GE 4), about two months after he stated in his August 2024 PSI that he would continue using marijuana, he announced that he no longer used the marijuana flower as of October 2024 because he did not need drugs to manage his anxiety. He did not intend to use marijuana in the future. (GE 4 at 3-4) Though he indicated that he never used marijuana based on state law legalizing the drug for medical or recreational purposes, he has used the marijuana flower because it is legal in his current state of residence. (GE 4 at 5)

Continuing with a discussion of Applicant's answers to subsequent interrogatory questions within GE 4, after indicating that he has never been terminated from employment for illegal drug use, he did not answer the interrogatory questions of whether

his current employer had a drug policy and whether his employer required drug testing. (GE 4 at 8) He did not respond to question 13 asking him whether he understood that marijuana use remains illegal under Federal law. (GE 4 at 9) In response to question 16 requesting additional information that could assist in evaluating Applicant's security clearance qualifications, he opined that his past marijuana use should not jeopardize his security clearance application. (GE 4 at 10)

In December 2024, Applicant provided responses to additional interrogatories issued by DOHA. (GE 5) He noted that he first purchased marijuana in about the middle of 2020, with his last purchase of the drug in November 2024. The frequency of his purchases was about once a month or less. He estimated that he spent about \$5,700 in about 48 months. (GE 5 at 2) The 48-month time period logically applies to 2000 to November 2024, cited earlier in this paragraph. Before the two follow-up questions to section 3 of the interrogatories, he was advised that regardless of state laws legalizing marijuana use, use of the drug continued to be illegal under the Federal Controlled Substances Act. The two follow-up questions asked him when he became aware that marijuana use was Federally illegal and how he became aware. He did not answer either question. (GE 5 at 3) Under question 4, Applicant indicated he intended to continue using marijuana in the future. With the help of a therapist and anti-depressant medication, he believed that he would be able to overcome the negative impact of an unexplained past trauma, which would enable him to stop using marijuana. He is not subject to random drug tests at his job. He does not associate with other drug users and he has never used another drug. (GE 5 at 3-5)

A two-page letter dated May 13, 2024, from the Chief of the Drug and Chemical Evaluation Section of the United States, Department of Justice, Drug Enforcement Administration, addressed to a member of a District of Columbia law firm, appears in the FORM following GE 5. In the letter, the chief was asked to explain the status of THCA under CSA. The chief explained that the marijuana flower (THCA) is not hemp if it has a delta-9-THC concentration of more than 0.3 percent on a dry weight basis. Therefore, it is controlled in schedule I under CSA as marijuana."

Character Evidence

To demonstrate his trustworthiness and reliability, Applicant referenced his employment as a lead software engineer from 2010 to 2019. In that position, he worked on multiple projects with Federal airline agency representatives to ensure that these projects were performed efficiently while complying with pertinent rules and regulations. As Director of Engineering for a technology company from 2022 to 2024, he managed a bank's central ledger which included handling various industry audits while safeguarding customer personal identifiable information. In both positions, Applicant never had any employment issues or breaches of his fiduciary duties. See attachment to Applicant's answer to the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth in AG ¶ 24:

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.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum (October 25, 2014), *Adherence to Federal Laws Prohibiting Marijuana Use*, which clearly states that state laws do not authorize persons to violate federal laws, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law

pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

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 illegal use, possession, production, and distribution of marijuana. Disregard of federal law relevant to marijuana use (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the “whole-person concept” stated under SEAD 4, to determine if an applicant’s behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, and processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted using marijuana between June 2005 and January 2024. (SOR ¶ 1.a) He admitted using Tetrahydrocannabinolic acid (THCA, Marijuana flower) from January to December 2024. (SOR ¶ 1.b) He intends to continue using marijuana, including the flower in the future. (SOR ¶ 1.c)

In his March 2024 e-QIP, Applicant was advised that any illegal drug use was illegal under Federal laws although permissible under state laws. In his August 2024 PSI, he provided significant details of his historical marijuana use and his intention to continue to use in the future to control his anxiety. Two months later in his October 2024 answers to DCSA AVS interrogatories, he denied that he intended to use in the future. However, in December 2024, he changed his mind in his answers to DOHA interrogatories. He reaffirmed his intention to continue use in his February 2025 answer to the SOR. AG ¶¶ 25(a) and 25(g) apply. Applicant’s use of marijuana means that he had to possess the drug as defined by AG ¶ 25(c).

AG ¶ 26. Conditions that could mitigate security concerns include:

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

Applicant has a lengthy history of illegal marijuana use between 2005 and January 2024. He began purchasing the marijuana flower in January 2024 and has continued using the drug since then. His regular use of the drug raises ongoing doubts about his judgment, reliability, and trustworthiness. AG ¶ 26(a) is inapplicable. Applicant's intention to use the drug in the future eliminates SOR ¶26(b) from consideration.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 38 years old and divorced. He earned his high school diploma in 2005 and his bachelor's degree in 2009. He has been employed as a software engineer since February 2024. He has held several previous software engineering jobs since 2010.

Applicant's favorable evidence is insufficient to overcome the disqualifying evidence presented under the drug involvement guideline. He admitted all three allegations of the SOR. While his uncorroborated statements describing his security

consciousness in two previous employment positions has been carefully considered, that evidence does not overcome his lengthy history of marijuana use and his vacillating positions regarding future use of the drug. The fact that he is being treated by a therapist and is taking prescribed medication does not mitigate or extenuate his continuing use of the drug. Based on a common-sense evaluation of the entire record, Applicant has not overcome the continuing security concerns arising from the drug involvement guidelines.

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
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Subparagraphs 1.a-1c:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge