



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



In the matter of: )  
)  
) ISCR Case No. 25-00564  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Sean Rogers, Esq.

03/30/2026

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from his illegal drug use and falsifications. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 19, 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 May 27, 2025 response to the SOR (Answer), Applicant admitted, with explanations, the allegations in SOR ¶¶ 1.a. and 1.b. He attached some co-worker feedback about his work performance. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On July 29, 2025, the Government amended the SOR to add two allegations under Guideline E (personal conduct). The amendment and Applicant's response are discussed *infra*.

On August 7, 2025, the Government was ready to proceed to a hearing. I was assigned this case on September 30, 2025. The case was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On January 6, 2026, a notice was issued scheduling the hearing for February 9, 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 three witnesses testified. Applicant submitted six exhibits, which I admitted as Applicant Exhibits (AE) A through F, without objection. Neither party requested an opportunity to supplement the evidentiary record, which closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on February 17, 2026.

### **Amendment to the SOR**

On July 29, 2025, pursuant to Paragraphs E3.1.13 and E3.1.17 of the Directive, the Government amended the SOR to add two allegations under Guideline E (Personal Conduct), as follows:

2. Guideline E: 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility. Available information raising this concern shows that:

- a. You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or about November 5, 2019, in response to "Section 23 – Illegal Use of Drugs or Drug Activity. In the last seven years, have you illegally used any drugs or controlled substance?" You answered that you used marijuana from August 2014-November 2014 and thereby deliberately failed to disclose that you used marijuana until approximately November 2019.
- b. You falsified material facts during a January 4, 2020 interview with an authorized investigator for the U.S. Department of Defense about your illegal drug use. You reported that you used marijuana from August 2014-November 2014 and thereby

deliberately failed to disclose that you used marijuana until approximately January 2020.

On August 29, 2025, Applicant, through legal counsel, responded to the Amendment to the SOR. He did not object to the amendment, and he admitted SOR ¶¶ 2.a. and 2.b. He did not attach any documentary evidence. (Answer to the Amendment)

### **Findings of Fact**

Applicant is 30 years old. He graduated from high school in June 2014 and earned a bachelor's degree in May 2018. From September 2018 to August 2022, he was employed with a federal contractor (A). He was granted a secret clearance in February 2020. Since August 2022, he has been employed with a different federal contractor (B), currently as a senior systems engineer. He has been married since October 2021, and he does not have any children. (GE 1-3; AE D-E; Tr. 22, 24, 26-28, 39, 42-43)

On November 5, 2019, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 22 – Police Record, he reported that he had been charged with possession of drug paraphernalia in November 2014. Adjudication of the charge was withheld, and he was placed in a diversion program. At the DOHA hearing, he testified that he completed the diversion program by attending eight group counseling sessions and that the charge was dismissed. (GE 1; Tr. 17, 53-54)

On his November 2019 e-QIP, under Section 23 – Illegal Use of Drugs or Drug Activity, he reported that he had “tried marijuana freshman year of college . . . .” He listed the dates of marijuana use as August to November 2014. He acknowledged that marijuana was illegal and expressed his intent not to use marijuana in the future. (GE 1)

On January 14, 2020, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he confirmed that he was charged with possession of drug paraphernalia in November 2014. He further confirmed his marijuana use (August to November 2014) as reported on his November 2019 e-QIP. He estimated that he had used marijuana approximately 20 times in total. He was granted a secret clearance in February 2020. (GE 3)

On May 7, 2024, Applicant certified and submitted an updated e-QIP, in pursuit of top-secret clearance eligibility. He reported that he had been previously employed with company A from September 2018 to August 2022 and with his current employer (B), at a different worksite, since September 2022. Under Section 22, he reported having been charged with possession of drug paraphernalia in November 2014. Under Section 23, he reported that he had used marijuana between August 2014 and July 2022. He denied any intent to use marijuana in the future, and he denied having used marijuana while possessing a security clearance. Under Section 25, he admitted having been granted a secret clearance in February 2020. (GE 2)

On February 6, 2025, Applicant was interviewed by a different OPM investigator. During the interview, he admitted that he first used marijuana in August 2014 and last used marijuana at a New Years Eve (NYE) party, hosted by his brother-in-law, on or about December 31, 2024. From August 2014 to May 2018, he used marijuana approximately two or three times a week. He typically purchased marijuana once every two or three weeks between August 2014 and May 2018. He added that he used marijuana approximately 15 to 20 times between May 2018 and July 2022. He did not use marijuana between July 2022 and the December 31, 2024 NYE party, when he used marijuana. (GE 3; Tr. 46)

On May 1, 2025, Applicant responded to DOHA interrogatories concerning his marijuana use. He admitted that he first used marijuana in 2013 and last used marijuana in December 2024. He characterized the frequency of his use as "infrequent" and denied any intent to use marijuana in the future. He further admitted that he had first purchased marijuana in 2013 and last purchased marijuana in 2018. He acknowledged that, by June 2018, he was aware that marijuana use was prohibited under federal law. He admitted that he had participated in a pre-employment drug test with his current employer. (GE 3)

Applicant's employer (B) maintains a drug-free workplace policy. The policy, in part, reads:

2.2 State and local initiatives legalizing the use of marijuana for medical and/or recreational purposes do not alter [B's] obligation as a federal contractor to maintain a drug-free workplace. This procedure applies to the use of all drugs that are illegal under state and/or federal law, including marijuana, which is prohibited under the federal Controlled Substances Act. Testing positive for any illegal drug, including marijuana, may result in adverse employment action, including termination. Use of illegal substances can have a negative impact on obtaining or maintaining a security clearance. (GE 3)

In his Answer, Applicant admitted the two allegations under Guideline H. He explained that he infrequently used marijuana while granted access to classified information and that he did not have access to any classified information between February 2020 and August 2022. (Answer)

On August 27, 2025, Applicant participated in a hair-follicle drug screening. He tested negative for amphetamines, cocaine, marijuana, methamphetamines, opiates, and phencyclidine (PCP). On December 5, 2025, he submitted a signed, sworn statement to abstain from all drug involvement and substance misuse. (AE A-B).

At the hearing, Applicant confirmed his previous admissions about using marijuana approximately two or three times a week between August 2014 and May 2018. He abstained from marijuana use for approximately eight weeks during the diversion program, during which he was tested weekly, and he abstained from marijuana between May 2018 and early 2020. Between early 2020 and July 2022, he used marijuana

approximately 15 to 20 times. He contributed money towards the purchase of marijuana during college but not after college. He did not use marijuana between July 2022 and December 31, 2024. He never tested positive for marijuana or reported to work under the influence of marijuana. He reaffirmed his intent not to use illegal drugs in the future and acknowledged his previous statement of intent not to use illegal drugs in the future on his two e-QIPs. He passed two pre-employment drug screenings in about August 2018 and August 2022. His wife does not use marijuana. He has never obtained a medical marijuana card. He has never used any illegal drugs besides marijuana nor misused prescription drugs. (Tr. 18-25, 28-35, 40-42, 48-49, 53-54)

During his employment at A and B, Applicant supported programs involving flight tests and telemetry for military aircraft. Although Applicant testified that he did not handle or view classified information while employed at A, his former supervisor at A explained that the programs involved sensitive information. Applicant admitted that he has had access to classified information during his employment at B and that his most recent marijuana use occurred while he had such access. He has understood, throughout his employment at A and B, that marijuana use is prohibited while granted access to classified information. He attributed his marijuana use while granted a clearance to immaturity at the time. He is subject to random drug testing with his current employer. He has not reported his most recent marijuana use to his supervisor or his facility security officer (FSO). (Answer; Tr. 39, 43-44, 47-48, 52, 79-81)

At the hearing, Applicant repeatedly admitted that he deliberately falsified the information about his reported marijuana use under Section 23 of his 2019 e-QIP and during the January 2020 OPM interview. When completing his 2019 e-QIP, he was “scared that failure to obtain a clearance would result in [him] losing [his] job.” He listed his 2014 marijuana use because he believed his 2014 arrest may be discoverable during the background investigation. He did not disclose his marijuana use to the OPM investigator in January 2020 because he feared such information may jeopardize his clearance eligibility and his employment. (Tr. 15-17, 34, 38, 50-52)

## **Whole Person**

Three witnesses testified in support of Applicant’s clearance eligibility. Two witnesses, including a former supervisor, worked with Applicant during his employment with A, and they both also submitted character-reference letters. In their letters and hearing testimony, they praised Applicant’s honesty, integrity, intelligence, and work ethic, and described him as an “exemplary employee.” They also attested to Applicant’s safeguarding of sensitive information. His former supervisor testified that Applicant’s work during his employment with A involved sensitive, but not classified, information because they supported U.S. military projects. The third witness, Applicant’s longtime friend, also submitted a character-reference letter. His friend described Applicant as trustworthy, honest, and reliable. (AE F; Tr. 58-81, 89-95)

In addition to the three character-reference letters from his former co-workers and friend, Applicant submitted a character-reference letter from a lifelong friend who praised him as a “reliable, thoughtful, honest, and trustworthy individual.” (AE F)

With his Answer, Applicant included feedback from his co-workers from B about his work performance. These co-workers praised his effective communication skills, delegation, collaboration, accountability, and subject-matter expertise. (Answer)

Applicant submitted performance reviews for 2022 through 2024. His raters noted his work ethic, proactive nature, collaboration skills, and “exceptional technical expertise and leadership skills.” (AE C)

### **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.<sup>1</sup>

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

- (a) any substance misuse; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The record evidence established Applicant’s marijuana use from August 2014 through May 2018, early 2020 to July 2022, and on or about December 31, 2024. At the time of this conduct, Applicant was aware that his use violated state and federal drug laws. AG ¶ 25(a) applies.

Applicant was granted a secret clearance in February 2020. His supervisor at the time testified that Applicant’s work supported U.S. military aircraft, involving sensitive, if not classified, information. Applicant testified that he used marijuana approximately 15 to 20 times between early 2020 and July 2022, while working on these sensitive programs. He further admitted that he had access to classified information at the time of his marijuana use on December 31, 2024. 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

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<sup>1</sup> *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.

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. Sep. 21, 2023). As defined by the SEAD 4, Applicant's marijuana use occurred while he held a "sensitive position." AG ¶ 25(f) applies.

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.

In his November 2019 e-QIP and during his January 2020 OPM interview, Applicant stated his intent not to use marijuana in the future, yet he used approximately 15 to 20 times while in a sensitive position. In his May 2024 e-QIP, as part of his application for a top-secret clearance, he expressed his intent not to use marijuana in the future, and he used again approximately seven months later. Applicant's subsequent expressions of intent to abstain from all future drug involvement and his signed, sworn statement to abstain are undermined by these previous statements of intent followed by marijuana use. Furthermore, his most recent marijuana use occurred after he had applied for a top-secret clearance and after having abstained from marijuana use for over two years.

There is no evidence that anyone at Applicant's current employment is aware of his marijuana use while employed with B and while possessing a security clearance. His repeated marijuana use while granted a clearance, in knowing violation of drug laws and DOW policies, raises significant security concerns about his judgment and ability to adhere to rules and regulations. He credibly and candidly testified about his marijuana use and acknowledged his poor judgment; however, he has not established a pattern of

abstinence given his repeated failures to maintain such abstinence in the past. He did not mitigate the drug involvement and substance misuse security concerns.

### **Guideline E: Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying conditions are potentially applicable in this case:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant admitted that he deliberately falsified his response under Section 23 of his November 2019 e-QIP and that he deliberately provided false information to the OPM investigator during his January 2020 interview when he minimized his marijuana use. AG ¶¶ 16(a) and 16(b) apply.

The following personal conduct mitigating conditions under AG ¶ 17 are potentially relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

On his May 2024 e-QIP, Applicant reported the full extent of his marijuana use. During his February 2025 OPM interview, he admitted having used marijuana on or about December 31, 2024. While these disclosures are favorable evidence in mitigation, they

are not “prompt” in the context of AG ¶ 17(a) and Applicant’s falsifications in November 2019 and January 2020. He has acknowledged his lapses in judgment – both in his illegal drug use and in his falsifications. Nonetheless, these falsifications strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. See ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). I must also note that Applicant’s falsifications were motivated by his fear of jeopardizing his clearance eligibility and his employment, and he has not informed his current supervisor or his FSO of his marijuana use while employed with B. Falsifications during the background security investigation raise significant security concerns as to Applicant’s trustworthiness, judgment, and reliability, and he has not mitigated those concerns. None of the personal conduct mitigating conditions apply.

### **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, Guideline E, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant’s professional associates and friends praised his honesty, integrity, trustworthiness, work ethic, work performance, and subject-matter expertise. Fear motivated Applicant to deliberately minimize his marijuana use on his 2019 e-QIP and during his 2020 OPM interview, yet he continued to exhibit poor judgment while repeatedly using marijuana in a sensitive position. Despite multiple expressions of intent to abstain from future marijuana use, he used marijuana again in December 2024. While I found his testimony candid and credible, and he has acknowledged his lapses in judgment, he has not overcome the concerns about his judgment, trustworthiness, and

reliability. He did not mitigate the drug involvement and personal conduct security concerns. Eligibility for access to classified information is denied.

This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With candor and forthrightness throughout the clearance process and continued abstinence from possession and use of illegal drugs, 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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.-2.b.:	Against 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