



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



In the matter of:

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ISCR Case No. 25-00906

Applicant for Security Clearance

Appearances

For Government:

Carroll J. Connelley, Esq, Department Counsel

For Applicant:

Pro se

04/09/2026

Decision

NAGEL, Jeff A., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant has mitigated the concerns raised under Guideline H (Drug Involvement and Substance Misuse) but has not mitigated the security concerns raised under Guideline E (Personal Conduct). National security eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 9, 2024, in connection with his employment in the defense industry. On September 9, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). The action was taken under Executive Order 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) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on October 8, 2025, and requested a hearing before an administrative judge. The Department Counsel was prepared to proceed on December 12, 2025. The case was re-assigned to me on February 23, 2026. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 14, 2026. I convened the hearing as scheduled on March 12, 2026. The Government called no witnesses and submitted Government Exhibits (GE) 1 and 2, which I admitted into evidence without objection. Applicant testified on his own behalf, called four witnesses to testify, and submitted Applicant Exhibits (AE) A through C, which I admitted into evidence without objection. DOHA received the transcript of the hearing (TR) on March 23, 2026.

Findings of Fact

Applicant, who is 31 years old, is presently employed by a DoD contractor. He has worked for them since February of 2026. He received his chemical engineering degree in 2021. Applicant is unmarried and has no children. He submitted his SCA in April of 2024 and is applying for a security clearance for the first time. (Tr. at 18, 19, GE 1)

Applicant testified without objection to the fact that recreational use of marijuana purchased from a state licensed dispensary by an individual that is at least 21 years old is legal in Washington, Nevada and Colorado, Department Counsel had no objection. I take Administrative Notice of the same. (Tr. at 21)

The first time Applicant used marijuana was in 2012 when he was attending college in Utah. Applicant admitted during cross-examination that marijuana use in Utah was illegal then and still is. The last time Applicant used marijuana was in March 2024, prior to him starting his position as a contractor. Applicant testified that he has no intention to use marijuana in the future. He “recognizes in order to hold a security clearance I cannot consume marijuana, even if it is legal under state law.” (Tr. at 21, 22, 25, 26)

When Applicant answered the SOR he admitted that he used marijuana on various occasions between at least approximately 2012 and March of 2024. Applicant also admitted that he answered, “NO,” in response to Section 23 questions concerning illegal drug use but explained that when he answered the question it was his understanding that his use of marijuana was legal under in accordance with state law. (Tr. at 21, GE 2)

Based upon the evidence presented in the administrative record, I find the following facts regarding the history and status of Applicant’s marijuana use:

- September 2012 till May 2018 while living in Utah, Applicant used marijuana 5-10 times socially. Recreational use of marijuana has always been illegal in Utah. (Tr. at 24, GE 2 at page 10)

- June 2018 till September 2019 while living in Nevada, Applicant used marijuana 10-15 times socially. Recreational use of marijuana is legal in Nevada. (Tr. at 28, 29, GE 2 at page 10)
- September 2019 till December 2020 while living in Washington, Applicant used marijuana somewhere between 32 to 64 times, approximately 2 to 4 times a month socially. Recreational use of marijuana is legal in Washington. (Tr. at 30, GE 2 at page 10)
- December 2021 till March 2024. Applicant was living in Utah, but his marijuana use occurred in other states. He used marijuana approximately 3 to 5 times socially in states where recreational marijuana use is legal. (GE 2 at page 10)

Applicant authenticated the summary of his August 2024 background interview in his August 12, 2025, interrogatory response. During his security clearance interview, Applicant told the investigator that he did not “list this information in the SCA as he feared that by doing so, he would not be given a job offer. Subject volunteered that he deliberately did not list this information in the SCA for this reason”. He also confirmed the timeframe and frequency of his marijuana use. Applicant also stated that he no longer intended “to use any Federally illegal drugs in the future.” (Tr. at 38, GE 2 at pages 5, 12)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect, or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

The Controlled Substances Act (“CSA”) makes it illegal under Federal law to manufacture, possess, or distribute certain drugs, including marijuana. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844.) All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§ 811, 812. Marijuana is classified as a Schedule I controlled substance, § 812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. § 812(b)(1). See *Gonzales v. Raich*, 545 U.S. 1 (2005).

Further, in October 2014, the Director of National Intelligence (DNI) issued a memorandum entitled “*Adherence to Federal Laws Prohibiting Marijuana Use*,” (2014 DNI Memo) which makes clear that changes in the laws pertaining to marijuana by the various states, territories, and the District of Columbia do not alter the existing National Security Adjudicative Guidelines, and that Federal law supersedes state laws on this issue:

[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.

The DOHA Appeal Board has cited the 2014 DNI Memo in holding that "state laws allowing for the legal use of marijuana in some limited circumstances do not pre-empt provisions of the Industrial Security Program, and the Department of Defense is not bound by the status of an applicant's conduct under state law when adjudicating that individual's eligibility for access to classified information." ISCR Case No. 14-03734 at 3-4 (App. Bd. Feb. 18, 2016).

The current National Security Adjudicative Guidelines went into effect on June 8, 2017, after the 2014 DNI memo was issued. Nevertheless, the principle continues to apply.

Moreover, on December 21, 2021, then-DNI Avril D. Haynes issued a memorandum entitled, "*Security Executive 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.*" (2021 DNI Memo) The memo incorporates the AGs (at reference B) and the 2014 DNI Memo (at reference G) among various other relevant federal laws, executive orders, and memoranda. I take administrative notice of the 2021 DNI memo here, given its relevance to this case, its reliance on the AGs, and its recency.

The 2021 DNI memo specifically notes that "under policy set forth in SEAD 4's adjudicative guidelines, the illegal use or misuse of controlled substances can raise security concerns about an individual's reliability and trustworthiness to access classified information or to hold a sensitive position, as well as their ability or willingness to comply with laws, rules, and regulations." Thus, consistent with these references, the AGs indicate that "disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position." (2021 DNI Memo)

Guideline H, Drug Involvement and Substance Misuse

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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 facts of this case establish the following potentially disqualifying condition set forth in AG ¶ 25:

(a) any substance misuse (see above definition).

Applicants' original use of marijuana was in Utah where recreational use has never been legal. However, that ended almost eight years ago. Applicants' other uses of marijuana occurred in states where recreational use is legal under state law. However, it was still illegal under federal law. AG ¶25(a) is applicable; therefore, the burden shifts to Applicant to mitigate security concerns under Guideline H.

I have considered the mitigating conditions 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 is grounds for revocation of national security eligibility.

Applicant's use of marijuana occurred on various occasions over a 12-year period. His last use of marijuana was two years ago, and he has refrained from using it again. Applicant began using marijuana in Utah in 2012 when he was a college student. He last used it in Utah in May of 2018, which is almost eight years ago. Marijuana use in Utah was then and is now illegal. After that Applicant used marijuana between June 2018 and March 2024 in Washington, Colorado and Nevada where recreational use of marijuana is legal. Applicant has no intention to use marijuana in the future and understands that in order to hold a security clearance he cannot use marijuana as long as it is illegal to do so under federal law.

I find that Applicant has abstained from illegal drug involvement for an appropriate period, and that it happened under such circumstances that it is unlikely to recur. His drug

involvement no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, 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.

The facts of this case establish the following potentially disqualifying condition set forth in AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsified relevant facts on the SCA he certified in April of 2024. AG ¶ 16(a) is applicable; therefore, the burden shifts to Applicant to mitigate security concerns under Guideline E.

Applicant intentionally provided false information on the SCA he certified in April of 2024, when he answered, "No," to all the illegal drug questions. He admitted during his security clearance interview that he did not "list this information for he feared that by doing so, he would not be given a job offer." AG ¶ 16(a) is applicable.

The guideline includes the following two conditions in AG ¶ 17 that could mitigate security concerns arising from Applicant's conduct:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behaviors or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to reoccur.

Applicant lied to protect his desire to receive a job offer from the DoD contractor. What is most troubling is that he has shown that he will lie to protect himself. Applicant's personal conduct is not mitigated and continues to cast doubt on his current reliability, trustworthiness, and good judgment. Currently none of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome Applicant's intentional falsifications.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 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 Guidelines H and E in my whole-person analysis. I have given the appropriate weight to Applicant's statement that he has no intention to use marijuana in the future. I have also considered the comments in both his Answer and interrogatory responses, as well as the letters of support he submitted, and the testimony of his witnesses.

I have resolved the allegation of using marijuana on various occasions between at least approximately 2012 and March 2024 in Applicant's favor. He used marijuana in states where recreational use is legal, or years ago while in college in a state where recreational use is illegal. The remaining personal conduct issue cannot be resolved in Applicant's favor. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility for access to classified information or to hold a sensitive position.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility. Eligibility for access to classified information is denied.

Jeff A. Nagel
Administrative Judge