



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



In the matter of:)
)
) ISCR Case No. 25-00904
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2026

Decision

HOGAN, Erin C., Administrative Judge:

The security concern raised under Guideline H, Drug Involvement and Substance Misuse, is mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 9, 2024. (Item 4) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on August 13, 2025, detailing security concerns under Guideline H. 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On August 14, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 10, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on September 22, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a two-page document in response to the FORM, which is marked and admitted as Item 7. The case was forwarded to the Hearing Office on December 1, 2025, and assigned to me on February 5, 2026.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a and 1.b. Applicant's admissions are accepted as findings of fact. (Item 2)

Applicant is 29-year-old employee of a DOD contractor since January 2020. This is his first time applying for a security clearance. He has no military experience. His highest level of education is a bachelor's degree. He is married and has no children. (Item 3; Item 4)

The SOR alleges that Applicant used marijuana with varying frequency from at least 2018 to at least September 2024 (SOR ¶ 1.a: Item 5 at 3-5, 7) and that he purchased marijuana from at least 2018 to at least September 2024. (SOR ¶ 1.b: Item 5 at 4, 7).

Guideline H - Drug Involvement and Substance Misuse

In response to "Section 21 – Illegal Use of Drugs or Drug Activity" on his SCA dated April 24, 2020, Applicant answered "No" to the question about whether he illegally used drugs or illegal substances in the last seven years. (Item 3) The preface to the specific questions under Section 21 read as follows:

The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity not in accordance with Federal laws, even though permissible under state laws. (Item 3 at 22)

Applicant completed another SCA on April 9, 2024. In response to "Section 23- Illegal Use of Drugs of Drug Activity – In the last seven (7) years, have you illegally used any drugs or controlled substances?", he answered "No." He noted in the **Additional**

Comments section on page 32 of this SCA that he had a medical marijuana license for chronic back pain. (Item 4) The preface of Section 23 on this SCA contained the following language:

The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws. (Item 4 at 26)

During Applicant's background investigation interview on September 13, 2024, the investigator asked him if he had used illegal drugs or controlled substances within the past 7 years. He replied, "No." The investigator then asked Applicant whether he had used any illegal drugs in the past 7 years legally in any state. He answered, "Yes." He explained that in 2018 he was visiting a friend who lives in a state where marijuana was legal. They went to a dispensary, and he purchased and used some marijuana (THC) gummies. He was aware that it was against federal law but thought federal law did not apply in states where marijuana is legal. (Item 5 at 3-4)

Applicant also told the investigator during his September 2024 background investigation interview that he applied for a medical marijuana card from a dispensary in the state where he currently resides in February 2024 to treat his back pain. He tried other options to deal with his back pain without much success. He received a marijuana card which was effective on March 2, 2024, and expires on March 2, 2026. He purchased marijuana gummies from a state medical marijuana dispensary. He used them about one to two times a week before bedtime. He believes the marijuana gummy numbs his pain but does not make him feel intoxicated. (Item 5 at 4)

In response to DOHA interrogatories dated June 27, 2025, Applicant indicated he stopped using marijuana since his September 2024 background investigation interview and is willing to take a drug test. He believed that states' rights held precedent over federal law and believed what he was doing was legal. He stated that his marijuana use began in 2018 and ended in early September 2024. He began to purchase marijuana sometime between late February to early March 2024 and the last date he purchased marijuana was sometime between late August to early September 2024. (Item 5 at 7)

Regarding future use, Applicant does not intend to continue using marijuana. He likes his job and enjoys government work. He misunderstood what constituted illegal drug use. (Item 5 at 8)

In his answer to the FORM, dated September 22, 2025, Applicant acknowledged that he made a mistake when completing the documents (presumably the SCAs) in 2020 and 2024 regarding drug use. He did not read the language which specified that state laws were not relevant. He did not intend to mislead the government about his drug use. He disclosed his marijuana medical card on his second security clearance application.

Had he been aware that use of marijuana was not allowed, he would not have pursued getting it prescribed for treating his back pain. He regrets his decision and will never use marijuana again in any capacity. He stopped using marijuana after his security clearance background interview. He really enjoys working for the federal government and hopes he can be forgiven for this one mistake. (Item 7: Response to FORM)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

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 and substance misuse 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.

Both AG ¶¶ 25(a) and 25(c) apply. Applicant admits to using and purchasing marijuana with varying frequency from 2018 to approximately September 2024.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

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 on 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.

Under the facts of this case, I find AG ¶ 26(a) applies. Although incorrect, Applicant believed that state law legalizing marijuana was superior to federal law. He briefly used marijuana in 2018 when he was in a state that legalized marijuana. Several years later, his state of residence legalized the medical use of marijuana. He applied and received a medical marijuana card which was effective on March 2, 2024, in order to treat his back pain. He mentioned that he had a medical marijuana card which he used to treat chronic back pain in the Additional Comments section on his April 2024 security clearance

application. When Applicant discovered that marijuana remained illegal under federal law during his background investigation interview in September 2024, he stopped using medical marijuana and future marijuana use is unlikely to recur.

AG ¶ 26(b) partially applies. Applicant admitted his marijuana use during his personal subject interview and in his response to interrogatories. In response to a question in his interrogatory with regard to future intent, he responded: "I do not intend to continue using THC. I like my job and my government work, so it is an easy choice to make. I am in this situation due to misunderstanding what constituted illegal drug use." (Item 5 at 8)

Overall, the Guideline H security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 Guideline H and the AG ¶ 2(d) factors in this whole-person analysis. The record evidence supports Applicant's assertion that he did not understand what constituted illegal marijuana use. Once he discovered that marijuana use remained illegal under federal law even if allowed under state law, he stopped using it and does not intend to use it again.

After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns raised under Guideline H.

Applicant is warned that any future illegal drug involvement and use, to include marijuana, is likely to result in the loss of his security clearance.

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.b:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge