



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



In the matter of:)
)
) ISCR Case No. 25-01121
)
)
Applicant for Security Clearance)

Appearances

For Government:
Rhett E. Petcher, Esq, Department Counsel

For Applicant:
Pro se

02/26/2026

Decision

CEFOLA, Richard A. Administrative Judge:

Applicant has not mitigated the security concerns raised under the Drug Involvement and Substance Misuse adjudicative guideline. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on January 30, 2023 (Questionnaire). On September 10, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). The action was taken under Executive Order 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) effective within DoD after June 8, 2017.

On October 22, 2025, Applicant responded to the SOR in writing (Answer) and requested that the case be decided on the written record in lieu of a hearing. In his Answer, Applicant admitted to the sole allegation. On December 11, 2025, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). Though Department Counsel dated the FORM "December 11, 2024," this predates the SOR. Moreover, Department Counsel's electronic signature is dated December 11, 2025, thus the date on the FORM itself is clearly a scrivener's error which has no bearing on the content.

A complete copy of the FORM, consisting of Government Exhibits (GE) 1 to 4 and the Government's arguments in support of the SOR, was received by the Applicant on December 29, 2025. He was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns, but he did not respond within the period specified. The case was assigned to me on February 20, 2026, and GE 1 to 4 were admitted without objection.

Findings of Fact

Applicant is 51 years old and has worked for a DoD contractor as an engineer since May 2022. He received a master's degree in 2008, was married from 2014 to 2022, and has no children. He submitted the Questionnaire in connection with his employment. (GE 2 at 5, 12-13, 21-23)

SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

The Government alleged that Applicant is ineligible for a security clearance because he used marijuana for over a 28-year span. Based upon the evidence presented in the administrative record, I find the following facts regarding the history and status of Applicant's drug use:

1.a. Marijuana Use from December 1996 to June 2025. In his Answer, Applicant admitted to the allegation as drafted. In his January 2023 response to Section 23 of the Questionnaire (Illegal Use of Drugs or Drug Activity) he acknowledged sporadic use of marijuana from December 1996 through November 2022 but pledged to discontinue use of the drug because "I would not do it and risk my security clearance." When Applicant was later interviewed on May 1, 2023, he acknowledged continuing to use the drug through April 2023. He proffered that his use since 2018 was tied to a prostate cancer diagnosis, but provided no supporting documentation of a prescription and no information as to how marijuana might be related to treatment of the disease.

During a follow-up interview on June 29, 2023, Applicant elaborated that some of his marijuana purchases since 2018 had been illegal under state law and that he used the drug daily from September 2018 to November 2018, when his cancer treatments ended. He then decreased the frequency of his use and ceased use entirely when he lived overseas from September 2019 through June 2021. Upon returning the United States he resumed recreational marijuana use on weekends.

In his most recent interview conducted on October 17, 2023, Applicant discussed his continued use of marijuana on a regular basis. He explained that he wants to use marijuana but would stop if he got a clearance. Then, in his responses to interrogatories on July 3, 2025, he admitted weekly use of marijuana as recently as June 29, 2025. He also acknowledged having failed a drug test at work in 2001 and having been terminated from a position in 2005 for refusing to submit to a drug test. Once again, he noted that he did not intend to use drugs or controlled substances in the future, noting “I enjoy marijuana but...receiving a security clearance is motivation to stop.” (GE 2 at 42; GE 3 at 6, 13, 16-17; GE 4 at 2-3, 5, 8)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

The facts of this case establish the following potentially disqualifying condition set forth in AG ¶ 25:

- (a) any substance misuse (see above definition); and

- (g) expressed intent to continue drug involvement and substance abuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant acknowledges illegal use of marijuana during the timespan alleged in the SOR and has continued to use the drug after pledging to stop. Therefore AG ¶ 25 applies. The burden then shifts to Applicant to mitigate security concerns under Guideline H.

The guideline includes the following two conditions in AG ¶ 26 that can mitigate security concerns arising from Applicant’s drug use:

- (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 the 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.

There is no evidence in the record to support the application of either mitigating condition in this case. Applicant used marijuana illegally over a 28-year period. Assuming, *arguendo*, that Applicant did in fact have a valid prescription for medical marijuana use from September through November 2018, any mitigation that fact might have provided is overcome by the extensive use both before and after that timeframe.

Of particular concern is Applicant's continued use after beginning the security clearance application process – and after pledging to stop. The Appeal Board has long adhered to the premise that drug use after submitting a Questionnaire undercuts an Applicant's promise to avoid such conduct in the future. See ISCR 07-00852 at 3 (App. Bd. May 27, 2008). Moreover, an Applicant who breaks a promise to abide by drug laws after having been placed on notice that drug use is not compatible with access to classified information has not demonstrated the quantum of reliability expected of those with access to classified information. See ISCR 16-03460 at 4 (App. Bd. May 24, 2018).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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.

Also, given the Applicant's admission of testing positive for an illegal drug on a random test administered by a previous employer (which is not listed in the SOR) it is important to note the well-established premise that unalleged conduct may still properly be considered by the judge (ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006)):

- a. To assess an applicant's credibility;
- b. To evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- c. To consider whether an applicant has demonstrated successful rehabilitation;
- d. To decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- e. To provide evidence for the whole person analysis.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given the appropriate weight to Applicant's statement of intent to abstain in his responses to interrogatories. I have also considered the comments he provided in his Questionnaire, interviews, and responses to interrogatories. Ultimately, however, the drug involvement issues in the record evidence leave me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility. Eligibility for access to classified information is denied.

RICHARD A. CEFOLA
Administrative Judge