



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



In the matter of:)
)
) ISCR Case No. 25-01001
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On August 20, 2025, the Department of War (DoW) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DoW on June 8, 2017.

In Applicant’s November 5, 2025 response to the SOR (Answer), he admitted, with explanations, all of the allegations. He did not attach any documentary evidence. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

I was assigned this case on January 16, 2026. On January 30, 2026, a notice was issued scheduling the hearing for February 18, 2025, by video teleconference. The hearing proceeded as scheduled. The Government proffered three evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 through 3, without objection. Applicant testified and submitted one document, which I admitted as Applicant Exhibit (AE) A, without objection. At Applicant's request, I left the record open until March 13, 2026, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on February 25, 2026. By email dated March 11, 2026, Applicant stated that he had no further submissions for the evidentiary record. The record closed on March 11, 2026.

Findings of Fact

Applicant is 39 years old. He graduated from high school in June 2005 and earned a bachelor's degree in December 2009. He married in October 2013, has been separated since August 2024, and has two children, ages 11 and 6. Since March 2024, he has been employed as a senior account executive for a DoW contractor. He has never held a security clearance. (GE 1, GE 3; Tr. 24-28)

On November 18, 2024, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he reported that his marijuana use spanned from October 2005 to November 2024. He stated:

I first tried marijuana before college. I used infrequently throughout my college career. I took a hiatus, but began using medical marijuana over the past few years for its medicinal properties. I will use marijuana several times a month for back pain and anxiety, as prescribed. I have a medical marijuana card in [State A] and only purchase from State approved facilities.

He admitted that he intended to use marijuana in the future to alleviate his back pain and anxiety. (GE 1; Tr. 35)

On February 26, 2025, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he clarified his history of marijuana use. He explained that he used marijuana from October 2005 until December 2009. He did not use marijuana between December 2009 and approximately 2021. He then used marijuana to alleviate the symptoms of his back pain from approximately 2021 until February 2025. He had obtained a state-issued medical marijuana card, and he estimated that he used tetrahydrocannabinol (THC)-infused edibles approximately five to seven times a month. He did not express an intent to alter or cease his marijuana use. He adopted the summary of the interview on August 11, 2025. (GE 3)

On June 17, 2025, Applicant responded to DOHA interrogatories concerning his drug involvement. He acknowledged his understanding that marijuana remained

classified as a Schedule I drug by the Drug Enforcement Administration and was illegal under federal law. He affirmatively expressed his intent to continue to use marijuana in the future, notwithstanding federal drug laws prohibiting such use. He explained that he was “prepared to comply with all [f]ederal regulations” but he had not done so as of his response. He reported his current monthly marijuana use and his most recent use (June 14, 2025). He explained that he had obtained a state-issued medical marijuana card and used marijuana to alleviate his back pain. (GE 2; Tr. 35)

In his Answer, Applicant admitted all of the allegations. He explained that he had been unaware that medical marijuana use would disqualify him from access to classified information. He allowed his medical marijuana card to expire in late October 2025, and he expressed his intent to abstain from marijuana in the future. (Answer)

At the hearing, Applicant confirmed the span of his marijuana use as previously disclosed. From October 2005 to December 2009, he used marijuana on average “a couple times a month.” He admitted he may have had “occasional instances” of marijuana use between December 2009 and 2021. Following back surgery in May 2021, he was uncomfortable with the potential addictive nature of opioids and obtained a state-issued medical marijuana card to alleviate his back pain and anxiety. He estimated that he purchased and used marijuana approximately five to seven times a month, as needed for his back pain, from mid-2021 until October 2025. He last purchased marijuana in September 2025. On October 29, 2025, his medical marijuana card expired. There were occasions when he shared his medical marijuana with others – his then wife and friends – who also held medical marijuana cards. His estranged wife, with whom he has taken steps to reconcile, continues to possess a medical marijuana card and to use marijuana. (Tr. 30-33, 47-49, 55)

At the hearing, Applicant also explained his evolving understanding of the laws governing marijuana use and the policies prohibiting marijuana use by clearance holders. He testified that, when he completed his e-QIP, he discussed his marijuana use with his facility security officer (FSO), who was uncertain whether medical marijuana use was permitted by clearance holders. At the FSO’s direction, Applicant reported his marijuana use in his e-QIP. He participated in a pre-employment drug screening in August 2024; however, he provided copies of his medical marijuana card to the testing facility and the FSO. He testified that he was never advised by the FSO to discontinue his marijuana use. (Tr. 44-47, 52-53)

At the hearing, Applicant acknowledged his understanding, as of the June 2025 interrogatories, that marijuana was classified as a Schedule I drug and that marijuana use was prohibited by federal law. He explained that he was unclear about the interplay of federal and state laws permitting medical marijuana use. “So, to explain that, again, personally it was a bit confusing and conflicting to me because I did not view it as illegal because of my prescription.” Therefore, he continued to use marijuana after the June 2025 interrogatories. After he received the August 2025 SOR, he understood that all marijuana use, including medical marijuana use, was prohibited for clearance holders;

however, he chose to continue to manage his pain using marijuana until his medical marijuana card expired in October 2025. (Tr. 36-39)

Applicant has never had access to classified or sensitive information related to any Government project or client. His job responsibilities involve business development. Although a clearance is not required for his position, having access to classified information would enhance his ability to communicate and develop business opportunities with Government clients. His employer has a drug-free workplace policy, which reads:

Employee understands the company and its clients maintain a drug free workplace. A client or company for which [Employer] renders services hereunder requires its own employees to be tested for drugs or alcohol. As a condition of working or for continued work, employee agrees to undergo such testing. Employee also agrees to undergo such testing if required by company.

He did not believe that he was violating any workplace policy, because he never used marijuana while at work and because he never worked at a Government facility. He has not had any interaction with classified material and has not worked directly on any federal projects. His work does not involve any personal identifying information (PII). (GE 2; Tr. 28-29, 41, 57-58)

Applicant has abstained from alcohol for approximately 18 months, and he is committed to abstaining from alcohol and marijuana in the future. He submitted a written statement of intent to abstain from all drug involvement in the future. He also stated that he would avoid any drug environments or associations. He continues to experience “crippling pain” on occasion, but he is committed to using other medications and methods to manage his pain. He exercises regularly and coaches his children’s sports teams year-round. (AE A; Tr. 43-44, 56-57, 61)

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines. . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In 2021, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators 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. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged 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 Standard Form 86 (SF-86), Questionnaire for National Security Positions.¹

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (a) any substance misuse; and

¹ *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*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

(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 admitted that he used marijuana “a couple times a month” between October 2005 and December 2009 and sporadically between December 2009 and mid-2021. From mid-2021 to October 2025, he purchased and used marijuana approximately five to seven times a month. AG ¶¶ 25(a) and 25(c) apply.

The SEAD 4 ¶ D.8. defines a “sensitive position” as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant had access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor.

See ISCR Case No. 22-01661 at 4 (App. Bd. Sept. 21, 2023). His job responsibilities involve business development, and the sensitive nature of his position would not begin until after he held a clearance. As defined by the SEAD 4, the record evidence did not establish that Applicant’s marijuana use occurred while granted access to classified information or holding a sensitive position. AG ¶ 25(f) does not apply.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. 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.

The DOHA Appeal Board has “long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.” ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021). Even if Applicant was uncertain as to the interplay between federal and state drug laws as of his June 2025 response to DOHA interrogatories, the August 2025 SOR unequivocally established that all marijuana use, to include medical marijuana use, was prohibited for security clearance holders. Nonetheless, he affirmatively chose to repeatedly use marijuana to alleviate his back pain until October 2025, despite the known illegality under federal law and the potential negative impact upon his clearance eligibility. I have also considered that Applicant continues to associate with his estranged wife, who uses marijuana.

Applicant provided a signed statement of intent to abstain from all drug involvement and substance misuse. I also found his testimony credible. AG ¶ 26(b)(3) applies. Notwithstanding his statement of intent and credible testimony, he has not mitigated the drug involvement security concerns given the recency of his use and his use after having been placed on notice of the security significance of such conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for access to classified information 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant candidly disclosed his marijuana use and purchase throughout the clearance process, and he initially believed he was complying with the laws governing medical marijuana use. As of June 2025, he was aware that federal laws prohibited all marijuana use, and, by August 2025, he was on notice that marijuana use would likely negatively impact his clearance eligibility. He has recently committed to abstaining from

all drug involvement; however, he has not established a pattern of abstinence, and his marijuana use after issuance of the SOR raises concerns about his judgment and ability to adhere to rules.

This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With a longer passage of time and further evidence of a pattern of abstinence, Applicant may overcome the aforementioned 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:	AGAINST APPLICANT
Subparagraphs 1.a.-1.b.:	Against Applicant
Subparagraphs 1.c.-1.d.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge