



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 25-00265

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/14/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from his use and purchase of marijuana and his expressed intent to continue to use marijuana. Eligibility for access to classified information is denied.

Statement of the Case

On April 10, 2025, 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) and Guideline J (criminal conduct). 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 May 22, 2024 response to the SOR (Answer), he admitted all of the allegations. He did not provide any explanation or mitigating evidence, and he did not attach any documentary evidence. 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 17, 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 3. 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 July 30, 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 3 are admitted into evidence without objection.

Findings of Fact

Applicant is 28 years old. He earned a bachelor's degree in June 2020 and a master's degree in June 2022. Since October 2022, he has been employed full time as an engineer for a DOD contractor. He has never married and does not have any children. (GE 3)

On October 12, 2023, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he reported that he had used marijuana between March 2017 and August 2023. He estimated the frequency of his use as between monthly and multiple times in a week. He characterized his marijuana use as recreational, though he did experience some symptom relief for a chronic condition when he used marijuana. He admitted that he intended to continue to use marijuana "sparingly" and "recreationally" in the future. He also admitted that he had purchased marijuana from state-licensed dispensaries. (GE 3)

On February 7, 2025, Applicant responded to DOHA interrogatories concerning his marijuana use. He confirmed that he used marijuana bi-weekly, on average, and that he last used marijuana on or about January 18, 2025. He also confirmed his intent to continue to use marijuana "sparingly" in the future. He added:

I have no specific anticipated dates of future use for anything, including Marijuana. Considering this form, I plan to take a decent (not permanent) break. I have used with some regularity previously but in no way do I "abuse." Like many Americans who enjoy alcohol at a bar a couple times per month, I consider my use of marijuana to be in a similar capacity, to not hamper my general health/well-being, technical competence (as I NEVER use if I even think I may be engaged in worker related activities), or trustworthiness. . . .

In his response to the DOHA interrogatories, Applicant acknowledged that his marijuana use was “prohibited at the federal level,” and he noted what he perceived as a shifting public perception concerning marijuana use. He did not express any intent to discontinue his marijuana use. (GE 3)

The Drug-Free Workplace policy of Applicant’s employer requires pre-employment drug testing, and employees may be subject to random drug testing if they hold “safety sensitive positions.” There is no evidence in the record of any drug testing or evidence establishing that he holds a safety-sensitive position with his employer. (GE 3)

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. The following disqualifying conditions are potentially applicable:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, 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.

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 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.

Between March 2017 and at least mid-January 2025, Applicant used marijuana on several occasions. He estimated the frequency of his use as between monthly and multiple times in a week. He also admitted purchasing marijuana on several occasions during this period. In his February 2025 response to DOHA interrogatories, he estimated his recent marijuana use to be "biweekly," and he confirmed his intent to continue to use marijuana "sparingly" in the future. He acknowledged that his marijuana use, possession, and purchase violated Federal drug laws. AG ¶¶ 25(a), 25(c), and 25(g) apply.

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.

Notwithstanding Applicant's candor in his e-QIP and in his response to DOHA interrogatories, he expressed his intent to continue to use marijuana in knowing violation of Federal drug laws. His marijuana use continued until at least mid-January 2025. None of the drug involvement and substance misuse mitigating conditions apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Between about March 2017 and at least August 2023, Applicant possessed and used marijuana in violation of Federal drug laws. AG ¶ 31(b) applies.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant illegally possessed and used marijuana on many occasions over several years. Notwithstanding his candor during his background security investigation, he has expressed his intent to continue to illegally possess and use marijuana in the future. None of the criminal conduct 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 J, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant did not provide sufficient evidence in mitigation to overcome the security concerns arising from his longtime and frequent marijuana use and his expressed intent to continue such use. He did not mitigate the drug involvement and criminal conduct 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:	AGAINST APPLICANT
Subparagraphs 1.a.-1.c.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a.:	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