



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



In the matter of:)	
)	
)	ISCR Case No. 24-01991
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles Esq., Department Counsel
For Applicant: *Pro se*

02/10/2026

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to mitigate security concerns under Guidelines H (drug involvement and substance misuse), J (criminal conduct), and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) December 20, 2023. On February 21, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines H, J, and E. Applicant received the SOR on March 4, 2025, submitted his final answer to the SOR on May 2, 2025 (Answer), and elected to have his case decided on the written record in lieu of a hearing. The case was assigned to me on November 18, 2025.

The Government's written case was submitted on May 30, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 25, 2025, and did not respond.

Evidence

Government Exhibit (GE) 1 includes the SOR and Applicant's Answer, which are the pleadings in the case. GE 2 through GE 7 are admitted in evidence without objection. It is administratively noticed that GE 6 and GE 7 are federal and state government marijuana facts and policy documents from official sources and will be considered to the extent relevant and appropriate. Applicant did not submit any documentary evidence to support his case in mitigation.

Findings of Fact

In his Answer, Applicant admitted allegations in SOR ¶¶ 1.a through 1.g and 2.a and denied allegations in SOR ¶¶ 3.a through 3.c. His admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 31 years old. He received his high school diploma and a technical certificate upon his graduation from high school in June 2012. He has not attended college, never married, and does not have children. He has resided with his cohabitant girlfriend since October 2023. (GE 2, 3)

Applicant has worked as a test writer for a defense contractor since February 2024. Before his employment in the defense industry, he worked as a sales consultant for various telecommunications companies between 2019 and January 2024. He experienced two brief periods of unemployment during this time, from March to May 2021, and from January to February 2024. He voluntarily left his previous position in the telecommunications industry by mutual agreement, and to accept his current position. (GE 2, 3)

Applicant completed his first SCA on December 20, 2023, and did not disclose his arrests in Section 22 (police record) or his involvement with illegal drugs in Section 23 (illegal drug use and purchase).

The SOR alleges security concerns under Guidelines H, J, and E, and is supported by Applicant's admissions and statements in his SCA, background interview, federal and state criminal record reports, and a response to Government drug and criminal offense interrogatories. (GE 2 – 5).

Guideline H alleges Applicant used and purchased marijuana almost daily from 2008 to December 2023 (SOR ¶¶ 1.a, 1.b); tested positive for marijuana in December 2023 (SOR ¶ 1.c); and was arrested for marijuana possession twice in 2018 (SOR ¶¶ 1.d, 1.e), once in 2017 (SOR ¶ 1.f), and once in 2014 (SOR 1.g). The allegations are cross alleged under Guideline J (SOR ¶ 2.a).

During his April 2024 background interview with a DOD investigator, Applicant discussed his marijuana use and involvement, and his arrests for marijuana possession in 2014, 2017 and twice in 2018. (GE 3 at 9-11)

From 2008 until about October 2023, Applicant said he and a friend smoked two to three marijuana cigars, about 1/4th ounce of marijuana, daily. He smoked to get high and said he felt relaxed, sleepy, and hungry. During this period, he also purchased 1/8th ounce of marijuana from “local dealers” a few times weekly. He and his friend shared each other’s marijuana. He also admitted he used marijuana with the same friend a few times from October to November 2023. (GE 3 at 9-11) The recreational use of marijuana was legalized in his home state (S1) in July 2021. (GE 6)

In December 2023, Applicant tested positive for marijuana in a pre-employment drug test, which used his hair sample. Later the same month, he said he took another drug test via mouth swab, and it tested negative for illegal drugs. He said he stopped smoking marijuana to work for his current employer. He understood his employer prohibited the use of illegal drugs, including marijuana. He also made the following statement:

I don’t go to places that I have reason to believe marijuana or anything [other illegal drugs] is sold. I’m usually at work, home, or with family besides running errands for the house or for my gaming business. (GE 3)

Regarding his arrest in 2014, Applicant said his car broke down, a tow-truck driver stopped to help, but after smelling marijuana, the driver contacted police. Police officers arrived, searched his car, and after finding 1/4th ounce of marijuana, they arrested him for possession of marijuana with intent to distribute. He claimed the marijuana was for his own personal use. He later pled guilty to marijuana possession and paid the required fine. (GE 3, 4)

Regarding his arrest in 2017, Applicant said he was pulled over by police officers due to an expired car registration. Police officers smelled marijuana, searched his car, and found one ounce of marijuana. He was arrested for marijuana possession and again claimed it was for his own personal use. He pled guilty and was required to participate in an eight-month outpatient alcohol and drug treatment program. He completed the program, which he said was focused more on education (vice treatment). He was not diagnosed with alcohol or drug dependency problems and denied ever voluntarily participating in a prescribed drug rehabilitation and treatment program. (GE 3, 4)

In 2018, Applicant was arrested twice for marijuana possession in S1 in March 2018 and in a nearby state (S2). Not much is known about his arrest in S2, including the date of the arrest. He said he smoked a marijuana cigar because he was stressed out. His car broke down, police officers arrived to help him, they smelled marijuana, found it, and arrested him. He said he went to court and was required to pay a fine, which he did. (GE 3 at 9-10)

In March 2018, Applicant said he was pulled over in S1 while on his way to work. Police officers noticed the smell of marijuana, searched his car, and found 1/4th ounce of marijuana. He was arrested and charged with marijuana possession. He claimed he was not smoking marijuana at the time, but that the smell of marijuana came from a prior use. A month later, he pled guilty to marijuana possession and was sentenced to 90 days confinement (suspended) and one year probation. (GE 3 at 10; GE 4)

Guideline E alleges Applicant failed to disclose his illegal drug use “in the last seven years” (SOR ¶ 3.c) in response to questions in Section 23 of the SCA. He also failed to disclose his criminal history of being arrested multiple times for illegal drug possession “in the last seven years” (SOR ¶ 3.a); and for denying EVER being charged with an alcohol or illegal drug offense (SOR ¶ 3.b) in response to questions in Section 22 of the SCA.

In his Answer, Applicant denied SOR ¶ 3.a, stating he “[did] not recall every offense [he] had” because of the passage of time. He also denied SOR ¶ 3.b, stating he “did answer ‘yes’ to having an offense with alcohol or drugs,” and SOR ¶ 3.c, asserting he “mentioned use of illegal drugs, only marijuana.” The record shows he clearly answered “no” to the questions in Sections 22 and 23 of the SCA, as described and quoted in the SOR allegations under ¶ 3.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(c), the entire process is a conscientious scrutiny of several 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 classified information enters 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 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 and substance misuse is described 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are applicable are:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; 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 used and purchased illegal drugs during the period alleged in the SOR; that he tested positive for illegal drugs in December 2023; and that he was arrested for illegal drug possession in 2014, 2017, and twice in 2018. His admissions are also supported by other evidence in the record. AG ¶¶ 25(a), 25(b), and 25(c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶¶ 26(a) and 26(b) are not established. Applicant has a long history of using and purchasing marijuana. He used marijuana daily with a friend for 15 years, from 2008 to about December 2023. He also purchased marijuana up to three times every week from "a local dealer" during the same period, and was arrested four times, between 2014 and 2018, for the illegal possession of marijuana. He tested positive for marijuana in December 2023 during his employer's routine pre-employment drug test.

Though Applicant said he has abstained from using marijuana since that time, about two years, he has not provided objective evidence to support his assertion. Nor has he submitted evidence that he disassociated from his drug-using friend, with whom he smoked marijuana with daily for 15 years; or provided a signed statement of intent to abstain from drug involvement and substance misuse with an acknowledgment that any future involvement with illegal drugs would be grounds for revocation of national security eligibility.

AG ¶ 26(d) is not established. Applicant completed an alcohol and drug abuse training program, required by the court, after his 2017 arrest and conviction for marijuana possession, but was subsequently arrested twice in 2018 for marijuana possession. Also, he described his alcohol and drug training program as one that focused on education and

not treatment, and this distinction appears to fall outside the scope of requirements in AG ¶ 26(d).

After weighing Applicant's 15-year history of marijuana use and involvement against his abstinence for two years, I concluded that not enough time has passed to find that his use and involvement with marijuana is completely behind him, or that full rehabilitation has occurred. I commend his progress and encourage his continuance on this path towards success.

Applicant's evidence is insufficient to overcome concerns and doubts about his judgment, reliability, and willingness to comply with laws, rules, and regulations. Drug involvement and substance misuse security concerns remain unmitigated in this case.

Guideline J, Criminal Conduct

The security concern for criminal conduct is described in AG ¶ 30: Criminal activity creates doubt about an Appellant'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.

Applicant's admissions and the evidence in this case establish the following disqualifying conditions under AG ¶ 31.

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

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.

AG ¶¶ 32(a) and 32(d) are not established. The analysis under Guidelines H also applies here. Applicant's criminal actions and conduct, as reflected in four arrests for marijuana possession between 2014 and 2018, illustrate a pattern of poor judgment. He repeatedly, over a period of four years, made the same error without learning from prior conduct. Following his arrest for marijuana possession in 2017, he was required to participate in an eight-month outpatient alcohol and drug program focused on education. Despite successfully completing the program, he was arrested twice in 2018, again for the illegal possession of marijuana. This which raise questions about his trustworthiness, reliability, and overall suitability for a security clearance.

Guideline E, Personal Conduct

The security concern under this guideline is described in AG ¶ 15:

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 or sensitive 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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

In Section 22 of his SCA, Applicant failed to disclose his two arrests in 2018 for marijuana possession (SOR ¶ 3.a), and his arrests in 2014, 2017, and 2018, as to "ever" being charged with an offense involving drugs (SOR ¶ 3.b). He also failed to disclose he used marijuana from 2008 to about December 2023 as required in Section 23 of his SCA (SOR ¶ 3.c). He smoked marijuana daily for 15 years with the same friend, until he said he stopped in about December 2023. His actions were not the result of a mistake, but were a deliberate omission, concealment, and falsification of adverse information he was required to disclose as part of the security clearance process. AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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

(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.

The above analysis under Guidelines H and J also apply here. Applicant's discussions about his illegal drug use and involvement during his background interview did not amount to a prompt, good faith effort to correct omissions and falsifications in the SCA. His illegal drug use and involvement and four arrests for drug possession are not minor offenses. He has not sought out or received rehabilitative counseling. Though credited with making progress towards abstaining from his involvement with illegal drugs, the failure to disclose his extensive illegal drug use and involvement, including purchases and multiple arrests, as discussed throughout this decision, casts doubt on his reliability, trustworthiness, overall judgment, and his willingness to abide by federal laws, rules, and regulations. More time is needed to mitigate personal conduct security concerns. I find his personal conduct security concerns have not been mitigated in this case.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H, J and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under these guidelines and evaluating all evidence in the whole-person context, I conclude Applicant failed to mitigate security concerns under Guidelines H (drug involvement and substance misuse), J (criminal conduct) and E (personal conduct).

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.g:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a – 3.c:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge