



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



In the matter of:)	
)	
)	ISCR Case No. 24-02480
)	
Applicant for Security Clearance)	

Appearances

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

02/27/2026

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H (drug involvement and substance misuse) and Guideline J (criminal conduct) security concerns arising from his past illegal drug use. He refuted Guideline E (personal conduct) security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On February 13, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, J, and E. The DCSA acted under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

On February 26, 2025, Applicant provided a response to the SOR (Answer). He admitted two of the SOR allegations (¶¶ 1.a and 2.a.) He denied SOR ¶ 3.a and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

I was assigned this case on July 18, 2025. DOHA issued a notice on August 13, 2025, scheduling the hearing for September 11, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 and 2; Applicant testified and offered three documents, which I labeled as Applicant Exhibits (AE) A, B, and C; and all of the exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 18, 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 44 years old. He is married with one child. He served in the U.S. Air Force from 2000 to 2001, when he was honorably discharged for medical reasons. He earned a bachelor's degree in 2009 and a master's degree in 2011. He first worked for a federal contractor in 2011. Since October 2014, he has been employed full time with a different federal contractor. He was recently promoted to a staff engineer position. He resides in a state that legalized the recreational use of marijuana in 2021. This is Applicant's first application for a security clearance. (GE 1; Tr. 9, 15-17)

Drug Involvement and Substance Misuse and Personal Conduct

SOR ¶ 1.a alleges Applicant used and purchased marijuana with varying frequency from about June 1997 until at least January 2025.

Applicant admitted this information in his response to the SOR. He testified during the hearing that he first used marijuana at the age of 15 while enrolled in high school and following a terrible break-up with his girlfriend. He used it with friends infrequently thereafter when it was offered to him. He never purchased marijuana until he was in graduate school. He does not drink alcohol, and he used marijuana on occasion to relax and release feelings of anxiety. (Tr. 17-19)

When Applicant finished with his college education and started his career, he began using marijuana more frequently and purchasing it more often. Over the years, he started to be concerned about the long-term effects of marijuana to his health, and he reduced his use of marijuana significantly. By the time he applied for a security clearance in 2023, he was using marijuana on rare occasions, approximately "a few times a year." When he completed the security clearance application in April 2023, he was very candid about his use and purchases of marijuana. (Tr. 19-20, 23; GE 1)

Applicant admitted he had to submit to a hair follicle drug test before he was hired by a federal contractor in 2011, and with his current employer in 2014. He successfully passed both hair follicle drug tests. He testified that his employer supports state law when

an employee is a civilian, but he now understands that once an employee is sponsored for a DOD security clearance, federal laws are to be observed and followed. Applicant had assumed state laws superseded federal laws. He reasoned that states would not pass state laws otherwise if they were ineffective and futile in light of existing federal laws. Recreational use of marijuana is legal in his state, but as an employee being processed for a security clearance for the first time, he was not aware that federal law prohibiting marijuana use was applicable to him. (Tr. 20-24)

Applicant became aware, in the security clearance context, that federal law superseded state law only after he received interrogatories from DOHA in January 2025. Attached were two memoranda issued by the Director of National Intelligence (DNI), which emphasized that marijuana use remains illegal under federal law and relevant to individuals who possessed security clearance eligibility. He had used marijuana after he completed his April 2023 SCA, and following his background interview in November 2024. He had candidly reported to the investigator during his interview that he followed state law, and therefore he was in compliance with his employer's workplace policies, as he had never used marijuana, or was under the influence of marijuana, during duty hours. He had truthfully told the investigator that he intended to use marijuana on an infrequent basis in the future. However, after he received the January 2025 interrogatories, Applicant became aware of security clearance requirements, and he immediately made the decision to comply with federal law and not use marijuana in the future. At the hearing Applicant testified that he may not fully agree with the federal law, but he stated, "I will uphold my agreement to comply and abstain from further marijuana usage." He last used marijuana on New Year's Eve in 2025. (GE 2; Tr. 23-25, 27)

Applicant testified during the hearing that since January 2025, he now uses meditation as an alternative to release feelings of anxiety. He no longer uses marijuana and remains concerned about marijuana's long-term effects to his health. He does not want his child to be influenced by marijuana use. He does not associate with any individuals who use marijuana. His aerospace engineer career is very important to Applicant, and he takes pride in his work. (Tr. 25-30)

Criminal Conduct and Personal Conduct

SOR ¶¶ 2.a and 3.a cross-referenced the information, as set forth in SOR ¶ 1.a above, as also applicable to criminal conduct and personal conduct security concerns.

Character Evidence

Applicant provided two character reference letters and a copy of his resume. A manager from his current place of employment stated that Applicant had worked for him from 2014 through 2023. He described Applicant as a hard worker with integrity and the discretion needed to protect classified information. The second reference, also a manager from his place of employment, reported that he has known Applicant for the past two and

a half years. In his role as manager, he has observed Applicant's professionalism, integrity, and commitment to the mission of the aerospace and defense industry. He is well respected in the workplace. Both references fully support Applicant's security clearance eligibility. (AE A, B, C)

Policies

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 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, these guidelines are applied 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 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 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 not drawn inferences grounded 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, 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 to obtain 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 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 Executive Order 10865 provides that 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

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 under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used and purchased marijuana from about June 1997 to about January 2025. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. 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; 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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana over a long period of time. He used it infrequently at the beginning; he used marijuana more frequently in the middle, and then he started to taper his use of marijuana to approximately to a few times a year during the final stage of his marijuana use. He used marijuana after he completed the April 2023 SCA, and after he participated in a November 2023 background interview. His last use occurred just over a year ago. I find these facts concerning.

The DOHA Appeal Board cited the importance of consideration of “the changing landscape of marijuana law and . . . of the Director of National Intelligence’s *Clarifying Guidance Concerning Marijuana*.” ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the “evolving landscape of marijuana law and policy,” “the resulting increasing prevalence of marijuana use,” and in some instances “recreational marijuana use deserves less, or even no negative inference on judgment.”).

Several factors are important in a non-exclusive list concerning the assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; the employee’s company’s policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; and broken promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use was not illegal under state law; no marijuana use after notice that marijuana use was federally illegal); ISCR Case No. 22-02601 at 3 (App. Bd. Feb. 22, 2024) (reversing denial of security clearance; factors: marijuana abstinence 3.5 years before hearing; marijuana use while holding a security clearance; marijuana use legal under state law).

Beginning in 2021, state law permitted the recreational use of marijuana. Applicant was aware that he was not permitted to possess and use marijuana during duty hours while working for the federal contractor, but he was not aware during his security clearance process that the federal law’s prohibition of marijuana use was applicable to him. He was very transparent about his use and purchase of marijuana to the government, and even reported to the investigator during his background interview that he would use marijuana on rare occasions in the future. Applicant assumed state law superseded

federal law. He was not made aware of this misconception until he received interrogatories in January 2025, which also attached two memoranda issued by the DNI dated October 25, 2014, and December 21, 2021. The DOD policy made clear to him that marijuana use, even in a state that legalized recreational marijuana use, was nonetheless prohibited by federal law. Applicant decided he would comply with federal law, and he stopped all use of marijuana.

I found Applicant to be a credible witness. There is no evidence of any broken promises not to use marijuana in the future. He was sincere about his misconception of state and federal laws in the context of security clearance eligibility. He testified at the hearing of his clear intent not to use any illegal drugs in the future.

Applicant used marijuana on an infrequent basis when he applied for a security clearance. He was honest and forthright about his use and purchases of marijuana. Just over a year has passed since his involvement with illegal drugs, and I find this time is sufficient to show his commitment to remaining drug-free. Applicant is very dedicated to his aerospace engineering career. I also find that future illegal drug use is unlikely to recur. His past infrequent illegal drug use and his misconception about the application of state and federal laws no longer cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 26(a) and 26(b) apply. Guideline H security concerns are mitigated.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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.

Applicant used and purchased marijuana from about June 1997 to about January 2025. He possessed marijuana before he used it. Possession of marijuana is a federal criminal offense and is listed on Schedule I of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration listing at <https://www.dea.gov/drug-information/drug-scheduling>. The above disqualifying condition is applicable.

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.

There is no evidence of additional misconduct. Applicant's criminal conduct is related to his illegal drug possession in a state where the recreational possession and use of marijuana is legal. Once he understood the application of federal law, he has stopped all illegal drug use and has not used marijuana since January 2025. He has demonstrated successful rehabilitation, and I believe future drug-related misconduct is unlikely to recur. AG ¶¶ 32(a) and 32(d) apply. Criminal conduct security concerns are mitigated.

Guideline E: Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 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 provides the following conditions that could potentially raise a security concern and may be disqualifying as follows:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

None of the personal conduct disqualifying conditions apply. The allegation in SOR ¶ 1.a was also cross alleged in SOR ¶ 3.a. The conduct in SOR ¶ 3.a is fully addressed under Guidelines H and J, above. Essentially this allegation is a duplication. Personal conduct security concerns are refuted.

Whole-Person Concept

Under the whole-person concept, the 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. 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 Guidelines H, J, and E and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

After considering the record as a whole, to include the circumstances surrounding Applicant's limited use of marijuana, his honesty, and the timing of when he learned that federal law supersedes state law, I conclude that Applicant has met his burden of proof and persuasion. Overall, his conduct and abstention from marijuana upon learning of its security significance shows his reliability, trustworthiness, and good judgment. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines H and J, and he successfully refuted the security concerns under Guideline E.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT (Refuted)
Subparagraph 3.a:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge