



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



In the matter of: )  
)  
) ISCR Case No. 24-01192  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2026

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate drug involvement and substance misuse and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On April 16, 2025, the Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse and personal conduct guidelines the DCSA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative*

*Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017.*

Applicant responded to the SOR on May 17, 2025, and elected to have his case decided on the written record in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on September 11, 2025, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not respond to the Government's FORM and did not object to the Government's materials included in the FORM. The Government's exhibits were admitted as Government's Exhibits 1-8. (GEs 1-8) The case was assigned to me on January 28, 2026.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly (a) used marijuana or other products containing THC with varying frequency from about May 2015 to about September 2024, to include while holding a sensitive position, i.e., one requiring a security clearance, since February 2008; (b) used various prescription medications not prescribed to him; (c) received outpatient medical treatment at a substance abuse facility between January and March 2017 as an outpatient for a condition diagnosed as Moderate Hypnotic or Anxiolytic Use Disorder, and was treated in 2020 for abusing prescribed medications; (d) was hospitalized on three occasions in 2020 for diagnosed polysubstance abuse disorders; and (e) received inpatient treatment from May 2020 to October 2020 at a substance abuse facility for diagnosed opiate use disorder. The substance abuse allegations are cross alleged under Guideline H.

In Applicant's SOR response, he admitted all of the allegations covered by Guideline H, but denied the incorporated allegations covered by Guideline E. He claimed he was forthcoming with DoD investigators: he claimed that he provided all paperwork and answered all questions asked of him in his scheduled personal subject interview (PSI) about events that ranged as far back as five to 10 years.

### **Findings of Fact**

Applicant is a 33-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow herein.

### **Background**

Applicant never married and has no children. (Items 3-4) He earned a high school diploma in June 2010 and an associate's degree in May 2012. (Item 3) Applicant did not report any military service.

Since June 2017, Applicant has been employed by his current employer as a draftsman and designer. (Items 3-4 and 8) Previously, he worked for other employers in various jobs. He has held a security clearance since 2018 and is sponsored by his current employer for a security clearance. (Item 3)

### **Illegal drug involvement and diagnosed substance misuse disorders**

Between May 2015 and August 2016, Applicant used marijuana with varying frequency (generally twice weekly but escalating to a rate of almost daily). His usage included ingestion of the drug while holding a sensitive position (i.e., one which requires a security clearance) since February 2018). (Items 2-4 and 8) After abstaining from marijuana use for several years (beginning in August 2016), following a driving under the influence (DUI) arrest and conviction and ensuing counseling, he resumed his marijuana use for medical purposes in April 2020 after suffering a Fentanyl overdose. (Items 4 and 8)

In his personal subject interview (PSI) of July 2022, Applicant confirmed his state's legalization of marijuana use for medicinal purposes (Item 4) He added that he used "the medical marijuana for the reoccurring nerve pain associated with this syndrome (i.e., compartment)," believing his state issued marijuana card permitted him to do so. Based on his understanding of his right to use and purchase marijuana with a medical marijuana card, he posited that he would continue to do so "as long as his nerve pain continues." (Item 4) Unaware at the time of his PSI of a federal marijuana possession ban covered by the Federal Controlled Substances Act. (21 U.S. §§ 802, *et seq.* (1970)) (CSA), he committed to abstinence once he learned of the ban for so long as his nerve pain was manageable and cited over a year of abstinence since his last acknowledged use of the drug in September 2024. (Item 4)

Applicant's marijuana discontinuance claims are not challenged and are accepted. What remains unclear is whether his abstinence claims are based on his desires to satisfy his job and security clearance requirements or on a self-determined decision to permanently avoid marijuana activity (i.e., any drug involvement). He cited no recent drug counseling or alternative medications for addressing pain recurrences.

Besides his marijuana use, Applicant used other illegal or non-prescribed drugs over a period of years. Medical records document Applicant's use of non-prescribed prescription medication Ativan for several months (April 2016 through August 2016). Records also document his use of non-prescribed (a) prescription medication Xanax between April 2016 and April 2020 and (b) Fentanyl with varying frequency between November 2016 and April 2020.

Medical records document Applicant's series of treatment admissions between January 2017 and October 2020. (Items 5-7) Specifically, he received outpatient treatment between January 2017 and March 2017 for diagnosed Moderate Hypnotic or Anxiolytic Use Disorder. During this outpatient admission, he was treated for abusing Adderall, Xanax, and Ativan. (Items 4 and 7) Medical records also document his

inpatient hospitalization in January 2020, where he was treated for an overdose of Fentanyl. (Item 7) During the same month of January 2020, he received outpatient care for diagnosed polysubstance use disorder, anxiety, and depression. (Item 6) Between April 2020 and May 2020 he received inpatient treatment for diagnosed Fentanyl dependence associated with his use of Fentanyl and marijuana. (Item 5) And, medical records document Applicant's outpatient treatment between May 2010 and October 2020 for diagnosed Fentanyl dependence. (Item 6)

## **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period

of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are considered together with the following AG ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent:

### **Drug Involvement**

*The Concern:* The illegal use of controlled substances, to include the misuse of 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. AG ¶ 24.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes . . . AG ¶

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours.

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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The AGs presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

Security concerns are raised over Applicant’s use and purchases of marijuana, and non-prescribed prescription drugs over a considerable number of years. Additional security concerns are raised over his resumption of marijuana use following several years of abstention while holding a sensitive position requiring a security clearance.

### **Drug and Substance Abuse Concerns**

Applicant’s admissions to using marijuana (some while holding a sensitive position) and non-prescribed prescription drugs in varying frequency over a considerable number of years raise security concerns over his judgment and risks of recurrence. The Director of National Intelligence (DNI) has made very clear that neither state laws legalizing the use of marijuana and any other drugs considered illegal under federal law permit individuals to preempt or otherwise violate federal laws banning or restricting the possession of drugs covered by Schedules 1 and 2 of the CSA.

On the strength of the evidence presented, four disqualifying conditions (DCs) of the AGs for drug involvement and substance misuse are applicable. DC ¶¶ 25(a), “any

substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position”; and 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse,” apply to Applicant’s situation.

Applicable disqualifying conditions under cross-alleged Guideline E conduct consist of DC ¶ 16(c), “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information,” has application to the facts in Applicant’s case without impugning his overall candor.

Uncontroverted is Applicant’s discontinuance of using marijuana following his Fentanyl overdose in September 2024. Applicant has fully acknowledged his frequent use of marijuana and polysubstance abuse of prescription drugs requiring multiple inpatient and outpatient admissions before he ever applied for a job requiring a security clearance. He has committed to sustained abstinence from his use of marijuana for so long as marijuana is banned by the CSA, irrespective of the drug’s legalization for medicinal purposes by his state of residence. Still, he has not foreclosed a future recurrence of marijuana use should his nerve pain persist or recur.

Considering all of the circumstances surrounding Applicant’s past involvement with marijuana and non-prescribed prescription drugs over a prolonged period, his recent qualified commitments to abstain from marijuana activity for so long as it is federally required, and his lack of corroborating evidence to support his abstinence claims, potentially applicable mitigating conditions (MCs) of the drug involvement and substance misuse guideline are unavailable. More specifically, neither potentially applicable MC ¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” nor any of the other listed mitigating conditions are available to Applicant.

Likewise, none of the potentially applicable mitigating conditions covered by Guideline E are available to Applicant. Recent drug counseling and exploration of other options to address his nerve pain are neither documented nor demonstrated sufficiently in other ways to free him from risks of resumption of marijuana use in the future should he incur recurrent flareups of nerve pain.

Summarized, most of Applicant’s acknowledged use of marijuana occurred after the drug was legalized for medicinal purposes in his state of residence. Once he became aware of the drug’s possession ban under the CSA, he ceased using the drug altogether. None of his accounts have been controverted, and his limited use of

marijuana in a state that legitimized the drug in 2020 for medicinal purposes before he familiarized himself with the CSA ban is encouraging. Overall, however, his qualified commitments to abstain from marijuana use are insufficient to warrant favorable mitigation of his past use of illegal drugs.

And, while Applicant's use of unprescribed prescription drugs and associated treatment admissions is somewhat dated (last reported in 2020) and potentially mitigated if assessed alone, neither his usage nor necessitated treatment admissions can be separated from his contemporaneous use of marijuana without engaging in long-disfavored piecemeal analysis. See ISCR Case No. 06-08708 at 3 (App. Bd. Dec. 2007). It is still too soon to make safe predictions that Applicant will be able to fulfill his personal commitment to avoid illegal drugs in the future.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his established pattern of illegal drug use and involvement with non-prescribed prescription drugs requiring multiple treatment admissions can be reconciled with minimum standards for holding a security clearance. Applicant's (a) considerable amount of marijuana use (more recently while holding a sensitive position requiring a security clearance) and use of non-prescribed prescription reflect a longstanding pattern of substance abuse, still too recent to facilitate safe predictions of sustained abstinence in the future.

While Applicant is to be credited for his contributions to the defense industry, his considerable history of both federally banned marijuana possession (especially while holding a sensitive position requiring a security clearance) and pattern use of non-prescribed prescription drugs preclude him from benefitting from any of the potentially available mitigating conditions. See ISCR Case No. 02-07555 at 2-3 (App. Bd. July 19, 2004); ISCR Case No. 01-07735 at 2 (App. Bd. June 25, 2002)

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that illegal drug involvement and substance misuse and cross-alleged personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant

GUILDEINE E (PERSONAL CONDUCT):      AGAINST APPLICANT

Subparagraph 2.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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Roger Wesley  
Administrative Judge