



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



In the matter of:)
)
) ISCR Case No. 25-00922
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2026

Decision

HOGAN, Erin C., Administrative Judge:

The security concern raised under Guideline H, Drug Involvement and Substance Misuse, is mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 15, 2024. (Item 3) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on September 30, 2025, detailing security concerns under Guideline H. DCSA acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective as of June 8, 2017.

On October 14, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 30, 2025, Department Counsel submitted the Government’s File of Relevant Material (FORM), including documents identified as Items 1 through 4. Applicant received the FORM on January 14, 2026. He was afforded 30 days after

receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response to the FORM, consisting of three pages. The case was forwarded to the Hearing Office on March 12, 2026, and assigned to me on March 16, 2026.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted the sole allegation in SOR ¶ 1.a. His admission is accepted as findings of fact. (Item 2)

Applicant is 66 years old. He is being sponsored for a security clearance by his employer, a federal government contractor, whom he has worked for since August 2018. Prior to that time, he worked for several federal contractors in cleared positions since approximately 1996. He was granted a top-secret clearance in November 2011 and May 2017. He has no military experience. His highest level of education is a master's degree. He is married and has two adult children. (Item 3; Item 4)

The SOR alleges that Applicant used marijuana on two occasions between approximately September 2015 and December 2022 while employed in a sensitive position while he held a security clearance. (SOR ¶ 1.a: Item 3 at 35-36; Item 4 at 3-7)

Guideline H - Drug Involvement and Substance Misuse

In response to Section 23 – Illegal Use of Drugs or Drug Activity on his SCA dated February 15, 2024, Applicant listed that he used marijuana on one occasion in September 2015. He was on vacation visiting friends in a state where the use of marijuana was legalized. His friends offered a club soda that had some liquid THC drops in it. His friends had purchased the THC drops from a state marijuana dispensary. He admits that when he ingested the liquid THC drink, he had an active security clearance and that he was aware that marijuana use remained illegal under federal law. He also listed that he used marijuana in December 2022. His best friend visited his home and brought some marijuana gummies with him that he purchased at a local dispensary. Marijuana was now legal in Applicant's state of residence, but he was aware that marijuana use remained illegal under federal law. He ate half a gummy and believed that the amount of marijuana in the gummy was low because he felt little effect. He still possessed an active security clearance in December 2022 when he ingested the gummy. (Item 3 at 35-37)

When asked about his future intent to use marijuana, Applicant wrote:

I will not use any substance that is federally illegal (regardless of whether it's legal in the U.S. state I live in or visiting) as long as I hold a security clearance. My use of the gummy cited above was a mistake. I shouldn't

have accepted or consumed it. Lesson learned not repeated since. (Item 3 at 36)

In May 2023, Applicant was scheduled for a polygraph related to access to sensitive compartmented information (SCI). He provided the information about his 2015 and 2022 marijuana use to the polygrapher. He also admitted that on each occasion he used marijuana he worked for a federal government contractor and possessed a security clearance. During his personal subject interview on July 30, 2024, he admitted that he did not disclose his marijuana use to his employer prior to the May 2023 polygraph out of concern that it might adversely affect his career and his security clearance. His access to SCI was removed shortly after his May 2023 polygraph disclosures, but he still had a top secret clearance. (Item 4 at 3-7)

Applicant told the interviewer conducting his background investigation interview that he does not intend to use marijuana again unless he retired or when he no longer worked for the federal government or a government contractor. He later clarified that he is undecided if he will use marijuana after he retires. (Item 4 at 6)

In his response to the FORM, dated January 14, 2026, Applicant indicated he has maintained a drug-free lifestyle since 1987 and deeply regrets his two lapses in judgment. He provided a statement of intent to abstain from illegal drug use in the future. He understands that any future illegal drug involvement will result in the immediate revocation of his eligibility for access to classified information. He told his friends who may or may not use drugs that he will not attend any gatherings where illegal drugs are used and he will excuse himself if drug use occurs. He emphasizes that this is very infrequent because he does not associate with habitual drug users. (Response to FORM at 1-2)

Applicant has abstained from all illegal drug use since December 2022. He has no intention to use illegal drugs in the future. He has taken the following steps: He avoids social settings or occasions where any illegal drug use may occur; he is willing to undergo a drug test at any time; he acknowledges that marijuana remains illegal under federal law, and he understands as a security clearance holder, that his obligation is to federal standards even if it is legal under state law. He wrote that his judgment lapse in 2022 was an error that will not recur. His security clearance is vital to his career and his ability to provide for his family. He apologizes for these past two incidents and requests that his overall record of reliability and his firm commitment to future abstinence be considered. (Id.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

DOW and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use" addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. "An individual's disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations."

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, "Federal Laws and Policies Prohibiting Marijuana Use." The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is

federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent 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*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

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 and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a): any substance misuse;

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

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant has a history of illegal marijuana use. He admits to using marijuana on one occasion in September 2015 and on one occasion in December 2022. He possessed a security clearance on both occasions and was aware that marijuana use remains illegal under federal law even though it was legal in the states where he used it. AG ¶¶ 25(a), 25(c), and 25(f) apply.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

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 on 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.

AG ¶ 26(a) applies because Applicant's last use of marijuana occurred more than three years ago in December 2022. On both occasions, the amount of marijuana used was minimal. In 2015, he drank a club soda infused with liquid THC and in 2022, he ate half of a marijuana gummy. While I do not condone his behavior, Applicant fully disclosed his marijuana use during his polygraph examination. He apologized for his actions and does not intend to use marijuana in the future.

AG ¶ 26(b) applies because Applicant has abstained from marijuana for more than three years. In his response to the FORM, he signed a statement of intent to refrain from illegal drug use in the future and acknowledged that any future illegal drug use or involvement would result in the revocation of his security clearance. While he admits that he has friends who may still use marijuana products in states where it is legal, he told them that he will avoid any gatherings where marijuana used and will leave if anyone uses marijuana in his presence.

Applicant demonstrated poor judgment when he used marijuana in 2015 and 2022 while possessing a security clearance. He apologized for his past actions and expressed his intent to refrain from future marijuana use. The security concerns raised under Drug Involvement and Substance Misuse are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant's use of marijuana on two occasions while possessing a security clearance raised security concerns. His conduct is not condoned. However, he ingested a small amount of marijuana each time he used it, and more than three years have passed since his last use of marijuana. He does not intend to use marijuana in the future and apologized for his poor judgment. I conclude that Applicant mitigated the security concerns raised under Guideline H. He is warned that any future illegal drug use or involvement will likely result in the revocation of his security clearance.

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
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge