



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 24-00809 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government:
John Renehan, Esquire, Department Counsel

For Applicant:
Pro se

01/21/2026

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

On July 30, 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 (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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on August 26, 2024, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 18, 2025. The case was assigned to me on June 2, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 9, 2025. I convened the hearing as scheduled on August 15, 2025. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through D, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 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 66 years old, divorced, and has two adult children. He has a Bachelor of Science degree in electrical engineering. He has worked for his current defense contractor employer (Company 2) since January 2023 as a vice president. He has held government security clearances at various times since 2002. He does not currently have national security eligibility. (Government Exhibit 1 at Sections 12, 13A, 17, 18, and 25; Applicant Tr. 5-7.)

Guideline H: Drug Involvement and Substance Misuse

The Defense Counterintelligence and Security Agency (DCSA) alleged that Applicant is not eligible for access because he has used illegal drugs. He admitted the three allegations under Paragraph 1 with explanations.

Applicant worked for Company 1 as Maintenance Manager from June 2020 to September 2022. In this position he managed approximately 1,200 people who worked at a large government facility. He worked in a sensitive position and held national security eligibility, i.e., a security clearance, during this employment. He acknowledged that his employer, and the government facility he worked on, prohibited the use of illegal drugs. During this period in which he worked in a sensitive position, he had national security eligibility and a security clearance provided by another agency. (Tr. 21-22, 35.)

Applicant began using marijuana in the form of THC gummies in approximately June 2022. He continued to use them until December 2022. He also used them in August and September 2023. He stated that he used THC gummies to help with insomnia. (Government Exhibit 1 at Section 23; Government Exhibit 2; Tr. 26-28.)

Applicant was questioned about why he used THC knowing such use was prohibited by his employer and the government, and that there was the possibility of a random urinalysis. He stated, "I don't necessarily have a good answer. I took a chance. I was thinking that even though it's random, that somehow I wouldn't get picked. And, I also thought that - - with only doing them so infrequently and such little - - if I did get picked, I might not even have enough to test positive." (Tr. 29, 35-36, 42.)

Applicant tested positive for the THC metabolite during a random drug test in August 2022. Based on that positive drug test, he was offered the opportunity to resign rather than be terminated from his employment. (Tr. 36.)

As stated, Applicant continued to use THC gummies until December 2022. He used them again in August and September 2023, after he began working for his current employer. He stated that he continued to use them for sleep issues. He stopped using them because they were expensive and he did not think they worked well. (Tr. 36-38, 43-44.)

Applicant filled out an Electronic Questionnaire for Investigations Processing (e-QIP) in March 2023 (Government Exhibit 1). He fully described his THC use until December 2022 on the form under Section 23. He also indicated that he did not intend to use THC in the future stating, "The use did not significantly improve my sleep AND I want to be able to continue my career to support the mission of federal government customers." (Emphasis in original.)

Applicant was interviewed by an authorized investigator for the DoD in October 2023. He fully described his THC use through September 2023 in the interview. He also confirmed that he knew such use was prohibited by government contractors having national security eligibility. (Government Exhibit 2.)

Applicant expressed intent, during his testimony at the hearing, not to use marijuana in the future. He stated that he is willing to have random urinalysis to confirm his abstinence from illegal drugs. (Tr. 20, 40, 44.)

Applicant submitted documentation that he had a long and successful career working for various government contractors. During his career he often held a security clearance. (Applicant Exhibits A through D.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, 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

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (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.

All of the stated disqualifying conditions have application to this case. The burden then shifts to Applicant to mitigate them.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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.

Applicant used THC for several months in 2022 and again in 2023. His use of THC in 2022 occurred when he was a senior manager for Company 1 and was working at an important government facility. He used THC knowing it was not allowed, admitting that he knew he was taking a chance. He hoped he would not be tested, or if he was tested that the amount of THC in his system would not be sufficient for a positive result. While he appears to be sincere in his statements that he does not intend to use marijuana in the future, his periods of use given his position and knowledge is very concerning. At the time the record closed in August 2025 he had about two years of abstinence. Given the facts of this case, particularly his job position and knowledge, I find that period is insufficient. With continued abstinence he may be eligible for national security eligibility in the future. He is not eligible now. Paragraph 1 is found against Applicant.

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.

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 potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Viewing the evidence as a whole, Applicant has not presently mitigated the security concerns of his illegal drug use.

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge