



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



In the matter of:)
)
) ISCR Case No. 24-01256
)
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel,
For Applicant: *Pro Se*

03/20/2026

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On October 8, 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 (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 November 25, 2024 (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 14, 2025, scheduling the matter for a hearing on September 3, 2025. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1-3. 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 17, 2025, to provide him with the opportunity to submit documentation. On September 16, 2025, I received documentation from Applicant that I collectively marked as Applicant Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 9, 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 both SOR allegations in his Answer. He is 40 years old, divorced, and he does not have any children. He has lived in state A since at least 2013. (GE 1; Tr. 27-28)

Applicant graduated from high school in 2004. As of the date of the hearing, he has worked for his employer, a DOD contractor, (Company A) since 2023, and his employment position with another DOD contractor (Company B) is contingent on him obtaining a security clearance. He completed a security clearance application (SCA) in March 2024. He signed a classified information non-disclosure agreement on March 28, 2024, and he was granted an interim security clearance for the first time for about three to four months. His interim clearance was revoked in October 2024. (GE 1; GE 3; AE A; Tr. 5, 7, 12, 25, 27, 40)

Applicant used and purchased marijuana with varying frequency from about 2013 to 2018 and from April 2020 to May 2024. (SOR ¶ 1.a) He used marijuana while holding a DOD security clearance or otherwise occupying a sensitive position, *i.e.* one that requires access to classified information. (SOR ¶ 1.b) When he held an interim clearance from March 2024 to October 2024, he occupied a sensitive position with Company B, but he did not actually have access to classified information. He used marijuana solely for medical purposes, to treat essential [stat] tremors and persistent shoulder pain. He first used it in 2013, at age 27, to manage his shoulder pain. He purchased it from acquaintances. He stopped using it in 2018 because it was expensive to purchase, and he did not want to jeopardize his employment prospects. He first obtained a medical marijuana card from the state in which he lived in 2020, when marijuana became legal in that state. He renewed his medical marijuana card yearly, but when it expired in November 2024, he did not renew it and has no future intentions of doing so. From 2020 to 2024, he purchased marijuana for his personal use from dispensaries in the state in which he lived. He purchased a half ounce to an ounce every three to four months for \$85 to \$100. (GE 1-2; AE A; Tr. 15-16, 25-26, 28-47)

Erroneously, Applicant believed he did not have to disclose his marijuana involvement on his 2024 SCA because he perceived it as prescription medication, since he held a medical marijuana card at the time. He voluntarily disclosed his marijuana involvement during his interviews with an authorized DOD investigator in April 2024 and May 2024, and in his September 2024 response to interrogatories. When he completed his response to interrogatories, he incorrectly noted that his last marijuana use was in September 2024 because that was the date in which he was completing the interrogatories, and he was only trying to convey that he continued to hold an active medical marijuana card as of that date. (GE 1-2; AE A; Tr. 15-16, 25-26, 28-47)

Applicant last used marijuana in May 2024, after his second background interview. He disposed of all his marijuana and marijuana-related paraphernalia. He learned for the first time, during both of his background interviews in April 2024 and May 2024, that marijuana remains federally illegal and that security clearance holders are prohibited from using illegal drugs, to include marijuana, despite it being legal under the law of the state in which he resides. He was unaware of this information when he used marijuana from March 2024 to May 2024, when he held an interim clearance. He continued to use marijuana after his April 2024 background interview because he was still attempting to obtain referrals to other doctors to figure out alternative medication to manage his essential tremors and persistent pain. As of the date of the hearing, he was managing his shoulder pain with an over-the-counter pain reliever. Although he was still trying to find medication that is covered by his insurance to treat his essential tremors, he was confident that he would be able to manage them without resorting to marijuana. He stated he does not associate with anyone who uses illegal drugs, and he has no future intentions of using marijuana. (GE 2; Tr. 15-16, 25-43, 46-48; AE A) He provided a statement of intent in September 2025 in which he stated he has “quit and will continue to stay off marijuana for any reason.” (AE A)

Applicant provided letters of support from individuals who vouched for his character and attested to his reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. The vice-president of operations at Company A wrote, “[Applicant] has earned the trust and confidence of our company through his consistent delivery of high-quality work and his dedication to our business’s success.” (AE A) His colleague of two years at Company A, who was also his program manager, described him as an individual who “has become known among many of our clients’ [information technology] employees as a reliable source of knowledge and skills.” (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 . . . ;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used and purchased marijuana with varying frequency from 2013 to 2018 and from 2020 to May 2024. His use of marijuana from March 2024 to May 2024 occurred while he occupied a sensitive position, i.e. one that requires access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) apply.

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.”

Appellants 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 May 2024. His use of marijuana while he held a sensitive position and an interim clearance occurred over a limited 3-month period, from March 2024 to May 2024. He used marijuana solely for medical reasons, and he was unaware, when he held a sensitive position and an interim clearance, that he was prohibited from using marijuana. He stopped using marijuana once he learned, during his background interviews in April and May 2024, that it remained federally illegal, and he was prohibited from using it despite it being legal under the law of the state in which he resides.

Applicant was candid about his marijuana involvement during his background interviews, in his response to interrogatories, and at the hearing. He has not renewed his medical marijuana card since it expired in November 2024, he has no future intentions of doing so, he is managing his shoulder pain with an over-the-counter pain reliever, and he is confident he would be able to manage his tremors without resorting to marijuana. He does not associate with individuals who are involved with illegal drugs. Although his signed statement of intent does not fall under AG ¶ 26(b)(3), because he did not acknowledge that any future drug involvement and substance misuse is grounds for revocation of national security eligibility, he was credible in his testimony that he does not

have any future intent to use marijuana, and he has not used any other illegal drugs. I find that AG ¶¶ 26(a), 26(b)(1), and 26(b)(2) 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 drug involvement and substance misuse 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 - 1.b:	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