



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



In the matter of:)
)
) ISCR Case No. 24-00992
)
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel,
For Applicant: *Pro Se*

03/26/2026

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On January 2, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a single security concern 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 January 10, 2026 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on July 9, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice on

August 6, 2025, scheduling the matter for a hearing on September 11, 2025. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 and 2. Applicant testified, he did not call any witnesses, and he did not submit documentation. At Applicant's request, I kept the record open until September 25, 2025, to provide him with the opportunity to submit documentation. On September 12, 2025, I received documentation from Applicant that I collectively marked as Applicant Exhibit (AE) A and admitted in evidence without objection. No further evidence was received before the record closed. DOHA received the hearing transcript (Tr.) on September 22, 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 the sole SOR allegation in his Answer. He is 33 years old, married, and he has a minor child and a minor stepchild. He lived in state A from 2013 to 2018, in state B from 2018 to 2020, in state C from 2021 to 2022, and in state A again since December 2022. (GE 1; Tr. 8, 20)

Applicant graduated from high school in 2010. He served honorably in the U.S. military from November 2012 to August 2020. Since August 2021, he has a 100% disability rating from the U.S. Department of Veterans Affairs. He attended HVAC school and then electrical school full time from August 2020 to March 2022. He has an HVAC certification, a certification after completing electrical school, and several other certifications. (GE 1-2; Tr. 5, 8-9, 19, 24-28, 36-41, 55-56, 58-59)

Applicant was unemployed from March 2022 to November 2022. He worked as a maintenance technician for a company from March 2023 to July 2023, and he was unemployed again from July 2023 to October 2023. He has worked for his employer, a DOD contractor, since October 2023. He started as a field technician II and he was promoted to field technician III in July 2025. He works on various U.S. Navy ships. He completed a security clearance application (SCA) in November 2023. He previously held a security clearance while he was in the military. (GE 1-2; Tr. 5, 8-9, 19, 24-28, 36-41, 55-56, 58-59)

Applicant used and purchased marijuana from about September 2020 to October 2023. (SOR ¶ 1.a) He disclosed his marijuana involvement on his SCA, during both of his December 2023 background interviews, and in his November 2024 response to interrogatories. (GE 1-2) He used marijuana for the first time in September 2020, after his military discharge, when he lived in state C where it is legal under that state's law. He used it recreationally and as a coping mechanism for the stress he experienced from no longer being in the military and not knowing what to do. He consulted with a therapist, who steered him towards marijuana as a form of stress management. He smoked

marijuana daily at night, usually in the form of a marijuana cone cigarette, but sometimes he ate it in the form of a gummy. It had a calming effect on him. He purchased an ounce monthly for \$250, or 10 gummies for \$25, for his personal use while living in state C. (GE 1-2; Tr. 19-45)

When Applicant moved back to state A in December 2022, he obtained a medical marijuana card in February 2023 for his anxiety. He did not use marijuana from December 2022 to February 2023 when he did not have a card, but he resumed daily usage when he obtained the card. He smoked one marijuana cone daily at night. He purchased marijuana from legal dispensaries in state A. He continued to purchase an ounce monthly for \$150-\$160 and sometimes he purchased a two-pack of pre-packaged marijuana cones for \$17. His marijuana card expired after one year and he did not renew it. (GE 1-2; Tr. 22, 30-46, 54-55)

Applicant has not used marijuana since he started working for his employer in October 2023. He took a pre-employment drug test in October 2023 and tested positive for illegal drugs. His employer's drug-testing personnel informed him that marijuana remains federally illegal. He testified, "My job told me that the way the drug policy works there is that if you get hurt on the job, you get drug tested. I took that to notice, and I stopped doing it." (Tr. 31) His employer prohibits the use of illegal drugs and marijuana and has a random drug testing policy, but he has not been subjected to any such tests since his pre-employment drug tests. He utilizes different methods for stress management, to include walking and working out. He testified, "I take 20,000 steps a day, try to stay healthy. Find ways to manage stress. And the main way I manage stress is I walk a lot. I take long walks. That's what I do." (Tr. 34-35) He stated he does not associate with anyone who uses illegal drugs and would leave if he found himself in a situation here illegal drugs were being used. (GE 2; Tr. 19, 26-36, 46-54, 56-61)

In his SCA, Applicant affirmatively answered the question that inquired whether he intended to use marijuana in the future. (GE 1) During his background interview, he indicated his intent to continue using marijuana in the same manner but was willing to stop if it affected his ability to obtain a security clearance or jeopardized his employment. In his response to interrogatories, he negatively answered the question that inquired whether he intended to use marijuana in the future. He stated, "[I] will full stop if employer says so." At the hearing, he testified he did not recall telling the background investigator of his intent to continue using marijuana. He also maintained his last use of marijuana was in October 2023, not December 2023. He provided a statement of intent in September 2025, to abstain from illegal drugs and/or substances, and he acknowledged that any future illegal drug use is grounds for revocation of his security clearance. (GE 2; AE A; Tr. 29-36, 46-54, 56-58, 61-62)

Applicant stated he has been an exemplary employee. (Tr. 19-20, 55-56) His employer conducts "Start of the Day" daily meetings to ensure no one is intoxicated. He stated, "the work we do on the ship is kind of dangerous, so you don't want to have anybody on the ship intoxicated or high or any of those things." (Tr. 60) He further stated, "[N]ow that I'm able to run my own jobs, I conduct the meeting." (Tr. 60) He provided

letters of support from two individuals who vouched for his character and attested to his reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. His supervisor stated he was promoted to SCA tech III, described him as a “vital asset to the team,” and noted his ability to perform his duties with limited supervision. A coworker stated, “He has been promoted and is now leading teams of technicians.” (AE A)

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 and purchased marijuana with varying frequency from September 2020 to October 2023. AG ¶¶ 25(a) and 25(c) are established.

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 conflict 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 appellants on notice that marijuana use is prohibited under federal law 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 in October 2023. He first used and purchased marijuana in 2020, while residing in a state where it is legal under that state's law, and he used it primarily for stress management. In 2022, he obtained a medical marijuana card upon moving to a different state, and he used it to manage his anxiety. He purchased it from licensed dispensaries in that state. His marijuana card expired after one year and he did not renew it. He stopped using marijuana once he learned, after his positive pre-employment drug test, that it remained federally illegal, and he was prohibited from using it. He does not associate with individuals who are involved with illegal drugs.

Applicant was candid about his marijuana involvement in his SCA, during his background interviews, in his response to interrogatories, and at the hearing. He did not recall telling the background investigator of his intent to continue using marijuana, and he provided a statement of intent in September 2025 to abstain from illegal drugs and/or substances, and he acknowledged that any future illegal drug use is grounds for revocation of his security clearance. 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 was candid and credible at the hearing. Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. I conclude he mitigated the sole drug involvement and substance misuse security concern.

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:
Subparagraph 1.a:

FOR APPLICANT
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