



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



In the matter of:)	
)	
)	ISCR Case No. 24-00838
)	
Applicant for Security Clearance)	

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: *Pro se*

01/05/2026

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 use and possession of marijuana. National security eligibility for access to classified information is granted.

Statement of the Case

On September 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and J. 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.

Applicant provided an undated response to the SOR (Answer). He admitted all of the SOR allegations (¶¶ 1.a, 1.b, and 2.a.) He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case

on April 30, 2025. DOHA issued a notice on July 3, 2025, scheduling the hearing for August 5, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 and 2; Applicant testified and offered six documents, which I labeled as Applicant Exhibits (AE) A through F; and all of the exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 12, 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 24 years old. He is unmarried and has no children. He earned a bachelor's degree in June 2023. Since August 2023, he has been employed full time for a DOD contractor. His job title is electrical engineer. He resides in a state ("X") that has legalized the recreational use of marijuana. This is Applicant's first application for a DOD security clearance. (GE 1; Tr. 15-16; AE A)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges Applicant used marijuana with varying frequency from about July 2021 to about September 2023.

SOR ¶ 1.b alleges Applicant purchased marijuana from about July 2021 to about December 2022.

Applicant disclosed on his October 2023 security clearance application (SCA) his use of marijuana between July 2021 and September 2023. He testified at the hearing that his use of marijuana started during college with friends. They preferred smoking marijuana rather than drinking alcohol. He would typically smoke marijuana on weekends and occasionally a weekday night. Just before his college graduation, he decided to stop using marijuana "cold turkey" in February 2023. He was aware that many prospective employers would require him to pass a drug test before he was offered a job. He is not dependant on marijuana, so quitting was not a hardship. (Tr. 17-24; GE 1; AE A)

On April 23, 2023, Applicant accepted an employment offer from another company. That evening, he and his friends celebrated their new employment offers and smoked marijuana. The next day, he received an employment offer from a DOD contractor, and he immediately rescinded his acceptance from the other company. After April 23, 2023, Applicant stopped using marijuana. He participated in a drug test in July 2023, which he passed, and he started working for the DOD contractor in August 2023. (Tr. 24-26; GE 1)

On September 30, 2023, Applicant attended his friend's wedding. He used marijuana during this event. When Department Counsel questioned him why he would

use marijuana again, he explained that, at the time, he was under the influence of alcohol. He stated,

I guess a friend of the family friend's (sic) had marijuana and I think I just got roped into it. I really wasn't in a clear head space; it was a lapse of judgement. Again, I mean, I just don't remember entirely. I just know I smoked because I smelled it on my fingers the next morning. (Tr. 26-27)

Although Applicant was working for the DOD contractor, he had not yet completed his SCA for his new employment. He was aware that marijuana use was prohibited by the DOD contractor's workplace drug policy. He did not recall using marijuana at the wedding, but he assumed he had after he recognized the smell on his fingers the following morning. This was his last use of marijuana. He does not intend to use marijuana in the future, and he was remorseful that this incident happened. (Tr. 28, 32-33)

Applicant admitted that he had illegally purchased marijuana in State X. There were state dispensaries, but Applicant was unable to purchase from the dispensaries because he was underage. He would purchase marijuana from one or two known acquaintances who sold marijuana. When Applicant became of age, he continued to purchase from these individuals instead of purchasing marijuana legally through State X's licensed dispensaries. (Tr. 29-31)

When Applicant completed his SCA in October 2023, he was very candid about his marijuana history. During the hearing, he testified that he has no desire to smoke marijuana anymore. Most of his friends do not smoke marijuana as they have matured. Although recreational use of marijuana is legal in State X, he has no interest in associating with those few friends who still smoke marijuana. In the event he was offered marijuana at a future social event, for example, he would immediately remove himself from the situation. (Tr. 33-35; GE 1)

Criminal Conduct

SOR ¶ 2.a cross alleges that information as set forth in subparagraphs 1.a and 1.b, as listed above.

Character Evidence

Applicant submitted a positive employee performance review following his first year of employment with the DOD contractor. He has been told that it is very rare for a first-year employee to rate "Exceeding Expectations," which is the rating he received in several performance areas. His manager stated in the report, "[Applicant] exhibits a degree of ownership and engagement that is beyond expectations for a new hire. His performance exceeds expectations of a new hire." (AE C)

Applicant also provided his most recent employee performance review. His manager stated in the report, "Overall, [Applicant] far exceeded expectations in 2024. ...This year in many ways [Applicant] performed to a degree that would be expected of an Engineer 3, which ultimately propelled him into the 'Far Exceeds' category rather than just 'Exceeds.'" Applicant also received an award in October 2024 from his employer for his significant contributions. (AE D, E)

Applicant submitted a character reference letter from his immediate supervisor. His supervisor stated that since August 2023, he has had frequent daily interactions with Applicant in the workplace. He "could attest to [Applicant's] high degree of integrity, professionalism, and honesty." (AE F)

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:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted he used and possessed marijuana from about July 2021 to about September 2023. He purchased marijuana from about July 2021 to about December 2022. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

AG ¶ 26(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

AG ¶ 26(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's last use of marijuana in September 2023 occurred over two years ago. His one-time use of marijuana after graduating from college in June 2023 occurred while he was attending a friend's wedding in September 2023. He had been drinking alcohol and does not fully recall the entire situation, but when he woke up the next morning, he could smell marijuana on his fingers. He is remorseful that this incident occurred.

Applicant and his friends have matured and are now dedicated to their new careers. He avoids acquaintances and situations where recreational marijuana may be present. He fully disclosed his marijuana use on his October 2023 SCA, he has not used marijuana after submitting his SCA, and he testified at the hearing of his clear intent not to use any illegal drugs in the future. These actions demonstrate good judgment and reliability. Mitigating conditions AG ¶¶ 26(a) and 26(b) apply. Applicant successfully mitigated drug involvement and substance misuse security concerns.

Guideline J, Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to Criminal Conduct:

Criminal activity creates doubt about a person'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 the following conditions that could raise a security concern and may be disqualifying in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in

combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant used and possessed an illegal drug from July 2021 to September 2023. His illegal drug possession is prohibited by federal law and is criminal conduct. Each time he possessed marijuana; he committed a criminal offense. The evidence establishes the above disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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. After he submitted his October 2023 SCA to begin the process for a DOD security clearance, he decided that he no longer had any desire to use marijuana in the future. His last use of marijuana was over two years ago. He has matured and now is actively engaged in work for his employer. He has demonstrated successful rehabilitation, and I believe future drug-related misconduct is unlikely to recur. AG ¶¶ 32(a) and 32(d) 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 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 and J 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.

Applicant made positive changes in his life and is considered a trustworthy and reliable individual. These traits were fully supported by his supervisor's character reference letter, and his employee performance reviews in the record. He is committed to remaining drug-free, and I find his use of illegal drugs is unlikely to recur. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the drug involvement and substance misuse and criminal conduct 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 and 1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.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 or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge