



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



In the matter of:)
)
) ISCR Case No. 25-00815
)
Applicant for Security Clearance)

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2026

Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On July 22, 2025, the Department of War (DoW) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on August 24, 2025, and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2026.

The hearing was convened as scheduled on February 24, 2026. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and, while the record was open, offered Applicant Exhibit (AE) A, a formal statement of intent, which I admitted without objection. DOHA received the transcript (Tr.) on March 10, 2026.

Findings of Fact

In Applicant's Answer to the SOR, he admitted the four allegations, SOR ¶ 1.a, that he used marijuana with varying frequency from about 2011 to about October 2021; SOR ¶ 1.b, that he purchased marijuana from about June 2019 to about October 2021; SOR ¶ 1.c, that he intended to use marijuana in the future; and SOR ¶ 1.d, that he was an investor in and/or advisor to two companies in the cannabis industry.

Applicant is a 64-year-old business executive and investor. (Tr. 12.) He seeks to obtain his first security clearance. He is married and has an adult child who resides at home. Both his wife and adult child have medical marijuana cards for treatment of their respective health issues. (GE 1; GE 3 at 8.) Applicant's motion to have his opening statement placed in evidence was granted without objection. (Tr. 17-18.)

In July 2014, Applicant was involved in an accident that required serious medical treatment, including prescribed opioids. Given the risks of opioid use, Applicant sought an alternative pain management treatment. Since 2014, he has used marijuana for pain management within his state's medical framework. (Tr. 13; GE 1 at 30.) In his July 2023 Questionnaire for National Security Positions (SF 86) and in response to Government interrogatories, he fully disclosed his medical marijuana use to address his acute pain. He listed on the SF 86 his use as about one to two times a week in edible form or vaporizer. At the hearing, he stated "it was somewhere between four and six days a week" in estimating his marijuana use. He was aware marijuana was illegal under federal law having submitted an earlier SF 86 for a position with another federal agency in 2004. (GE 1 at 29; GE 2 at 12; Tr. at 22, 34-35.)

Under the question about involvement in illegal drug activities such as transfer, shipping, receiving, or sale of a drug or controlled substance, Applicant listed that he was an advisor in a cannabis delivery business and an advisor to a company that provides credit to marijuana consumers and dispensaries. He described himself as a passive investor. He acknowledged he held stock in the companies, but described his holdings as insignificant, less than a percent. (GE 1 at 30; GE 2 at 13-16; Tr. 31-35.)

Applicant on three occasions affirmed his intent to use marijuana in the future – in his July 2023 SCA, in his response to May 2025 interrogatories, and in his response to October 2025 interrogatories. (GE 1 at 30; GE 2 at 2, 12; GE 3; Tr. 26, 27.) He credibly testified:

As I prepared for this hearing and reflected carefully on these obligations, I concluded that continued use is incompatible with holding a clearance. My last use was three days ago. I've discontinued use and will remain abstinent while I hold a security clearance.

Now, with respect to my cannabis-related investments and cannabis-related payments company, I'm a passive investor only. I have no operational involvement in the handling or in the sale of cannabis. I understand that

federal law governs clearance eligibility, and I will ensure that my conduct remains compliant with those obligations. (Tr. 13.)

Applicant cited modifying his alcohol consumption in 2014 as example for a commitment that he has stuck with in his life. He made this change because of his decision to use marijuana. (Tr. 43-44.) He has always taken his prescription drugs as prescribed. (Tr. 48.) He discussed that he would switch to other legal means to help him to deal with the pain. Given his commitment to abstain from further marijuana use, he was prepared to use “inferior” medications to mitigate his pain. (Tr. 43.) He stated his wife would be pleased that he was abstaining from marijuana because of the side effects she notices in him. (Tr. 45.) In response to whether he would sign a statement concerning future use of marijuana, he offered that he would sign a statement declining future use. (Tr. 47.)

Applicant stated he never illegally purchased marijuana. He has a state medical marijuana card, which he must renew every six months pursuant to care of a physician. (Tr. 24-25.) He made his purchases from a state dispensary and only used marijuana for pain management. (Tr. 24.) He has not used any other illegal drugs in over 40 years, when in college he experimented with cocaine, mushrooms, and marijuana. (Tr.19.)

Applicant concluded his testimony with:

I've tried to limit exposure to addicting substances, like opioids. It is a battle -- it's not relevant here, but it is a battle, the pain, and I've found limited success with alternatives. Nevertheless, if I were to be given the opportunity to handle classified information, I know I could sign a written affidavit, dispose of all the materials, paraphernalia, everything else, and adhere to my commitment. (Tr. 50.)

With his response to the Government interrogatories, Applicant included a character-reference letter that described him as a tireless worker in a position requiring professionalism and trustworthiness. (GE 2 at 23-24.)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(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 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 EO 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* EO 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 several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted he used marijuana, purchased marijuana, expressed an intent to continue to use marijuana, and is involved in the cannabis industry. AG ¶¶ 25(a), 25(c) and 25(f) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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
- (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.

Applicant is very credible and now understands future use of marijuana is not compatible with holding a security clearance. However, insufficient time has passed given his regular use of marijuana for medical reasons, which continued until just three days before the hearing. He is still an advisor and investor in the two cannabis-related companies, and while the record reflects his activities with these companies are minimal,

these are still significant ties. The evidence establishes that Applicant knew throughout the periods of time alleged that his use and purchasing of marijuana was prohibited under federal law. He continued to purchase and use marijuana after applying for a security clearance and after being placed on notice that such conduct was inconsistent with holding a security clearance. This behavior raises substantial questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Both family members who live at home with him are also medical marijuana users. Applicant's various statements of intent not to use illegal drugs in the future does not mitigate the security concerns given his total history. None of the mitigating conditions are applicable to SOR ¶¶ 1.a through 1.d.

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 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 have incorporated my comments under Guideline H in my whole-person analysis. I also considered Applicant's favorable character evidence, the detailed admissions in the documents, and his candor in his testimony. However, insufficient time has passed since his last use of marijuana to overcome the extent and seriousness of his conduct.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guideline H.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraphs 1.a-1.d: Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge