



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



In the matter of:)	
)	
)	ISCR Case No. 25-01021
)	
Applicant for Security Clearance)	

Appearances

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

02/19/2026

Decision

DRISKILL, A. M., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

On August 5, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on September 23, 2025, and requested a decision on the written record in lieu of a hearing. The Government’s written case was submitted on November 24, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 8, 2025. He timely submitted documentation which I labeled as Applicant’s Exhibit (AE) A. The case was assigned to me on February 5, 2026. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from about July 2002 to about May 2025 (SOR ¶ 1.a) and that he intends to continue to use marijuana in the future (SOR ¶ 1.b). In his answer, Applicant admitted both allegations, explaining that he has “no interest in clearance,” he does not work on classified material, his maturity and responsibility have never been an issue, his usage is legal in his state, his usage is conservative and not risky, and that political circumstances in the U.S. regarding marijuana use are evolving toward more permissibility.

Applicant is 41 years old. He has been married since 2021 and has one minor child. He has not served in the military. He earned a high school diploma in 2002. He has been employed with a defense contractor since April 2023. He has never held a security clearance. (Items 3, 6; AE A)

Applicant completed an application for a position of trustworthiness in February 2024 and a security clearance application in June 2024. In February 2024, he reported using marijuana from January 2002 to October 2023. In June 2024, he reported using marijuana from July 2002 to June 2024. In both documents he described his past frequency of usage as daily or multiple times a day but stated that his current frequency of usage was a couple times a month. He explained that he used marijuana for relaxation, creativity, and stress reduction. He expressed an intent to continue using marijuana. He also reported purchasing marijuana over approximately the same period of time as his usage. He expressed an intent to continue purchasing marijuana in the future, explaining that it is legal in his state of residence. (Items 3, 4)

Applicant had a background subject interview (SI) with a government investigator in August 2024. He reported that he uses marijuana by himself and has been purchasing it in his state since it was legalized in 2012. Before legalization, he would purchase marijuana from drug dealers. He reported that the last time he used and purchased marijuana was two weeks prior to the SI. For the last ten years, he has been using marijuana two to four times per month. Prior to that, he used it daily. He told the investigator that he will likely continue to use marijuana in the future unless he is “told to stop to hold a security clearance.” He stated that he was aware that marijuana is illegal under Federal law. (Item 6)

In his July 2025 response to interrogatories, Applicant reported that he has not stopped using marijuana and last used it in May 2025. He described his frequency of use as six to 12 times per year and confirmed that he intends to continue using marijuana in the future at the same frequency he currently uses it. He stated that he is responsible with his drug and alcohol use. (Item 5)

In AE A, Applicant acknowledged that his illegal drug use is likely disqualifying but argued that Federal law is rarely enforced against users like himself, and the legalization of marijuana in individual states shows that the prosecution of users has been deprioritized. He emphasized that he is a responsible user and that his professional

record “speaks for itself.” He stated that he has never had any drug-related or driving-under-the-influence arrests, nor any workplace disciplinary actions. (AE A)

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) implemented by the DOD on June 8, 2017.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v.*

Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

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

The following mitigating conditions 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 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 condition is established. Applicant's drug involvement is recent, frequent, and does not occur under circumstances making recurrence unlikely. He is a regular user of marijuana and has used it consistently for years. He acknowledged his drug involvement and substance misuse but has made no attempt to stop or maintain abstinence. He is aware of the illegality of marijuana use but has continued its use despite that knowledge, which directly casts doubt on his ability or willingness to comply with laws, rules, and regulations. Much of his argument in mitigation centers around the policy of marijuana legalization, but it is established that "DOHA proceedings are not a proper forum to debate the pros and cons of whether marijuana should be legal for some purposes, how it should be classified as a controlled substance, or the merits of DoD policy concerning drug abuse." ISCR Case No. 14-03734 at 3 (App. Bd. Feb. 18, 2016). Applicant has not met his burden to establish that his marijuana use does not cast doubt on his current reliability, trustworthiness, and good judgment.

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

