



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 25-00175
)
Applicant for Security Clearance)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2026

Decision

HOGAN, Erin C., Administrative Judge:

The security concern raised under Guideline H, Drug Involvement and Substance Misuse, is not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 16, 2024. (Item 3) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on April 11, 2025, detailing security concerns under Guideline H. DCSA acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On July 14, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On August 8, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 4. Applicant received the FORM on August 22, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional matters in response to the FORM. The case was forwarded to the Hearing Office on October 16, 2025, and assigned to me on January 8, 2026.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. He denied SOR ¶ 1.d. Applicant's admissions are accepted as findings of fact. (Item 2)

Applicant is 42 years old. He is being sponsored for a security clearance by his employer, a DOD contractor. He has worked for the same DOD contractor from 2005 to July 2024. His original employer was selling off the division where he works. He resigned his position and began working for another DOD Contractor in July 2024. This is his first time applying for a security clearance. He has no military experience. His highest level of education is a bachelor's degree. He is married and has four minor children, ages 16, 15, 12, and 9. (Item 3; Item 4)

The SOR alleges that Applicant used marijuana with varying frequency from about December 1999 to about April 2024 (SOR ¶ 1.a: Item 3 at 30-31; Item 4 at 2, 8); that he purchased marijuana from about December 1999 to about April 2024 (SOR ¶ 1.b: Item 4 at 3, 8); that he intends to use marijuana in the future (SOR ¶ 1.c: Item 3 at 31; Item 4 at 4); and that from about April 2024 to the present, he used and purchased marijuana with varying frequency, while employed in a sensitive position, i.e. one in which he held a security clearance. (SOR ¶ 1.d: Item 3 at 30-31; Item 4 at 2, 8). Applicant denies the allegation in SOR ¶ 1.d because he does not have a security clearance. (Item 2) I find SOR ¶ 1.d for Applicant because there is no evidence in the file which indicates that Applicant had a security clearance.

Guideline H - Drug Involvement and Substance Misuse

In response to Section 23 – Illegal Use of Drugs or Drug Activity on his SCA dated April 14, 2024, Applicant listed that he used marijuana from approximately December 1999 to April 2024. (Item 3 at 30-31) He indicated his use was recreational. He used marijuana every once in a while on the weekends to unwind. He indicated that marijuana was legal in the state where he resides. In response to the question, “Do you intend to use this drug or controlled substance in the future?,” he answered, “Yes.” He explained:

Recreational Use. Better than alcohol in my opinion. Nothing serious. I hate pills and all other drugs. Never will try. THC is it. (Item 3 at 31)

In response to DOHA interrogatories on August 5, 2024, Applicant listed 1997 as his first date of marijuana use and February 14, 2024, as his last date of marijuana use. His present average use was approximately one to three times a month. He consumed only edibles. He indicated that he purchased marijuana from approximately 1999 to 2024. He indicated that his wife purchased marijuana. He is aware that marijuana use remains illegal under federal law even if it is legal under state law. He also acknowledged that he intends to occasionally consume a THC gummy in the future. (Item 4 at 2-4)

During his background investigation interview, Applicant said that he first used marijuana in high school when he was 16. He did not like alcohol and marijuana would make him feel mellow. He would take a few puffs off a joint or a bowl with friends a couple times a month. He occasionally purchased marijuana until around 2009. He met his wife in high school. They smoked marijuana while in high school and still use marijuana on occasion to unwind while at home. They never use marijuana in front of their children. From 2010 to present, he and his wife used marijuana in the form of edible gummies about 2-3 times a month. He never purchases it. His wife purchases the marijuana gummies from a store in his neighborhood. His use of marijuana is moderate, and he is not dependent on it. He is serious about his responsibilities to his family and work. (Item 4 at 7-11)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *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 emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a): any substance misuse;

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g): expressed intent to continue drug involvement and substance abuse, or failure to clearly and convincingly commit to discontinue such misuse.

Both AG ¶¶ 25(a) and 25(c) apply. Applicant has a history of illegal marijuana use. He admits to using marijuana on various occasions starting when he was 16 years old. At present, he and his wife consume marijuana edibles about two to three times a month. He is aware that marijuana use remains illegal under federal law even though it is legal in the state where he resides. AG ¶ 25(g) applies because he intends to continue using marijuana in the future.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

Neither mitigating applies because of Applicant's long history of illegal marijuana use and his expressed intent to use marijuana in the future even though he is aware that marijuana remains illegal under federal law. As a result, questions are raised about his reliability, trustworthiness, and judgment. The security concerns raised under Drug Involvement and Substance Misuse are not mitigated.

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 security 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 AG ¶ 2(d) factors in this whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of marijuana to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered that Applicant is applying for a security clearance for the first time. I considered his honesty when disclosing his history of marijuana use during his background investigation. However, questions remain because he intends to continue to use marijuana in the future even though he is aware that marijuana remains illegal under federal law and is inconsistent with holding a security clearance. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards maintaining a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge