



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



In the matter of:

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ISCR Case No. 25-00302

Applicant for Security Clearance )

**Appearances**

For Government: Alison P. O'Connell, Esq., Department Counsel

For Applicant: Gilbert J. Comely, Esq.

12/29/2025

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 16, 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. On June 17, 2025, Applicant responded to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on July 24, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 4, 2025, and he timely submitted a response with attached documents (FORM Response). He did not object to any of the Government exhibits included in the FORM. The Government did not object to the FORM Response or the appended documents. The Government exhibits included in the FORM, marked as Items 1 through 4, and the FORM Response are admitted in evidence without objection. The case was assigned to me on December 9, 2025.

## **Findings of Fact**

Applicant is a 34-year-old who is being sponsored for a security clearance by a government contractor for whom he has worked since June 2021. Since July 2024, he has been detailed as an information technology (IT) specialist with the Army. He earned a high school diploma in 2009 and has taken some undergraduate courses without earning a degree. He has been married since August 2023. He has a five-year-old child. He is applying for security clearance eligibility for the first time. (Items 2-4; Form Response)

Applicant used marijuana on various occasions between January 2013 and March 2024. He purchased marijuana on various occasions between January 2017 and February 2024. His aforementioned drug involvement was gleaned from information he volunteered in the security clearance application he completed in June 2024 (SCA), the security interviews he had with a DOD investigator in July and September 2025 (collectively "SI"), and from his responses to DOHA Interrogatories that he answered in March 2025. The Government alleged Applicant's aforementioned marijuana involvement in the SOR. He admitted the SOR allegations with additional comments. His admissions are incorporated in my findings of fact. Marijuana possession is illegal pursuant to federal law and has been throughout the relevant period herein. In State A, where he resides, medical marijuana use has been legal pursuant to state law since 2008, and recreational marijuana use has been legal pursuant to state law since 2018. (Items 2-4)

Applicant expounded upon his marijuana use in the above-referenced record evidence, the Answer, and the FORM Response. He used marijuana a couple of times per week from January 2013 until March 2016. He did not use it again until March 2017, after he had a car accident that month left him with chronic back pain, when he used it more frequently until it became a daily occurrence. He obtained a medical marijuana card in State A in March 2017 after receiving a prescription from a licensed medical doctor. The record evidence shows that this card expired in 2021. Once Applicant's pain from the car accident abated, he alleged that he went back to using marijuana infrequently again, mostly to help him sleep. From 2013 until 2016, he almost exclusively obtained marijuana from his father, who uses marijuana, held a medical marijuana card, and is licensed by State A to cultivate it for personal use. Beginning in 2017, Applicant normally bought marijuana himself from a state-authorized dispensary. In his DOHA interrogatory responses, he wrote the following about his understanding of the legality of marijuana and his intention for future use:

I am now very aware of marijuana being illegal under Federal law. I fully and completely understand that it may affect my eligibility for maintaining a clearance as well as a public trust position .... I have absolutely, unquestionably, and unequivocally zero intention of using any form of marijuana, CBD, THC, or any drug in the future.

(Items 2-4; FORM Response)

Applicant has acknowledged his error with his involvement with marijuana in the past and provided context for those mistakes. He wrote:

My judgement, as it related to marijuana use, had been misinformed and misguided for years. Early on, when I had some brief, adolescent, struggles with mental health (adjustment disorder), my fiancée at the time suggested using marijuana to help cope being away from family. From there and coupled with [State A's] abundance, State legalization / regulation, I developed an acceptance of marijuana as a legitimate "medicine" as opposed to an illegal drug / controlled substance, and I wrongfully allowed marijuana to become a part of my life. Looking back, I lived with and continued in the exercise of this poor judgement for far too long. I am ashamed of such an enduring lapse and the concerns it raises in this process.

(Item 2)

Applicant's father, whom Applicant sees about once per month, still uses marijuana. Applicant's wife used marijuana to help alleviate pain resulting from chronic medical conditions until August 2025. She held a state-issued medical marijuana card. In August 2025, she stopped taking marijuana and began taking a legally prescribed prescription drug to help with the pain associated with her chronic illnesses. She claimed that the prescription drug is working well, and she does not foresee the need to revert back to marijuana use. (Items 2-4; FORM Response)

Beginning in June 2025, Applicant has received mental-health treatment from a psychotherapist and licensed professional counselor (Counselor). The Counselor provided a letter in which she wrote that she sees no signs that Applicant has been using marijuana, and that he has been actively engaged in their process of developing better coping mechanisms to reduce stress and make positive lifestyle choices. She noted that she sees him regularly and he has not missed any sessions. He provided a June 2025 urinalysis test result that was negative for illegal substances, including marijuana. He provided character-reference letters from work colleagues (including his supervisor) and family members attesting to his trustworthiness, reliability, work ethic, and personal growth. All his character references are aware of at least some degree of his involvement with marijuana because he disclosed it to them. His father, uncle, and wife wrote that they know that he is committed to abstinence, and, given his nature, they believe he will continue his abstinence. Applicant claimed that he loves his job, understood that marijuana involvement was incompatible with his career and maintaining security clearance eligibility, so he stopped his involvement. (Items 2-4; FORM Response)

## Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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(c), 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 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 the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse is set out 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[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.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications (*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 states in pertinent part:

[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 require them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant illegally used marijuana with varying frequency from January 2013 until March 2024. He illegally purchased marijuana with varying frequency from January 2017 until February 2024. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;
- (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.

This is not a perfect case in mitigation. Applicant used marijuana regularly for a significant period of time. He still associates with his father, who is a marijuana user. His wife stopped using marijuana to treat chronic disease about a week before the FORM Response was submitted. However, given these mitigative flaws, overall, I find that

Applicant's drug involvement is unlikely to recur, and that he has established a sufficient pattern of abstinence. First, he claimed that he would not use marijuana or other illegal substances again beginning in June 2024. He has provided significant evidence that he is honest, so I find his claim persuasive. For example, he volunteered his marijuana involvement and other potentially derogatory information, such as his father and wife using it, in the SCA. He openly discussed his marijuana involvement in the SI. His character references, who indicated they are aware of his marijuana use (at least to some extent) wrote that he is trustworthy and reliable. He has not used or purchased marijuana for about 21 months, which coincides with his stated intent to abstain. He provided a copy of a negative urinalysis test from June 2025.

In addition to the evidence supporting his honesty about abstinence, there are other factors auguring in favor of mitigation. He has been attending behavioral therapy with the Counselor and has learned stress coping mechanisms and how to make healthier life decisions. The Counselor opined that she sees no evidence that he is using marijuana. Applicant's job and his security clearance are important to him, and he wrote that he understands that marijuana involvement is incompatible with both. While he has not provided the precise statement of intent contemplated by AG ¶ 26(b)(3), I find this understanding, along with his many credible claims that he has no intent to use in the future, fulfill the "spirit" of that subparagraph.

The record is somewhat equivocal about Applicant's understanding of whether marijuana involvement was appropriate throughout his involvement. However, his marijuana involvement almost exclusively occurred in a state where there was a colorable framework in place for him to plausibly believe the last seven years of his marijuana involvement were sanctioned by local law. He had a prescription for marijuana from a doctor. He applied for and received a state medical marijuana card. He purchased marijuana from a state-sanctioned dispensary. When it was time for him to apply for a security clearance, he became definitively aware of the obscure and at times confusing legal fiction of permissible marijuana use. So, he stopped using it and credibly claimed that he has not used it since. Given the aforementioned considerations, I find that Applicant has met his burden to show that AG ¶¶ 26(a) and 25(b) are applicable.

### **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 in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I find that he has removed any concerns about his current reliability, trustworthiness, and good judgment. I conclude he mitigated the drug involvement and substance misuse security concerns.

### **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: For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Benjamin R. Dorsey  
Administrative Judge