



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



In the matter of:)
)
) ISCR Case No. 25-00274
)
Applicant for Security Clearance)

Appearances

For Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2026

Decision

HOGAN, ERIN C., Administrative Judge:

The security concern raised under Guideline H, Drug Involvement and Substance Misuse, is not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 3, 2024. (GE 1) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on April 17, 2025, detailing security concerns under Guideline H. DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective June 8, 2017.

On May 18, 2025, Applicant answered the SOR and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 19, 2025. On January 16, 2026, DOHA issued a notice of hearing on February 19, 2026. The hearing was held on that date. During the hearing, the Government offered two exhibits which were marked as Government Exhibits (GE) 1

and 2. Applicant testified and offered no exhibits. The transcript (Tr.) was received on March 3, 2026, and the record closed on that date.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a - 1.d. Applicant's admissions are accepted as findings of fact.

Applicant is a 24-year-old employee of a defense contractor. He has worked there since June 2022. This is his first time applying for a security clearance. He has no military experience. He graduated high school and earned some college credits, but no degree. He and his girlfriend are expecting a baby in the early summer 2026. (Tr. 12-13, 25; GE 1)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from approximately May 2014 to about March 2023 (SOR ¶ 1.a: GE 1 at 29; GE 2 at 6, 13); that he used cocaine with varying frequency from about March 2023 to about May 2024 (SOR ¶ 1.b: GE 1 at 30; GE 2 at 3, 6, 14); that he used and purchased marijuana on various occasions between May 2014 and June 2022 (SOR ¶ 1.c: GE 1 at 31; GE 2 at 13-14); and that he purchased cocaine on various occasions from about March 2023 to May 2024. (SOR ¶ 1.d: GE 1 at 31; GE 2 at 14)

Guideline H - Drug Involvement and Substance Misuse

Applicant began to use marijuana in 2014 when he was 13 years old. He used marijuana approximately once or twice a month until a few months before he was hired by his employer in 2022. His friends usually provided the marijuana, but he purchased marijuana about one or two times. Before he was hired, his employer told him that illegal drug use was not tolerated. A friend who told him about the job also told him illegal drug use was not tolerated. He was required to take a pre-employment drug test. He passed because he had not used marijuana for several months. He is also subject to random urinalysis while working for his employer. He was called for testing about three times, and he passed each test. After being hired by his employer, he used marijuana one more time in March 2023 while he was on a beach trip. This was the last time he used marijuana. He stopped using marijuana because he did not like smoking it, and he was worried about keeping his job. (Tr. 13-19)

In his March 18, 2025, response to DOHA interrogatories, Applicant provided a copy of his employer's Code of Conduct handbook. The Code of Conduct handbook has a section on the use of drugs and alcohol. It states that the employer is committed to providing a safe and drug-free environment for all employees and maintains a zero-tolerance policy for substance abuse. Regarding illegal drug use the policy states:

Employees may not possess, buy, sell, or use illegal drugs. Under no circumstances may employees report to work or conduct work for the company while being impaired by legal or illegal substances. (GE 2, Employer Code of Conduct Handbook at 12)

Soon after Applicant's last use of marijuana in March 2023, he began to use cocaine during the same month. He testified that he used cocaine because he wanted to try it. A lot of his friends were using cocaine, and he felt left out. When he used cocaine, he was still worried about testing positive on a random drug test. He did not want to lose his job. His friends told him that cocaine does not last that long in the body. He said he used cocaine a couple times. He would use it at social events, usually after drinking alcohol. He contributed toward the purchase of cocaine on at least one occasion. He stopped using cocaine in May 2024. (Tr. 19-22)

On July 3, 2024, Applicant completed his SCA. In response to "Section 23 – Illegal Use of Drugs or Drug Activity", he listed that he used marijuana from approximately May 2014 to March 2023. He described his frequency of use as approximately once or twice a month though there were periods where he did not use it on a regular basis. He indicated that he stopped using marijuana because he "Outgrew using it and did not want to mess up job opportunities." He also purchased marijuana a few times, but usually one of his friends provided it. (GE 1 at 29-31)

In response to Section 23 on his July 2024 SCA, Applicant also indicated that he used cocaine from approximately May 2023 to about May 2024. He estimates that he used cocaine about 10 or 15 times. He purchased cocaine about two or three times. He indicated that he did not intend to use cocaine in the future because he thought that it was "dangerous and damaging to the body," and he did not want to lose job opportunities. (GE 1 at 30-31)

On March 18, 2025, Applicant replied to a set of DOHA interrogatories about his illegal drug use. He listed that he first used marijuana in May 2014, and his last use was in March 2023. He listed the frequency of use as once or twice every other month. He knew it was illegal when he started using marijuana. He has no intent to use marijuana in the future. He also listed that he used cocaine from March 2023 to May 2024, and that he did not intend to use cocaine in the future. (GE 2 at 6-7)

Applicant described the steps he was taking to not use illegal drugs, even if they were being used in his presence as:

The steps I take are thinking about my future and how doing this can risk my current job or future job with the clearance. That usually removes any feeling of wanting to partake. Also removing myself from the situation. I am not surrounded by it constantly and it's more rare but when it does I don't. (GE 2 at 7)

During the hearing, Department Counsel asked Applicant if he had used cocaine after completing his interrogatory response in March 2025. He admitted that he used cocaine once in the summer of 2025. He was at a social event with his usual group of friends. He is not sure why he used the cocaine. He was drunk and thought that he would not test positive on a drug test. His friends have used drugs in front of him since his last cocaine use in the summer 2025. They still offer some to him, but he has declined. Now that he is becoming a father, he realizes that he has people who depend on him. The mother of his future child does not use illegal drugs. (Tr. 22-25)

Applicant's last use of cocaine in the summer of 2025 was not alleged in the SOR. As a result, I will consider this use under matters of extenuation and mitigation and not as disqualifying conduct.

Applicant testified that he does not intend to use illegal drugs in the future. He is aware that future illegal drug use will result in the loss of his security clearance. He wanted to be honest about his past illegal drug use. He did not seek drug counseling because he did not think that he had a drug problem. He is not perfect but believes that he has changed as a person and wants to continue to grow. (Tr. 26-27)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but stated that federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *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*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Both AG ¶¶ 25(a) and 25(c) apply. Applicant has a history of illegal marijuana use. He admits using marijuana on various occasions from May 2014 to March 2023. He purchased marijuana several times during the same timeframe. The use and purchase of marijuana was illegal under federal and state law when he first used marijuana. Even if marijuana use is legal in the state where he resides, it remains illegal under federal law. He used cocaine between 10 to 15 times from March 2023 and May 2024. The use and purchase of cocaine is illegal under federal and state law. He purchased cocaine on one or two occasions between March 2023 and May 2024.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

AG ¶ 26(a) does not apply because of Applicant's long history of illegal marijuana use from May 2014 to March 2023 and his use of cocaine between March 2023 and May 2024. Questions are raised about his reliability, trustworthiness, and judgment because he continued to use marijuana after being hired by his employer in June 2022 while aware that his employer had a zero-tolerance policy pertaining to legal and illegal substance abuse. When he stopped using marijuana, he started using cocaine in March 2023 while still employed with the same employer. His last use of cocaine occurred in the summer of 2025, after submitting his security clearance application in July 2024, and his response to DOHA interrogatories in March 2025. He indicated his intent to abstain from future marijuana and cocaine use in both documents. His last use of cocaine occurred several months after receiving the SOR in April 2025. His decision to continue using illegal drugs after being employed by a contractor with a zero-tolerance drug policy and after applying for a security clearance raised questions about his judgment, trustworthiness, and reliability.

AG ¶ 26(b) does not apply. Applicant still socializes with the friends with whom he used marijuana and cocaine in the past. While Applicant testified that he does not intend to use illegal drugs in the future, he has expressed his intent to abstain from marijuana use and cocaine use in the past only to use them again while socializing with his friends. Applicant admits that he was informed before he was hired by his employer that they had a zero-tolerance substance abuse policy. He either did not get the message or did not want to get the message that use of illegal drugs violates his employer's code of conduct. He should have also been aware after submitting his SCA that illegal drug use to include marijuana and cocaine, was a security concern. Even though he stopped using marijuana in March 2023, he started using cocaine that same month. His last use of cocaine occurred in the summer of 2025. It has been less than a year since his last use of cocaine. Not enough time has passed to conclude he is serious about abstaining from illegal drug use. The security concerns raised under Drug Involvement and Substance Misuse are not mitigated.

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 based on all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

I considered Applicant and his girlfriend are expecting their first child in June 2026. I considered that he is applying for a security clearance for the first time. I considered his honesty when disclosing his history of illegal marijuana and cocaine use during his background investigation. Questions remain because he continued to use marijuana and cocaine after expressing an intent to abstain from using both drugs. He used illegal drugs after being hired by his employer in June 2022 although he was aware of his employer's zero-tolerance substance abuse policy. While he indicates he stopped using marijuana in March 2023, he began using cocaine that same month. His last use of cocaine in the summer of 2025 was less than a year ago. Considering his history of illegal drug involvement, not enough time has passed to conclude he is serious about his intention to refrain from illegal drug use. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns raised by his conduct under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards maintaining a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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.d:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge