



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



In the matter of:)
)
) ISCR Case No. 25-00298
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

01/20/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from his use of marijuana, including while in a position of public trust. Eligibility for access to classified information is denied.

Statement of the Case

On April 16, 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). 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 June 2, 2025 response to the SOR (Answer), he admitted, with explanations, SOR ¶¶ 1.a. and 1.b., and he denied SOR ¶ 1.c. 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 2, 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 5. 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 17, 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 5 are admitted into evidence without objection.

Findings of Fact

Applicant is 26 years old. He graduated from high school in May 2017, and he earned a bachelor's degree in December 2021. Since December 2022, he has been employed full time as an auditor with a DOD contractor. According to his Answer, he was granted eligibility for a position of public trust in about October 2022. He has never married, and he does not have any children. (GE 2-3, 5)

On February 21, 2024, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he admitted use of tetrahydrocannabinol (THC) from August 2017 to February 2024. He used marijuana monthly during college and used marijuana monthly to weekly "recently." He further admitted that he purchased marijuana every three months between August 2017 and August 2022 and that he intended to use marijuana recreationally in the future. He denied any illegal drug use while possessing a security clearance or in a position of public safety. (GE 3)

On September 25, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he confirmed that he used marijuana recreationally from August 2017 to the "present." He did abstain from marijuana use from August 2022 to June 2023, while he was going through the hiring process with his current employer. He estimated that he currently used marijuana monthly to weekly and that he purchased marijuana from a licensed dispensary twice a year. He had never tested positive for any illegal drugs nor participated in any substance abuse treatment. During the interview, he confirmed his intent to continue using marijuana, unless required to abstain for his employment. (GE 4)

On February 6, 2025, Applicant responded to DOD interrogatories regarding his drug involvement. In his response, he admitted his "current" use of marijuana and his intent to use marijuana in the future. He admitted that he currently used marijuana once

a month or every two months, with his most recent use on December 31, 2024. He intended to continue to use marijuana – “If not instructed otherwise, yes. Occasional recreational use.” He denied any substance use assessments, counseling, or treatment. He admitted that he obtained a public trust clearance eligibility through his current employer and that he had used marijuana while holding that public trust position. He acknowledged that marijuana use remained illegal under federal law and any future use may negatively impact his clearance eligibility. He explained his marijuana use as follows:

I currently use marijuana occasionally and irregularly, in compliance with [State] laws, and I am confident in my ability to do so in a responsible manner. I understand that marijuana currently remains federally illegal but have not been informed of any specific restrictions on recreational use in my role. If I am officially instructed that such use is not permitted, I will immediately comply and discontinue use as required. (GE 5)

In his Answer, Applicant admitted SOR ¶¶ 1.a. and 1.b. He stated, “Since December 31, 2024, I have ceased all marijuana use and am fully committed to maintaining a drug-free lifestyle going forward.” He acknowledged that his marijuana use occurred while holding a position of public trust; however, he believed, at the time, that his conduct was permitted under state and local laws. He added, “I now fully understand the expectations tied to holding a sensitive position and have since discontinued all marijuana use.” He denied any intent to use marijuana in the future. (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. 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;¹

¹ Applicant’s illegal purchase of marijuana was not alleged; however, I have considered Applicant’s marijuana use as predicated upon his illegal possession.

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

(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 a memorandum entitled, "Adherence to Federal Laws Prohibiting Marijuana Use" addressing concerns raised by the changes to laws by some states and the District of Columbia to legalize or decriminalize the use of marijuana. The memorandum states that the changes 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.

From August 2017 to December 31, 2024, Applicant used marijuana on several occasions. During college, he used marijuana monthly. From December 2021 to at least late September 2024, he used marijuana monthly to weekly. As recently as his September 2024 security interview, he confirmed his intent to use marijuana in the future. In his February 2025 response to interrogatories, he claimed his marijuana use to be only monthly to every two months, and he did not unequivocally express his intent to abstain from future marijuana use. AG ¶¶ 25(a), 25(c), and 25(g) apply.

In his February 2025 response to interrogatories and in his Answer, Applicant admitted that he used marijuana while in a position of public trust with his current employer between October 2022 and December 2024. Title 5 C.F.R. § 731.106(b) defines a public trust position as:

Public trust position. A position at the high or moderate risk level is designated as a "public trust" position. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities, or other duties demanding a

significant degree of public trust such as positions involving access to or control of financial records or with significant risk for causing damage or realizing personal gain.

The SEAD 4 ¶ D.8. defines a “sensitive position” as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant had access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor.

See ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023). At the time of his marijuana use, Applicant served as an auditor for a federal contractor in a position of public trust. As defined by § 731.106(b) and SEAD 4, Applicant’s marijuana use occurred while he held a “sensitive position.” AG ¶ 25(f) applies.

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.

On his e-QIP, during his OPM interview, and in his response to the interrogatories, Applicant expressed his intent to use marijuana in the future unless explicitly instructed by his employer to cease his marijuana use to maintain his position. In his February 2025 response to interrogatories, Applicant acknowledged his marijuana use, though decriminalized in his state of residence, violated federal drug laws, yet this knowledge did not cause him to cease his illegal drug involvement. The e-QIP queries and OPM interview similarly did not prompt him to inquire with his supervisor or facility security

officer to ascertain whether his conduct was prohibited while holding a public trust position.

The DOHA Appeal Board has “long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.” ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021). In ISCR Case No. 20-01772, the Board concluded that the e-QIP and pre-employment drug test were sufficient notice to the applicant that the use of marijuana was not compatible with maintaining access to classified information. Here, Applicant completed an e-QIP, addressed his marijuana use during his security interview, responded to interrogatories about his drug involvement, and was explicitly questioned about his awareness of federal laws prohibiting marijuana use. Moreover, Applicant repeatedly used marijuana while holding a public trust position. Title 5 C.F.R. § 731.202(b)(6) explicitly states that illegal drug use is a specific factor making an individual unsuitable to maintain a position of public trust. Applicant abstained from marijuana use from August 2022 to June 2023 while in the pre-employment process for his employer – another indication he recognized, or should have recognized, that marijuana use was incompatible with his position of public trust.

In his response to interrogatories, Applicant noted that he was aware his marijuana use violated federal law and that he would cease such conduct if advised to do so to retain his position or clearance eligibility. Applicant should not rely on his employer or the DOD to expressly and individually instruct him to abstain from illegal conduct or jeopardize his clearance eligibility. Rather, he is expected to follow the law and to inquire with his supervisor or security officer if any uncertainty remains. In sum, Applicant’s continued marijuana use, while holding a position of public trust and while aware of its prohibition under federal law, cast doubt as to his judgment and willingness to adhere to laws and regulations. Furthermore, Applicant has not established a pattern of abstinence or that he has disassociated himself from drug-using associates or environments. None of the drug involvement and substance misuse mitigating conditions apply to SOR ¶¶ 1.a. and 1.b.

In his Answer, Applicant unequivocally expressed his intent to abstain from marijuana use in the future. He mitigated the security concern as to SOR ¶ 1.c.

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 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, including while in a position of public trust and while aware of its prohibition under federal law. This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With an established pattern of abstinence from drug involvement, Applicant may overcome the aforementioned concerns; however, at this time, he did not mitigate the drug involvement and substance misuse 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.b.:	Against Applicant
Subparagraph 1.c.:	For 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