



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



In the matter of:)	
)	
)	ISCR Case No. 24-02349
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2026

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On January 17, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. 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 implemented by the DOD on June 8, 2017.

On February 4, 2025, Applicant provided a response to the SOR (Answer). He admitted all of the SOR allegations. (¶¶ 1.a, 1.b, 1.c, 2.a, and 2.b.) He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was

assigned this case on July 18, 2025. DOHA issued a notice on August 11, 2025, scheduling the hearing for September 3, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 and 2; Applicant testified and offered five documents, which I labeled as Applicant Exhibits (AE) A through E; and all of the exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 9, 2025. This decision 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.

Findings of Fact

Applicant is 42 years old. He is divorced with two sons, ages 10 and 12. He has 50/50 split custody of his sons with his ex-wife. He cohabitates with his girlfriend, who is soon to become his fiancée. He earned a bachelor's degree in May 2006. He previously worked for a company from July 2018 through March 2024, as the executive vice president. He was fired by this employer for violating company policy (SOR ¶ 2.a). In July 2024, Applicant was hired by a federal contractor. His job title is business development representative. He resides in a state that legalized the recreational use of marijuana in 2021. This is his first application for a DOD security clearance. (GE 1; Tr. 29-32)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges Applicant used marijuana with varying frequency from about October 1999 until at least March 2024.

Applicant admitted this information in his response to the SOR. He testified during the hearing that he started to use marijuana in his teenage years. His use of marijuana occurred on a monthly basis. His most recent use of marijuana occurred on his property to help relieve his stress and anxiety from his previous employment. He would smoke marijuana, taking one or two hits from a glass bowl. His monthly use of marijuana remained consistent until March 2024, when he stopped all use for multiple reasons. He was aware that he might be applying for a federal contractor job; he had matured and is more committed to his family; and he has no desire, need, or intention to use marijuana again. (Answer; Tr. 16-27)

SOR ¶ 1.b alleges Applicant purchased marijuana from about 2000 to 2021.

Applicant admitted this information in his Answer. He said that since his state of residence legalized marijuana in 2021, he has not had to purchase marijuana. He had friends who provided him with small amounts of marijuana due to his infrequent and sparse use. He admitted he had some friends who cultivated marijuana in accordance with state law. During the hearing, he acknowledged that he was aware that marijuana

was illegal at the federal level. He candidly listed his use of marijuana on his July 2024 security clearance application (SCA). (Tr. 16-19; GE 1)

SOR ¶ 1.c alleges Applicant was arrested in September 2006 and charged with a felony sale and distribution of marijuana.

Applicant stated that in September 2004, while enrolled in college, a classmate had asked him if he could get him some marijuana. Applicant obtained marijuana from an acquaintance and sold the marijuana to the classmate. Unbeknownst to him, the classmate was actually an undercover police officer. In 2006, Applicant was charged with the felony sale and distribution of marijuana for the incident that took place in September 2004. Applicant was found guilty, and the court placed him on two years of probation and sentenced him to 100 hours of community service. He successfully completed all court requirements in 2008. He had his rights restored in June 2014. He listed this information in his July 2024 SCA. Applicant explained in his Answer that at the time of this incident, he was young, ignorant, and used poor judgment. He has never been arrested for any other drug-related charge. (GE 1, 2; Answer; Tr. 22-23; AE C)

SOR ¶ 2.b cross referenced that information set forth above, (¶¶ 1.a, 1.b, 1.c), as also applicable to personal conduct security concerns.

Personal Conduct

SOR ¶ 2.a alleges Applicant was secretly recording meetings with his former supervisor from approximately January 2024 through March 2024. These secret recordings were against company policy.

Applicant explained that his position at his former place of employment was challenging and, at times, toxic. He believed he experienced the harshest criticisms and verbal assaults from the Chief Executive Officer (CEO) of the company. Applicant provided a six-week notice that he planned to leave the company. To protect himself, as he planned his exit from the company, he considered potentially filing a hostile workplace lawsuit against the CEO. Applicant recorded two specific conversations in his office with the CEO only when he anticipated further instances of abusive behavior. Each recorded conversation was approximately four minutes in duration. At no time did he record client meetings or regular company meetings. He was fired three days before his agreed termination date and shortly after he requested to be released from his non-compete agreement. He was not aware that his employer had a policy against recording meetings. He looked up the state law and found it was legal. He now regrets making the two recordings, which have now been destroyed, and he wished he had consulted with a lawyer instead. (Answer; Tr. 32-44)

Applicant provided an anonymous employee review on Glassdoor about his former place of employment and criticism about the CEO. He stated this information supports his contention that he worked in a hostile workplace. (AE E)

Character Evidence

Applicant submitted three character reference statements. Two letters were from coworkers at his former place of employment, and one letter was from the Senior Director of Operations with his current employer. The overall sense I obtained from these sources was that Applicant is committed, trustworthy, professional, and sincere. All three character references supported Applicant being granted a DOD security clearance. (AE A, B, D)

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 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, these guidelines are applied 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(c), 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 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

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 under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a): any substance misuse; and

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

Applicant admitted he used marijuana from about 1999 to about March 2024. He admitted he had purchased marijuana from about 2000 to at least 2021. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

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 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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana over a long period of time – approximately 25 years. He was arrested for a felony charge of sale and distribution of marijuana in 2006 while he was enrolled in college. Despite his arrest, he continued to use and purchase marijuana.

To his credit, Applicant was very candid about his use of marijuana during the security clearance investigation. I found him to be sincere during the hearing about his desire to start a new chapter in his life. He had experienced a toxic workplace for years followed by a serious job termination in March 2024, which is now in the past. He has shared custody of his two sons, and he testified during the hearing that he is on the brink of becoming engaged to his girlfriend. He decided he needed to make positive changes in his life. He quit using marijuana in March 2024, started a rewarding career with a federal contractor in July 2024, and he has no desire to use marijuana or any other illegal drug in the future. It has been nearly two years since his last use of marijuana.

Several factors are important in a non-exclusive list concerning the assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; the employee's company's policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; and broken promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use was not illegal under state law; no marijuana use after notice that marijuana use was federally illegal); ISCR Case No. 22-02601 at 3 (App. Bd.

Feb. 22, 2024) (reversing denial of security clearance; factors: marijuana abstinence 3.5 years before hearing; marijuana use while holding a security clearance; marijuana use legal under state law).

Applicant established a pattern of abstinence from illegal drug use. He has never used illegal drugs after completing the SCA or while employed by the federal contractor. He has been candid about his illegal drug history. Almost two years have passed since his involvement with illegal drugs, and I find this time is sufficient to show his commitment to remaining drug-free. Applicant has matured and is now dedicated to his new career. His infrequent illegal drug use does not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 26(a) and 26(b) apply. Guideline H security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 provides one personal conduct condition that could raise a security concern and may be disqualifying in relation to Applicant's provision of inaccurate information on his SCA:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and
- (3) a pattern or dishonesty or rule violations.

Applicant's sporadic use of marijuana over a long period of time, his felony arrest associated with marijuana, and his March 2024 job termination for making secret recordings with the CEO that violated company policy, all reflect poor judgment and raise questions about his reliability, trustworthiness, and judgment. Based upon the general personal conduct security concern, I find AG ¶ 16(d) is the closest disqualifying condition raised by the evidence.

AG ¶ 17 provides the following potential conditions that could mitigate security concerns in this case:

AG ¶ 17(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; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's poor decision to record two private discussions with the CEO in 2024 was unfortunate, but his intention was not to record protected proprietary information; he made these recordings to protect himself. He had numerous adverse encounters with the CEO who had personally attacked his character and integrity. While he was unaware of violating company policy, he did review whether his actions were legal in his state. He destroyed the recordings and decided not to file a hostile workplace lawsuit. He now regrets his decision to make these recordings, and he has moved on with his life and his new employment.

Applicant's infrequent use and purchase of marijuana was fully covered under Guideline H, and to rehash it again under Guideline E is unnecessary. His felony drug arrest occurred many years ago when he was immature and enrolled in college. He has been very candid and transparent with the government about his illegal drug use. He is committed to never using an illegal drug in the future.

I found Applicant to be a very credible witness during the hearing. He regrets his past poor decisions and has taken the right steps to move forward in life. Future misconduct is unlikely to recur and his past behavior no longer casts doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) apply. Guideline E security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 Guidelines H and E and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made positive changes in his life and is considered a trustworthy and reliable individual. These traits were fully supported by his character references in the record. He is committed to remaining drug-free, and I find any future use of illegal drugs is unlikely to recur. The secret recordings he made of his past employer is an isolated incident he now regrets. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the drug involvement and substance misuse and personal conduct security concerns.

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
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge