



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-02062
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Renehan, Esq., Department Counsel  
For Applicant: *Pro se*

02/27/2026

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 26, 2024. On February 26, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, G, and E. The 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 21, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on July 30, 2025. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM consists of 12 items. Items 1 and 2 are the pleadings in the case. Items 3 through 11 are labeled as Government Exhibits (GX) 1 through 9, and they are the evidence in support of the allegations in the SOR. FORM Item 12 appears to duplicate Item 6. GX 1 through 9 are admitted in evidence.

Applicant received the FORM on August 19, 2025, and did not respond. The case was assigned to me on January 21, 2026.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 2.b, and 3.a. He denied the allegations in SOR ¶¶ 2.a and 3.b. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old systems administrator employed by a federal contractor since February 2023. He has held a security clearance since 2015. He served in the Army National Guard from 2014 to 2021, attained the rank of specialist (pay grade E-4) and received an honorable discharge. He has never married and has no children. He received an associate degree in July 2013.

Applicant submitted an SCA in June 2022. In Section 23, he answered "No" to questions asking if, in the last seven years, he had illegally used any drugs or controlled substances and asking if he had ever been illegally involved with a drug or controlled substance while possessing a security clearance. (GX 1 at 31)

Applicant submitted another SCA in March 2024. In this SCA he disclosed that he used marijuana between March 2005 and January 2024. He stated that he recalled using marijuana three times, and he admitted using marijuana while holding a security clearance. (GX 2 at 36-37) When he was interviewed by a security investigator in June 2023, he stated he consumed food containing marijuana at a party in February 2021, which he believed caused his positive urinalysis while on active duty. (GX 3 at 18) When he was interviewed by another security investigator in April 2024, he disclosed that he used marijuana four times between March 2021 and January 2024. (GX 3 at 29)

In Applicant's answer to the SOR, he admitted using marijuana with varying frequency from at least March 2004 to about January 2024 (SOR ¶ 1.a), testing positive for tetrahydrocannabinol (THC) in a urinalysis (SOR ¶ 1.b), and using marijuana while holding a sensitive position requiring a security clearance (SOR ¶ 1.c). His marijuana use occurred in a state where recreational marijuana use is legal. His answer included statements from his manager and a friend attesting to his outstanding duty performance, reliability, and trustworthiness. His answer included a signed statement of intent to abstain from all drug involvement and substance misuse and acknowledging that any future

involvement or misuse is grounds for revocation of national security involvement. He also claimed that he intended to move to a jurisdiction where recreational use of marijuana is illegal, which would give him a fresh start away from drug-using associates and a drug-using environment. However, the documentation supporting his claimed intention to relocate reflects that he informed his supervisor that he intended to work in his new drug-free location “a few weeks at a time” and “potentially relocate.” He told his supervisor that his plans were “not set in stone just seeking if there’s an option.” (AX D) He provided no evidence that his request to relocate was approved or that he had relocated, with or without approval.

SOR ¶ 2.a alleges that Applicant was arrested for misdemeanor driving under the influence (DUI) in September 2021, that he refused to take a breath or blood test, that he was charged with DUI, that the case was dismissed for a defective complaint, that his driving privileges were suspended by the Department of Motor Vehicles for two years, and that he was required to install an ignition interlock device in his vehicle after his driving privileges were reinstated. The law enforcement official who arrested Applicant reported that he stopped Applicant’s vehicle after observing that he was driving without headlights or taillights and was swerving. He reported that as he approached the driver’s window, he detected the odor of alcohol, and as he moved closer, he was “engulfed with the odor of burnt marijuana.” There were two males in the vehicle. There is no evidence indicating whether the other occupant of the vehicle was the source of the odors. The police officer observed that Applicant’s eyes were bloodshot red, glassy, and watery. Applicant agreed to a field sobriety test, and the police officer concluded that he appeared to be impaired. He refused to take a breathalyzer or blood test. (GX 6) The police report reflects that Applicant was advised of the administrative consequences of refusing to take the tests. (GX 6) The law of the jurisdiction where the incident occurred provides that refusal to take a breath or blood test will result in administrative revocation of the driver’s license, which is what occurred in Applicant’s case.

The state court records reflect that the DUI charge was dismissed without prejudice, because of a defective complaint. The nature of the defect is not reflected in the record. Even though the dismissal was without prejudice, there is no evidence that a proper complaint was subsequently filed. (GX 7)

Applicant denied all the allegations in SOR ¶ 2.a. He did not admit or deny that he was intoxicated. He admitted that the police may have had probable cause to arrest him, but he asserted that there was no court determination that he was intoxicated. He admitted that his driver’s license was revoked, not suspended, but that the revocation was by a government entity other than the entity alleged in the SOR.

Applicant also denied that he was required to install an ignition interlock device, stating that he voluntarily installed the interlock device so that he would be permitted to drive during the period when his driver’s license was revoked. He submitted evidence that he had satisfied all the requirements for reinstatement of his driver’s license and that it had been reinstated.

After the incident alleged in SOR ¶ 2.a, Applicant was required to undergo a substance abuse assessment. The clinician who completed the report concluded that he did not meet clinical criteria for a substance abuse disorder and showed a low probability of substance abuse. In accordance with the clinician's recommendation, Applicant attended seven Alcoholics Anonymous (AA) meetings. He submitted receipts showing that on nine occasions in 2023 and 2024, he used Uber for transportation from events involving alcohol use.

SOR ¶ 2.b alleged that Applicant was convicted of misdemeanor driving under the influence (DUI) in September 2011. He admitted this allegation.

The SOR cross-alleges the Guidelines H and G conduct as personal conduct under Guideline E. Applicant admitted SOR ¶ 3.a, cross-alleging SOR ¶¶ 1.a and 1.b, and he denied SOR ¶ 3.b, cross-alleging SOR ¶¶ 2.a and 2.b.

### **Policies**

"[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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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* 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation.

Applicant's admissions in his answer to the SOR establish the following disqualifying conditions under this guideline:

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

AG ¶ 26(b): testing positive for an illegal drug;

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(f): any illegal drug use while granted access to classified information or holding a sensitive position.

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;

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.

AG ¶ 26(a) is not established. Applicant submitted two documents attesting to his job performance and reputation for reliability and trustworthiness, but no evidence reflecting abstinence from marijuana use since January 2024. He has a history of illegal marijuana use while in the Army National Guard and while holding a security clearance. Even if two years have passed since Applicant's last admitted marijuana use, only two months had elapsed between his last admitted use and his submission of his SCA, and he has been under pressure to obtain a clearance since January 2024. I am not satisfied that he will not revert to his illegal marijuana use when the pressure of qualifying for a clearance is removed.

AG ¶ 26(b) is not fully established. Applicant has provided the signed statement of intention provided for in AG ¶ 26(b)(3), but AG ¶ 26(b)(1) and 26(b)(2) are not established. His evidence falls sort of showing that he has carried out his stated intent to move to a jurisdiction where recreational marijuana use is illegal or that he no long associates with drug users.

### **Guideline G, Alcohol Consumption**

The concern under this guideline is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

AG ¶ 22(a) is established by Applicant's arrest for misdemeanor DUI in September 2021. Although the charge was dismissed because of a defective complaint, there was substantial evidence of intoxication. His eyes were glassy and bloodshot, he smelled like alcohol, and the field sobriety test showed signs of impairment. The allegation that his driver's license was revoked is included in SOR ¶ 2.a, but it is of marginal relevance, because it was based on his refusal to take a breath or blood test, not alcoholic intoxication.

AG ¶ 22(a) is established by Applicant's conviction of misdemeanor DUI in September 2011, alleged in SOR ¶ 2.b.

The relevant mitigating condition is AG ¶ 23(a): "[S]o much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment." This mitigating condition is established for the DUI alleged in SOR ¶ 2.b, which occurred ten years before the DUI alleged in SOR ¶ 2.a. It is not established for the DUI alleged in SOR ¶ 2.a, which was more recent and did not happen under unusual circumstances making recurrence unlikely. Applicant presented no evidence of reduced consumption. Instead, he presented evidence of reduced driving after consumption. His preventive measures occurred while he was under pressure of qualifying for a security clearance.

### **Guideline E, Personal Conduct**

The security concern under this guideline is set out 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 cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶16(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; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Department Counsel argues that Applicant's failure to disclose his drug involvement in his June 2022 "raises questions about his willingness to provide truthful and forthcoming responses to valid questions in national security processes." The Government did not allege falsification of the June 2022 SCA. Consequently, Applicant's falsification of the June 2022 SCA and the disqualifying condition in AG ¶ 16(a) may not be an independent basis for denying his application for a security clearance, but it may be considered for the limited purposes of evaluating his evidence of extenuation, mitigation, or changed circumstances; and considering whether he has demonstrated successful rehabilitation. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have limited my consideration of his falsification of his June 2022 SCA to evaluating the probative value of Applicant's description of his plans to change his environment and his written statement declaring his intention to abstain from future illegal drug involvement.

The disqualifying condition in AG ¶ 16(e) is applicable. Applicant's drug involvement, DUI conviction in September 2011, arrest for DUI in September 2021, and revocation of his driver's license affected his personal and professional standing.

The following mitigating conditions are potentially applicable:

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;

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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(c) is established for some, but not all, of Applicant's conduct. His most recent alcohol-related incident was in 2021, when was arrested for misdemeanor DUI, a minor offense, more than four years ago. Even if there was substantial evidence supporting the allegation of DUI, it would be mitigated by the passage of time. Under the law of the jurisdiction where he was arrested, he was entitled to decline a blood-alcohol or breath test, and he chose to do so, knowing the administrative consequences of his decision.

However, Applicant's use of marijuana in January 2024, while holding a sensitive position, was not minor and was recent. It did not happen under unique circumstances making recurrence unlikely. His concealment of his marijuana use while in the Army National Guard by falsifying his SCA raises serious questions about his candor and undermines the sincerity of his stated intent to refrain from drug involvement.

AG ¶ 17(d) is not established. Applicant submitted no evidence of counseling or other positive steps to avoid recurrence.

AG ¶ 17(e) is not established. Applicant's response to the SOR asserted his intention to move to a jurisdiction where marijuana use was illegal. However, the documentation of his move to another jurisdiction shows that his purported relocation is tentative and for only "a few weeks at a time," and not a permanent move.

### **Whole-Person Analysis**

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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, G, 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 question him or 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 Guideline H, G, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the Guideline G concern alleged in SOR ¶ 2b, but he has not refuted or mitigated the remaining security concerns alleged under Guidelines H, G, and E.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement And Substance Misuse):	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline G (Alcohol Consumption):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge