



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



In the matter of:)
)
) ISCR Case No. 25-00391
)
Applicant for Security Clearance)

Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Samir Nakhleh, Esquire
The Edmunds Law Firm

02/13/2026

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

Statement of the Case

On April 2, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The action was taken 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 8, 2025, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 21, 2025. The case was assigned to me on June 3, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 12, 2025. I convened the hearing as scheduled on August 25, 2025. The Government submitted Government Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through E. His exhibits were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 8, 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 27 years old and single. He has a bachelor's degree. He has been employed by a defense contractor since September 2020. He became a principal liaison engineer in November 2024, and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 18; Applicant Exhibit D; Tr. 14-19, 30.)

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. He admitted both allegations under this paragraph with explanations.

1.a. Applicant admitted that he used marijuana in various forms between July 2017 and June 2021. From 2017 until graduation from college in 2021 Applicant used marijuana about 60 times. Once he started work in September 2020 he used marijuana about nine additional times, until he stopped all drug use in June 2021, over four years ago. His marijuana use was primarily THC edibles, though he occasionally smoked. He

credibly stated that he has no future intentions of using marijuana. He realizes the negative impact continued marijuana use can have on his life and career. (Tr. 20-25.)

1.b. As stated, Applicant admitted that he used THC edibles approximately nine times between September 2020 and June 2021, while holding a sensitive position, i.e., one in which he held a security clearance. He has stated that he will not use marijuana in any form in the future. (Government Exhibit 4; Tr. 20-21, 23, 40.)

Applicant provided a written statement of intent not to use marijuana or any other illegal drugs in the future. He has taken a marijuana awareness course and had several negative drug tests since issuance of the SOR. He avoids social situations where marijuana is used. His friends know that he cannot be around illegal drugs. As stated, he evinces a credible intent not to use marijuana in the future. (Applicant Exhibits A, B, and C; Tr. 25, 30, 38-39.)

Department Counsel indicated some concern that Applicant's minimal use of marijuana for several months after starting his job was at odds with his previous written and oral statements about his future marijuana use. I have examined his use, his statements, along with his testimony, and have given them the appropriate weight. (Government Exhibits 1, 2, and 5; Tr. 31-32, 35-38.)

Applicant described his thought process when he stopped using marijuana. He stated that he was concerned about the impact on his job and clearance if he continued to use marijuana. In addition, two close friends of his had severe, detrimental, long-term effects from marijuana use. He was deeply affected by their problems and this helped him make the correct decision. (Tr. 26-29, 33.)

Mitigation

Applicant is viewed as an outstanding employee by his supervisors. His performance evaluations show a driven and talented person who has advanced rapidly to an important leadership role while in his 20s. He is described as someone who always gets the job done. He has received work awards. (Applicant Exhibit E; Tr. 16-20.)

At least one of Applicant's supervisors is knowledgeable of the allegations in this case. This supervisor wrote outstanding evaluations of Applicant in 2024. (Applicant Exhibit E at 7-9; Tr. 44-45.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana about 60 times between 2017 and August 2020. He used marijuana in the form of edibles about nine times while holding a sensitive position from September 2020 to June 2021. Both of the stated disqualifying conditions have application to this case.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana and issued the Guidance to "provide clarifying guidance." She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that "prior recreational marijuana use by an individual may be relevant to adjudications but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant's marijuana use is more than four years in his past and has not been repeated. He explained at length that he thoroughly understands the consequences of any future drug use or exposure, and has taken several steps to avoid it. He credibly testified and submitted a written declaration of his intent not to misuse drugs in the future. He also acknowledged that such misuse would be grounds for revocation of national security eligibility. His friends know that marijuana is no longer a part of his life. Viewing his marijuana use in the context of the whole person, Applicant has mitigated the security significance of his past drug involvement. Security concerns under Guideline H are mitigated. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of his prior drug use. As stated elsewhere in this decision, and supported by the evidence, Applicant is a talented and successful young engineer team lead who has learned from his mistakes and has moved forward with his life without drugs. His conduct has earned him the privilege of being granted national security eligibility. Paragraph 1 is found for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:

FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge