



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



In the matter of:)
)
) ISCR Case No. 25-00619
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: Michael D. Collett, Esq.

03/30/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns arising from his illegal drug use. Eligibility for access to classified information is granted.

Statement of the Case

On June 24, 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). 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 on June 8, 2017.

In his July 21, 2025 response to the SOR (Answer), Applicant admitted, with explanations, the allegations in SOR ¶¶ 1.a. through 1.d., and he denied SOR ¶ 1.e. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On August 5, 2025, the Government was ready to proceed to a hearing. I was assigned this case on December 17, 2025. On January 5, 2026, a notice was issued scheduling the hearing for January 28, 2026, 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 and two witnesses testified. Applicant submitted 12 exhibits, which I admitted as Applicant Exhibits (AE) A through L, without objection. At Applicant's request, I left the record open until February 27, 2026, to provide him an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on February 9, 2026. On February 13, 2026, Applicant submitted four additional exhibits, which I admitted as AE M through P, without objection. Applicant confirmed that he had no further submissions for the record, and the record closed on February 13, 2026.

Findings of Fact

Applicant is 40 years old. He graduated from high school in 2004 and earned a bachelor's degree in 2008. Since August 2010, he has been employed with a family maritime business, currently as the president and chief executive officer (CEO). This is his first application for access to classified information, as the family business seeks a facility clearance. He has been married since June 2013, and he has four children, ages 10, 9, 7, and 5. (GE 1; AE A, AE L; Tr. 19, 22, 33-34, 91)

On September 26, 2024, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 22 – Police Record, he reported June 2008 charges of misdemeanor assault and misdemeanor possession of marijuana; March 2010 misdemeanor possession of marijuana; and June 2011 misdemeanor public intoxication.¹ He further reported that all charges were nolle prossed or dismissed; however, he had been ordered to attend six substance-abuse counseling sessions in late 2010 due to the incident alleged in SOR ¶ 2.c. (GE 1)

On his September 2024 e-QIP, under Section 23 – Illegal Use of Drugs or Drug Activity, Applicant admitted that he used marijuana approximately one to three times a week from October 2000 to August 2024 (SOR ¶ 1.a.). He further reported that he purchased marijuana on several occasions between October 2000 and August 2024 (SOR ¶ 1.b.). He admitted that he intended to continue to use marijuana (SOR ¶ 1.e.). (GE 1)

On October 31, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he clarified the dates of some of the criminal incidents and his use and purchase of marijuana. In his May 2025 response to DOHA interrogatories, he adopted the interview summary as accurately reflecting his admissions during the OPM interview. (GE 2)

¹ Applicant's recitation in the e-QIP of the dates of his criminal charges was inaccurate and is correctly outlined in the findings of fact, *infra*.

SOR ¶¶ 1.a. and 1.b. In his e-QIP, during his security interview, and during his hearing testimony, Applicant credibly reported that he used marijuana between October 2000 and October 27, 2024. Upon moving from State A (where he attended college) to State B (where his family business has been located for decades) in 2011, the frequency of his marijuana use dramatically decreased. Between about 2011 and October 2024, he used marijuana approximately once or twice a week, and he estimated that he purchased marijuana about once every three months. He testified that he had understood throughout that marijuana use was prohibited by federal law and prohibited by State B law until 2021. He explained that he did not understand the interplay between state and federal laws following State B's legalization of recreational marijuana in 2021, until his October 31, 2024 OPM interview. During the OPM interview, upon learning that marijuana use may jeopardize his clearance eligibility, he decided to abstain from further marijuana use. He affirmed his intent to no longer use marijuana in his May 2025 response to DOHA interrogatories. He has not used marijuana since October 27, 2024, and he denied any ongoing association with individuals who use illegal drugs. (GE 1-2; Tr. 32-44)

SOR ¶ 1.c. In August 2009, Applicant was attending a meeting of a community organization when someone kicked in the back door of his residence. A neighbor contacted law enforcement, who, upon searching the property, found two marijuana plants, a hydroponic marijuana growing setup, a marijuana pipe, and a baggie of marijuana. He was charged with (1) keeping public nuisance structure for drug activity, felony; (2) drugs – deliver/distribute, felony; (3) possession of marijuana, a misdemeanor; (4) possession of drug equipment, misdemeanor. (Answer; GE 2; Tr. 29-30)

During his OPM interview, Applicant disagreed with the drug delivery offense, and he denied ever selling marijuana. He admitted that bagged marijuana, marijuana plants, and a hydroponic setup was found by police, and he admitted that the marijuana plants and the setup were his. Upon completion of six substance abuse group counseling sessions, the charges were dismissed. (GE 2; Tr. 69)

At the hearing, Applicant testified that the marijuana plants and the hydroponic setup were his roommate's but that he did help water and cultivate the plants. No marijuana was ever successfully cultivated, and Applicant has never since sought to cultivate marijuana. (Tr. 56-59)

SOR ¶ 1.d. In February 2011, Applicant and a friend were in State A for a wedding. While "very inebriated," Applicant got into a physical altercation with a bar bouncer. He was arrested and charged with (1) battery, a misdemeanor; (2) possession of marijuana, a misdemeanor; (3) possession of drug equipment, a misdemeanor; and (4) resisting an officer, misdemeanor. During his OPM interview, he explained that he had pled no contest or had pled guilty, and he recalled paying a fine. The criminal history record reflects that adjudication was withheld, and he was placed on probation for 12 months. Following the completion of probation, the charges were nolle prossed. (Answer; GE 1-3; Tr. 27-28, 55)

SOR ¶ 1.e. In his e-QIP, Applicant expressed his intent to continue to use marijuana in the future. During his OPM interview, he did express his intent to use

marijuana in the future if permitted under federal law. In his May 2025 response to DOHA interrogatories and in his Answer, he explained that, upon learning during the OPM interview that continued marijuana use may jeopardize his clearance eligibility, he decided to abstain from further use of marijuana. In his Answer, he attached a signed statement of intent to abstain from marijuana. He affirmed this intent at the DOHA hearing. (Answer; GE 1-2)

Between August 2025 and February 2026, Applicant participated in monthly drug urinalyses, and he tested negative for marijuana, cocaine, amphetamines, codeine, hydrocodone, oxycodone, phencyclidine (PCP), and MDMA. (AE C-H, O)

Since relocating to State B in 2011, Applicant has been arrested once. In 2011, he was walking with a cup containing alcohol. He consumed the alcohol and continued walking with the empty cup. He was approached by law enforcement and arrested for public intoxication. (Tr. 30-31)

At the hearing, Applicant confirmed his prior disclosures about his marijuana use and purchase. He explained that his marijuana use decreased upon relocating to State B and with the focus upon his career, his marriage, and his children. He characterized his marijuana use as recreational, and he has never sought a prescription or medical marijuana card. He has never failed a drug test; however, he acknowledged that he had been aware of upcoming drug screenings when he first started with his family business. He admitted that his infrequent marijuana purchases were through a friend or acquaintance and not through a licensed dispensary. His company's policies prohibit drug use in the workplace, and the company has initiated some random drug screening; however, Applicant, as president, would not be subject to these screenings unless requested by a customer. (Tr. 32-35, 44-54, 61-62, 67-68, 86)

Applicant once used psilocybin mushrooms and marijuana while traveling abroad in mid-2008. His parents are aware of his pre-2011 marijuana use but unaware of his marijuana use since joining the family business. He was once suspended for one week without pay for violating a hiring policy but has otherwise experienced no disciplinary actions at the workplace. He has earned ocean maritime certifications and has completed training in ship-repair. (Tr. 49, 58, 60-64)

Whole Person

Applicant's wife and sister testified in support of his clearance eligibility. He and his wife began dating in December 2006, relocated to State B in 2011, and married in June 2013. His wife was aware of, but not present for, the three arrests. She described him as driven and self-motivated. She had been aware of his marijuana use, and they had discussed his decision to quit following his October 2024 OPM interview because he had assumed additional drug tests would be involved with him obtaining and maintaining a security clearance. She was aware of the importance of Applicant obtaining and maintaining a clearance both for the company and his career. (Tr. 89-100)

Applicant's sister currently serves as the managing partner of the company, and she oversees human resources, workers' compensation issues, and safety functions within the company. She has been employed by the family business for over 15 years, and she interacts daily with Applicant. She described him as energetic, organized, and determined. She was aware of Applicant's past arrests and more recently aware of his drug use while employed by the company. She noted that the company had more recently instituted random drug testing for shipyard workers. (Tr. 71-86)

Applicant submitted five character-reference letters in support of his clearance eligibility. Four references participate with Applicant in a professional organization in which executives share their personal and professional challenges. These references praised Applicant's honesty, accountability, professionalism, integrity, and reliability. They noted that he volunteered with nonprofits focused on cleaning waterways. They had some awareness of Applicant's marijuana use. A longtime family friend and mentor attested to Applicant's "intellect, leadership, self-discipline, thoughtfulness, and his ability to work with and communicate clearly with people of all ages and backgrounds." (AE I-K, M, N; Tr. 37-38)

Applicant's employer has earned several awards over the last five years, for talent development, safety practices, operational excellence, and environmentally responsible business practices. Applicant himself has won several awards for leadership in the maritime industry, and he served on several boards of professional, business, and education entities. (AE B)

Applicant testified that he volunteers as a mentor for high school students exploring an interest in the maritime field. He serves on multiple boards in the ship-repair industry, and he volunteers with several waterway cleanup projects. (Tr. 68-69)

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.²

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

- (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

² *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.

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted purchasing and using marijuana, as detailed *supra*. He was twice charged with drug offenses. In both instances, he illegally possessed marijuana and drug paraphernalia. In 2009, he illegally cultivated marijuana. On several occasions, he illegally purchased and possessed marijuana. In his August 2024 e-QIP, he expressed his intent to continue to use marijuana. AG ¶¶ 25(a), 25(c), and 25(g) 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.

Applicant candidly reported his marijuana purchase and use and his drug offenses on his e-QIP, during his OPM interview, and at the DOHA hearing. I found his testimony to be largely consistent with his prior statements and the documentary evidence and to be credible.

I have also considered Applicant's 24-year history of drug involvement. While the frequency and depth of his involvement – including two drug offenses and cultivation – decreased after he relocated to State B, I must also consider that he continued to regularly use marijuana as a mature adult, husband, father, and president of a sizable business. His continued use and purchase, with the knowledge that his activities violated both state (at a minimum through 2021) and federal drug laws and were potentially problematic for his leadership within the family business, were not the missteps of an immature college student. He continues to withhold his past marijuana use, while working for the family business, from his parents. That said, upon learning that his continued marijuana use may jeopardize his clearance eligibility and therefore the family business' interests, he made the decision to abstain from future drug involvement in October 2024. Even if his

adherence to federal drug laws is motivated by his clearance eligibility, he demonstrated a pattern of abstinence for the past 15 months. His spouse's testimony and his drug screenings corroborate this abstinence. He testified that he no longer associates with individuals who use illegal drugs. He provided a signed statement of intent expressing his intent to abstain from drug involvement, with the understanding that future marijuana use is grounds for revocation. AG ¶¶ 26(a) and 26(b) apply. I conclude that he has mitigated the drug involvement and substance misuse security concerns.

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's professional associates, mentor, spouse, and sister praised his determination, honesty, accountability, professionalism, integrity, and reliability. Although Applicant's decision to abstain from marijuana use may have been prompted by self-interest and his clearance eligibility, those motivating factors persist going forward. His candor and credibility throughout the clearance investigation was a critical, favorable criterion in mitigation. The record evidence established a pattern of abstinence such that Applicant's illegal drug involvement is unlikely to recur. He mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

