



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



In the matter of:

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ISCR Case No. 25-01175

Applicant for Security Clearance

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

03/03/2026

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 3, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). On October 14, 2025, Applicant responded to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on November 18, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 4, 2025, but he did not respond to it. The case was assigned to me on February 18, 2026. The Government exhibits included in the FORM (Items 1-4) are admitted in evidence without objection.

Findings of Fact

Applicant is a 46-year-old employee of a government contractor for whom he has worked since January 2025. He earned a high school diploma in 1997 and a bachelor's degree in 2004. He was married from 2007 until a divorce in 2017. He has resided with a cohabitant since 2022. He has a 14-year-old child. (Items 3, 4)

In the SOR, the DOD alleged the following: Applicant used marijuana with varying frequency from January 2020 until at least September 2025 (SOR ¶ 1.a); he purchased marijuana from January 2020 until at least September 2025 (SOR ¶ 1.b); from January 2025 to at least September 2025, he used and purchased marijuana while in a sensitive position, i.e., one requiring a security clearance (SOR ¶ 1.c); and he intends to use marijuana in the future (SOR ¶ 1.d). He admitted the SOR allegations without additional comment in the Answer. His admissions are incorporated in my findings of fact.

Applicant completed a security clearance application in January 2025 (SCA). In it, he listed his marijuana involvement up to that time. He claimed that he held a medical marijuana card from State A and used prescription marijuana once nightly to help with his neuropathy and migraines. He wrote that he intended to use marijuana in the future. (Item 3)

In September 2025, Applicant responded to Government interrogatories. As part of his interrogatory responses, he authenticated a summary of his February 2025 interview with a DOD investigator (SI). In the SI, he confirmed the nature of his marijuana involvement as he indicated in the SCA, and that he had continued using marijuana once per night to help with his neuropathy and migraines. He indicated that he would continue his course of marijuana involvement because he believed it was legal to do so, and it helped with his health issues. (Item 4)

In his response to the Government's interrogatories, he wrote that he had continued to use marijuana as before up to the date that he answered the interrogatories (September 9, 2025). He wrote that he last purchased marijuana on August 23, 2025, and that he normally purchases it one to two times per month. He wrote that he has known marijuana use is federally illegal since December 2019. He wrote that he intended to continue to use marijuana because of its health benefits and acknowledged that he had tested positive for tetrahydrocannabinol (THC) in December 2024. The Government did not allege the positive drug test in the SOR. I will not use unalleged conduct for disqualification purposes, but I will use it for appropriate purposes such as in analyzing mitigation and in my whole-person analysis. He provided a copy of his employer's drug-free workplace policy and documents related to his State A medical marijuana license. He provided a copy of his medical marijuana card with an expiration date of January 9, 2026. His employer's written drug policy prohibits the use of illegal substances on company property and while working. (Item 4)

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), which became effective on June 8, 2017.

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 to be 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, 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(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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 EO 10865 provides that adverse 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

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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 (*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 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. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used and purchased marijuana with varying frequency from January 2020 until at least September 2025. From January 2025 to at least September 2025, he used and purchased marijuana while in a sensitive position, i.e., one requiring a security clearance. He repeatedly indicated he intends to use marijuana in the future. AG ¶¶ 25(a), 25(c), 25(f), and 25(g) are established.

AG ¶ 26 provides conditions that could mitigate security concerns. 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 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.

None of the mitigating conditions are applicable. At every stage of the security clearance process, when Applicant was asked to update his marijuana involvement timeline, he continued to use and purchase it. He consistently indicated his intent to continue to use marijuana. He knew that marijuana use was illegal pursuant to federal law the entire time he was involved with it. These considerations mean that he failed to provide sufficient evidence that his marijuana involvement is unlikely to recur. His continued use and stated intention to continue also mean he has not provided evidence that he has tried to overcome the problem or established a pattern of abstinence. AG ¶¶ 26(a) and 26(b) do not apply.

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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. While I am sympathetic to the issues Applicant faces with respect to his chronic health conditions, I am constrained by the requirements contained in the Directive. I also note the lack of record evidence that he has investigated an alternative, legal course of treatment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the drug involvement and substance misuse security concerns.

