



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



In the matter of:)
)
) ADP Case No. 25-00269
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/20/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the trustworthiness concerns arising from his drug involvement and substance misuse. Eligibility for a position of public trust is denied.

Statement of the Case

Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data-processing (ADP) position. On June 12, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing a trustworthiness concern under Guideline H (drug involvement and substance misuse). The adjudicative guidelines and procedures delineated under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) apply to the eligibility determinations for positions of public trust.

In Applicant’s July 14, 2025 response to the SOR (Answer), he admitted the allegation. He did not attach any documentary evidence. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On August 1, 2025, the Government was ready to proceed to a hearing. I was assigned this case on September 30, 2025. This case was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

On November 17, 2025, a notice was issued scheduling the hearing for December 15, 2025, by video teleconference. The hearing proceeded as scheduled. The Government proffered two evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 and 2, without objection. Applicant and one witness testified. Applicant submitted four exhibits, which I admitted as Applicant Exhibits (AE) A through D, without objection. At Applicant's request, I left the record open until January 15, 2026, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on December 29, 2025. On January 14, 2026, Applicant informed me that he had no further submissions for the record. The record closed on January 14, 2026.

Findings of Fact

Applicant is 35 years old. He earned an associate degree in 2011. Since July 2016, he has been employed with a DOD contractor, currently as a senior network engineer. He has never married, and he has a two-year-old child with his current partner. He resides with his partner and his child. This is his first application for a public trust position. (GE 1; Tr. 22-23, 31-32, 35)

On August 7, 2024, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he reported "almost daily use" of marijuana from December 2016 to June 2024. He explained that he purchased marijuana from state-licensed dispensaries and used marijuana for relief from anxiety and stress. (GE 1)

On November 14, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, Applicant confirmed his marijuana use and purchase as reported in his e-QIP. He added that he had most recently purchased and used marijuana in November 2024. He admitted that he typically purchased marijuana monthly and used marijuana or cannabidiol (CBD) products daily in his backyard. He used marijuana and CBD products to reduce his stress and anxiety. As of the interview, he had never participated in drug counseling or treatment. He reported that he currently used marijuana and intended to decrease his marijuana use, but he had not taken steps to do so. (GE 2)

In his May 9, 2025 response to DOHA interrogatories, Applicant adopted the summary of the November 2024 OPM interview without any revisions, corrections, or additions. He admitted that he continued using marijuana and CBD until February 17, 2025. He estimated that he used marijuana approximately five times a week between 2016 and February 17, 2025. He admitted that he had passed a drug test in about October 2013. He acknowledged that marijuana use was illegal under federal drug laws and expressed his intent to abstain from marijuana in the future. (GE 2)

On December 1, 2025, Applicant participated in a drug urinalysis. He tested negative for amphetamines, barbiturates, cocaine, opiates, and marijuana. (AE B, AE D; Tr. 49)

By email dated December 4, 2025, Applicant expressed his intent to abstain from marijuana in the future. He noted that he had joined a “recovery group” in February 2025 and had abstained from marijuana as of February 18, 2025. He attested to positive changes to his health and relationships resulting from his cessation of marijuana use. (AE A; Tr. 33-34)

At the hearing, Applicant testified that he typically used marijuana three to seven times a week between 2016 and February 17, 2025, to manage stress and aid his sleep. Prior to state-licensed dispensaries opening, he was given marijuana by his friends. By 2021, he was purchasing marijuana once “every couple weeks.” He acknowledged that his father had explained to him, in about 2021, that marijuana use violated federal drug laws, even if permitted under state laws. He was also aware, at the time he completed his e-QIP, that his continued marijuana use might negatively impact his eligibility for a position of public trust. At the time he completed his e-QIP, he responded that he did not intend to use marijuana in the future. He had continued to use marijuana after completing his e-QIP because he sought to manage his stress and aid his sleep and because he had been unable to quit. He marijuana use continued after his November 2024 OPM interview because he was also “going through a really difficult position in [his] life with [his] partner and [his] family,” and he was using marijuana to manage his stress. (Tr. 36-42, 51, 54)

Beginning in about June 2025, Applicant and his partner began attending couples counseling weekly, and they each began individual therapy. Applicant committed himself to a healthier lifestyle in early 2025, exercising and attending an AA recovery group. From January to about October 2025, he attended the recovery group meetings online approximately three times a week. In October 2025, his work responsibilities increased, and his attendance at recovery group meetings decreased. He has not attended any meetings since October 2025. (Tr. 41-46)

Applicant does not associate with any individuals, besides his partner, who use marijuana. His partner typically uses marijuana outside their residence. Applicant was unaware whether his current employer had a drug-free workplace policy or whether he was subject to random drug testing. He did not participate in a pre-employment drug screening in 2016. He testified that he informed his current supervisor of his marijuana use around the time he completed his e-QIP. I found Applicant’s testimony to be candid, sincere, and credible throughout. (Tr. 35-39, 47-48)

Applicant’s partner corroborated Applicant’s span of marijuana use, including his cessation of marijuana use in February 2025. She also confirmed that he only purchased marijuana from state-licensed dispensaries. As of the hearing, she continued to use marijuana three to four times a week and possessed marijuana at the residence she shares with Applicant. She testified that Applicant is not typically present while she uses

marijuana. She attested to Applicant's participation in an AA group and his expressed intent not to use marijuana in the future. She described Applicant as a detail-oriented person, a great partner, and a great father. (Tr. 24-30)

Applicant's recovery coach and peer-support specialist affirmed Applicant's attendance at Alcoholics Anonymous (AA) meetings; however, he did not provide further information as to the span or frequency of Applicant's attendance. (AE C)

Policies

When evaluating an applicant's suitability for a public trust position, 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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, 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.

In 2021, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. 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.¹

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

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

Applicant admitted that he illegally purchased, possessed, and used marijuana frequently between 2016 and February 17, 2025, in violation of federal drug laws. AG ¶¶ 25(a) and 25(c) 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

¹ *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*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

(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.

When Applicant completed his August 2024 e-QIP, he expressed his intent not to use marijuana in the future; however, he continued to use marijuana until February 17, 2025. His use continued after he completed his e-QIP, because he sought to manage his stress and aid his sleep, and because he could not quit. His use continued after his November 2024 OPM interview because he experienced significant stress at home. In early 2025, he initiated steps towards a healthier lifestyle, going to the gym and attending AA recovery meetings. In mid-2025, he began individual and couples counseling. He credibly testified that he has not used marijuana since February 17, 2025. In December 2025, Applicant submitted a signed statement of intent to abstain from all drug involvement in the future.

Applicant's partner continues to use marijuana approximately three or four times a week just outside their shared residence. Otherwise, Applicant does not associate with any individuals who use marijuana.

Notwithstanding Applicant's candor throughout the background security investigation and his credible and sincere testimony, he has not yet established a pattern of abstinence, particularly in light of his nearly nine-year history of frequent marijuana use. Furthermore, from about 2021 to February 2025, he used marijuana while aware that such use violated Federal drug laws. He continued to use marijuana after he completed his e-QIP, despite knowing that his continued marijuana use might negatively impact his eligibility for a position of public trust. Moreover, the continued, regular marijuana use by Applicant's partner in and around their shared residence is problematic. None of the drug involvement and substance misuse mitigating conditions fully apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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.

I found Applicant's testimony to be candid, sincere, and credible. As discussed above, his recent commitment to abstaining from marijuana, participating in counseling, and engaging in a healthier lifestyle is favorable evidence in mitigation, but insufficient to overcome his lengthy history of drug involvement. This decision should not be construed as a determination that Applicant cannot qualify a position of public trust in the future. With an established pattern of abstinence from drug involvement and disassociation from all marijuana users, Applicant may overcome the aforementioned concerns; however, at this time, Applicant has not mitigated the drug involvement and substance misuse trustworthiness concerns. Eligibility for a position of public trust 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**

Subparagraph 1.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 public trust position. Eligibility for a public trust position is denied.

Eric H. Borgstrom
Administrative Judge