



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



In the matter of:)
)
) ISCR Case No. 24-01294
)
)
Applicant for Security Clearance)

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel,
For Applicant: Matthew Thomas, Esq.

03/06/2026

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 15, 2024, the Department of Defense (DOD) 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 (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant submitted a response to the SOR on September 12, 2024 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice on April 7, 2025, scheduling the matter for a hearing on May 27, 2025. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 and 2. Applicant testified, called two witnesses, and submitted documentation that I

marked as Applicant Exhibits (AE) A-I and admitted in evidence without objection. Neither party requested for the record to be kept open, and the record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 11, 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 admitted all the SOR allegations in his Answer. He is 37 years old, married, and he and his spouse have two minor children. He has lived in state A since 2013, and he has owned the home in which he lives since 2018. (Tr. 39, 65, 72; GE 1)

Applicant graduated from high school in 2006, and he earned two bachelor's degrees in 2010 and 2015, respectively, and a doctorate degree in 2021. As of the date of the hearing, he has worked for his employer, a DOD contractor, since July 2021, and he was promoted by his employer in December 2023. He completed a security clearance application (SCA) in September 2023. He has never held a security clearance. (Answer; Tr. 5, 39-43; GE 1-2; AE F-H)

Applicant used marijuana with varying frequency from March 2007 to November 2003. (SOR ¶ 1.a) He also purchased marijuana from August 2007 to August 2019. (SOR ¶ 1.b) In addition to his admissions in his Answer, he disclosed information about his use and purchase of marijuana on his 2023 SCA, during his November 2023 interview with an authorized DOD investigator, and in his August 2024 response to interrogatories. He used marijuana at times daily between 2007 and mid-2020, and then approximately weekly from mid-2020 to November 2023, as a means of relaxation and primarily in the privacy of his home. He purchased marijuana for his personal use on average monthly, and he did so illegally until he realized that he could purchase it easily and legally from dispensaries in a district near his state and in dispensaries in his state. (Tr. 43-48, 65-71; GE 1-2)

Applicant last purchased marijuana in the summer of 2023, and he last used marijuana in November 2023. (Tr. 43-48, 59-60, 70; GE 2) He previously stated in his SCA, "I may use it in the future. It is now legal in the state in which I live so I see no reason to discontinue my usage. If obtaining a security clearance is contingent on my use of marijuana[,] then I will stop using it." (GE 1) He acknowledged knowing that at one point in his past, marijuana was federally illegal, but he incorrectly believed it became legal when he "could walk into a store and purchase it." (Tr. 62) He learned for the first time, during his November 2023 background interview, that marijuana remains federally illegal and that security clearance holders are prohibited from using illegal drugs, to include marijuana. As such, he stated he has no future intentions of using marijuana again, regardless of whether he holds a security clearance. He disposed of his marijuana and marijuana paraphernalia after his background interview. (Answer; Tr. 43-48, 55, 59-63; GE 2)

Applicant also used: hallucinogenic mushrooms (psilocybin) from about May 2008 to May 2010 (SOR ¶ 1.d); LSD in about May 2009 (SOR ¶ 1.e); and cocaine in about May 2011 (SOR ¶ 1.c). He disclosed information about his use of these illegal drugs in his 2023 background interview and 2024 response to interrogatories. He stated he used hallucinogenic mushrooms twice between 2008 and 2010; LSD once in 2009; and cocaine a few times over a weekend in 2011. His experimental use of these illegal drugs occurred when he was in college pursuing his first bachelor's degree. He further stated he did not intend to use these illegal drugs again. (Tr. 49-54, 65; GE 2)

Applicant stated that his family and friends are aware of his marijuana use, and while he has several family members and friends who occasionally use marijuana recreationally, he has not been in an environment where illegal drugs were being used in his presence since he stopped using marijuana in November 2023, aside from one occasion when he was at a casino with a friend and someone they did not know was smoking marijuana on the balcony, in which instance he left the balcony and went back inside the casino. He stated his spouse stopped using marijuana in May 2022 and she had no future intentions of using illegal drugs again. In May 2025, she provided a declaration of intent in which she acknowledged that the use of any illegal drugs is criminal and incompatible with the rules and regulations governing sensitive positions within the U.S. Government. She also stated her intent to be supportive of and not take any actions that would jeopardize Applicant's abstention from illegal drugs. (Tr. 50-57, 59-60, 71-72; AE C, I)

In April 2025, Applicant signed a statement of intent to abstain from any illegal drug use in the future. He acknowledged that any future use of illegal drugs is grounds for the revocation of his security clearance eligibility. He took a required preemployment drug test for his current employer, and he voluntarily underwent two drug tests, in March and April 2025. He has never tested positive for any illegal drugs. He has never been diagnosed with a drug-related disorder. He does not intend to misuse a prescription drug for which he does not have a legal prescription. He does not want any illegal drugs around his children, and he desires to be a good role model for them. (Answer; Tr. 43-48, 54, 57-58, 63-64; GE 1-2; AE A, E) He also completed a drug and alcohol course in April 2025. (Tr. 56; AE D)

Applicant holds multiple leadership positions, and he has achieved remarkable accolades for his work. (Answer; AE F-G) His witnesses, who have been colleagues and friends since 2020 and 2021, respectively, attested to his reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. Both hold security clearances. (Tr. 16-37) One described him as "an excellent scientist, very diligent, very bright." (Tr. 33) He also provided a number of letters of support from individuals who also vouched for his character. His supervisor since October 2024 and colleague since July 2021, stated that Applicant's "expertise would be potentially highly valuable for national security applications." A colleague and friend of four years stated, "[Applicant] holds himself to the highest professional standards, consistently producing high-impact scientific research that enables our group to achieve its objectives." (AE I)

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 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(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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse 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.

The guideline notes the following applicable conditions that could raise security concerns under AG ¶ 25:

- (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 marijuana with varying frequency from 2007 to November 2023, and he purchased marijuana with varying frequency from 2007 to 2019. He also hallucinogenic mushrooms from 2008 to 2010, LSD in 2009, and cocaine in 2011. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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;
- (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.

In addition, in October 2014, noting the recent decriminalization of marijuana use in several states and the District of Columbia, the Director of National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use." It reminded agency heads that such changes to state marijuana laws do not alter the

existing National Security Adjudicative Guidelines and asserting that an individual's disregard of federal marijuana law remains adjudicatively relevant in national security determinations.

Subsequently, on December 21, 2021, however, particularly in response to the increasing number of state and local governments legalizing or decriminalizing marijuana use, the Director of National Intelligence Security Executive Agent issued 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 (Clarifying Guidance). It instructs that "prior recreational marijuana use by an individual may be relevant to adjudications but not determinative," and reiterates the requirement that agencies utilize the Whole-Person Concept "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."

Applicants cannot be expected to be constitutional law experts or versed in the concept of Federal supremacy. The ambiguity between state and federal drug laws and the ensuing confusion was addressed by the Clarifying Guidance. Relevant to the topic of notice, the Clarifying Guidance encourages employers "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 [SCA]." Implicit in this guidance is the recognition that the SCA itself no longer puts applicants on notice and that employers should affirmatively be providing notice to prospective employees. The Clarifying Guidance to employers, however, cannot be presumed to have been followed. See ISCR Case No. 23-00476 (App. Bd. May 1, 2024)

Applicant's last use of marijuana occurred nearly two and a half years ago, in November 2023. He stopped using marijuana once he learned, during his background interview, that it remained federally illegal. His use of other illegal drugs while he was in college occurred over 15 years ago. He was candid about his use of illegal drugs on his SCA, during his background interview, and in his response to interrogatories. He stated he has disassociated from individuals who use illegal drugs. He was credible in his testimony that he does not have any future intent to use illegal drugs, and he signed a statement of intent in April 2025 to abstain from any future use of illegal drugs. I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are established.

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. Applicant presented a strong case of his good character and contributions to his employer. Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. I conclude he mitigated the drug involvement and substance misuse security concerns.

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.e:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge