



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. He did not mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse), Guideline E (personal conduct), and Guideline F (financial considerations). The DCSA acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

In Applicant's January 13, 2025 response to the SOR (Answer), he admitted SOR ¶ 1.a and denied SOR ¶¶ 2.a., 3.a., and 3.b. He expressly denied intentionally falsifying information on his security clearance questionnaire, claimed that he had prepared his

unfiled tax return, and claimed to be in compliance with an amended child-support obligation. He did not attach any documentary evidence to corroborate his claims. He requested a decision by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) based upon the written record in lieu of a hearing. (Answer)

On July 18, 2025, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM included Government Exhibits (GE) 1 through 4. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of the evidentiary exhibits.

On August 8, 2025, Applicant received the FORM and its attachments. A cover letter included with the FORM advised Applicant that he had 30 days from the date of receipt to file any objections or to provide any additional information in support of his clearance eligibility. He did not submit a response to the FORM nor object to any of the Government's evidentiary exhibits. The case was assigned to me on December 29, 2025. Government's Exhibits 1 through 4 are admitted into evidence without objection.

Findings of Fact

Applicant is 55 years old. He graduated from high school in 1989. He married his second wife in October 2012, and they divorced in August 2017. He has three children, ages 33, 31, and 18. (GE 3)

On August 10, 2023, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 13A – Employment Record, he reported that he had been laid off in February 2016 and that he had remained unemployed until January 2023. He noted that, during this period, he cared for a parent who passed away in late 2019. Since January 2023, he has been employed full time as a project liaison with a DOD contractor. (GE 3)

Under Section 23 – Illegal Use of Drugs or Drug Activity, Applicant answered “YES” to the following query:

In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.

He reported that he had a state-issued medical marijuana license to purchase marijuana and that he used marijuana between June 2021 and November 2022. He admitted that he used marijuana approximately once “every couple of days” and that he had relinquished his medical marijuana license in February 2023. He denied any intent to use marijuana in the future. (GE 3)

Under Section 26 – Financial Record, Applicant admitted that he had not filed his Federal and state income tax returns for tax year (TY) 2015. He explained that he was seeking the necessary documentation to file these unfiled returns. He also admitted that he owed approximately \$17,300 in child-support arrearages due to his lengthy period of unemployment. (GE 3)

On October 17, 2023, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). He admitted that he had been granted a state-issued medical marijuana license in May 2021. He purchased marijuana from state-licensed dispensaries, and he used marijuana approximately three times a week to medicate his pain and to aid his sleep. He most recently used marijuana in January or February 2023, and he relinquished his marijuana license in February due to his employment with a DOD contractor, which prohibits marijuana use. During the interview, he admitted that he used marijuana on at least one occasion in January or February 2023, in knowing violation of his employer's drug policy. (GE 4)

During the interview, Applicant admitted that, from the late 1980's until about 2016, he purchased marijuana approximately once every one to three months. During this period, he typically used marijuana at bedtime, but he did not provide further information as to the frequency of his marijuana use. From 2016 to May 2021, he used marijuana when offered to him at a bar or concert, but he did not specify the frequency of his use. He explained that he did not list his recreational marijuana use (between August 2016 and May 2021) on his e-QIP due to an oversight. (GE 4)

As of the security interview, Applicant had not yet sought the necessary documentation to file his unfiled TY 2015 tax returns. He admitted that his monthly child support payments (\$347) stopped after he became unemployed in February 2016. He made no payments until June 2023, at which time the arrears totaled approximately \$27,000. He claimed to have made a lump sum payment (\$10,000) and to have resumed monthly payments (\$347); however, he provided no evidence to corroborate his claims. Applicant adopted the summary of the October 2023 OPM interview in his response to DOHA interrogatories. (GE 4)

In Applicant's November 11, 2024 response to DOHA interrogatories, he admitted that he used marijuana approximately once or twice a year between 2016 and May 2021. He further admitted that he used marijuana once every one to three months between May 2021 and January 2023. He expressed his intent to abstain from illegal drugs, including marijuana, in the future. (GE 4)

In his Answer, Applicant simply admitted the drug involvement allegation without further information or explanation. He denied deliberately falsifying his response to Section 23 on his e-QIP:

With all due respect, I did not intentionally withhold information or falsify information. I do understand how things can be construed, and I truly tried capturing all the information as honestly as I could. I made an error and

believed I had explained with forthrightness in the interview this was the case. The frequency of use before 2021 was so few and far between going back to 2016 that it was not rememberable [sic]. (GE 2)

He also claimed to have mailed his 2015 returns on “Monday 12, 2025;” however, he did not provide any documentary evidence to corroborate his claim. He also claimed to be making child-support payments, without corroborating evidence. (GE 2)

Policies

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(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 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. In this case, AG ¶ 25(a) [any substance misuse] is potentially applicable.

Marijuana is a Schedule I controlled substance under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance stating that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing Federal law or the National Security Adjudicative Guidelines, and that an individual’s disregard of Federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

On December 21, 2021, the then DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant admitted using marijuana from about 2016 until at least January 2023. Between 2016 and May 2021, he used marijuana about once or twice a year. In his e-

QIP, he admitted that he used marijuana daily to once “every couple of days” from May 2021 to November 2022. During his security interview, he admitted he last used marijuana in January or February 2023 and confirmed January 2023 in his response to interrogatories. AG ¶ 25(a) applies. Applicant’s illegal purchase and possession of marijuana was not alleged in the SOR and was not considered as disqualifying conduct.

Conditions that could mitigate the drug involvement security concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

I have considered Applicant’s drug involvement spanning nearly 40 years, his marijuana use in knowing violation of his employer’s drug policy, and his falsification of his e-QIP concerning his marijuana use, discussed below. I cannot interpret Applicant’s falsification as evidence of more recent marijuana use. Applicant has not provided a signed statement of intent to abstain from all drug involvement, and he has not provided evidence of dissociation from drug-using associates or changing environments. Nonetheless, there is no evidence of any drug involvement in nearly three years. AG ¶ 26(a) applies. Applicant mitigated the drug involvement and substance misuse security concerns.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying condition is potentially applicable in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

In his August 2023 e-QIP, Applicant reported that he had used marijuana “every couple of days” between May 2021 and November 2022. During his security interview, he admitted that his marijuana use had, in fact, begun in the 1980’s, had occurred on occasion between 2016 and May 2021, and had continued until January or February 2023. In his response to DOHA interrogatories, he also minimized his marijuana use between May 2021 and January 2023 to once every one to three months.

Applicant intentionally minimized his marijuana use on his e-QIP when he listed his last use in November 2022 instead of January 2023. At the time of his January 2023 marijuana use, he was employed by a DOD contractor and aware that his use violated his employer’s drug policy. Furthermore, I do not find Applicant’s claim – that his omitted marijuana use (between 2016 and May 2021) was an oversight – to be credible. His e-QIP includes a detailed explanation of his marijuana use and his use of a medical marijuana license. It is implausible that he forgot his illegal marijuana use immediately prior to his reported use. This credibility assessment is bolstered by Applicant’s minimization of the frequency of his marijuana use – once every one to three months versus once every couple of days – in his response to DOHA interrogatories. Applicant deliberately falsified his response to Section 23 on the e-QIP. AG ¶ 16(a) applies.

The following personal conduct mitigating conditions under AG ¶ 17 are potentially relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

Applicant continues to deny that he falsified his response in his e-QIP. His minimization of the frequency of his marijuana use in his response to DOHA interrogatories is an aggravating factor. None of the personal conduct mitigating conditions apply.

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The Government established that Applicant failed to file his Federal income tax return as required for TY 2015. Applicant's unfiled state income tax return for TY 2015 was not alleged in the SOR. He also owes approximately \$17,000 in child-support arrearages. AG ¶¶ 19(a), 19(c), and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority or file or pay the amount owed and is in compliance with those arrangements.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is than an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n.5 (App. Bd. Aug. 14, 2014).

In his Answer, Applicant claimed to have mailed his TY 2015 tax return to the IRS and to be adhering to a revised child-support obligation; however, he provided no evidence to corroborate either claim. He also reported being unemployed from February 2016 until January 2023, but he did not establish what efforts, if any, he made to address his unfiled tax return or delinquent child-support obligation prior to the issuance of the SOR. He has not demonstrated that he acted responsibly with respect to his financial obligations. None of the financial considerations mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information 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, Guideline E, Guideline F, and the factors in AG ¶ 2(d) in this whole-person analysis.

The drug involvement and substance misuse security concerns arising from Applicant's marijuana use are mitigated by the passage of time. However, he did not provide sufficient evidence in mitigation to overcome the security concerns arising from his deliberate falsification, unfiled tax return, and delinquent child-support obligation. He did not mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

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
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a.-3.b.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge