



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



In the matter of:

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ISCR Case No. 25-01316

Applicant for Security Clearance

**Appearances**

For Government:

Erin P. Thompson, Esq, Department Counsel

For Applicant:

*Pro se*

04/23/2026

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**Decision**

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NAGEL, Jeff A., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant has mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 6, 2025, in connection with his employment in the defense industry. On December 15, 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 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 January 12, 2026, and requested a hearing before an Administrative Judge. The Department Counsel was prepared to proceed on March 3, 2026. The case was assigned to me on March 10, 2026. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 18, 2026. I convened the hearing as scheduled on April 8, 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 three witnesses to testify, but submitted no documentary exhibits. The record was kept open until April 17, 2026, for the receipt of additional evidence. Applicant submitted a character reference as well as a signed statement to abstain from all drug involvement in the future. I marked them as Applicant's Exhibits A and B and admitted them into evidence without objection. DOHA received the transcript of the hearing (TR) on April 15, 2026.

### **Findings of Fact**

Applicant is 53 years old and is presently employed as a Data Center Engineer for a DoD contractor, where he has worked since June of 2025. He received a computer science degree in 1996 and is a few credits short of earning his master's in computer science as well. Applicant is married and has two adult children. He submitted his SCA in June of 2025. This is Applicant's first time working in the defense industry and he is applying for a security clearance for the first time. (Tr. at 16-18, GE 1)

In his SCA, Applicant informed the Government that he had used marijuana from August of 1991 until May of 2025, 2-3 times a month and that he had no intention of using it in the future. Applicant confirmed this information in his answer to the interrogatories the Government sent him on December 4, 2025. Applicant submitted a detailed answer to the SOR admitting his use of marijuana and describing the circumstances of this use and once again affirming he no longer uses and will not use in the future. (GE 1 GE 2, Answer)

Applicant first began using marijuana casually with fellow students when he began college in August of 1991. Applicant attended college in California where recreational use of marijuana is legal now but was not at the time of his attendance<sup>1</sup>. In the ensuing years Applicant has used marijuana on and off approximately 2-3 times a month mostly for recreational purposes, but he did try it to help him with his Chron's disease. He found that it had no effect and stopped using it for that purpose but did continue his recreational use. Applicant moved to Colorado in 2000 and continued to use marijuana recreationally on occasion, and it was legal for him to do so on the state level for almost the last fifteen years<sup>2</sup>. (Tr. a 23, GE 2)

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<sup>1</sup> California legalized recreational marijuana on November 8, 2016, with the passage of Proposition 64, the Adult Use of Marijuana Act.

<sup>2</sup> Colorado legalized recreational marijuana in November 2012 with the passage of Amendment 64. It became legal for adults 21 and older to possess and use marijuana on December 10, 2012.

Applicant testified that there were numerous months when he did not use marijuana and periods that he abstained from using it for up to two years. As soon as Applicant received the job offer to begin work with his current company, he stopped using marijuana knowing he could not do so with his employment. Applicant submitted a signed statement to abstain from all drug involvement in the future. (Tr. 20, 22, at GE 2, AE B)

Applicant testified that in addition to stopping marijuana use because of his job, he has other reasons for abstaining. He wants to set an example for his kids who began college and are in an environment where marijuana is prevalent. He also wants them to think about their future, such as if they will need to apply for a security clearance, and his own medical concerns. (Tr. at 27, 28)

Applicant testified:

I have a couple of friends right now, and this is kind of heartbreaking. They're dealing with brain tumors, and I believe the brain tumor might've had to do something with their vaping and their vaping with Marijuana. And, they're not really sure where they started, but these are two of my friends who are doing the same thing. And, I smoked Marijuana with them on the golf course before this happened, and they're both having surgery and it's very serious. And, because of the medical risks to my health, not just my lungs, the possibility of scariness of a brain tumor and how scary that surgery is, I don't think I'll ever touch the stuff again in my life. And it's not just for this job. It's just morally and I'm not going to do it. ... I wouldn't do it. I just, there's too many risks and everything that's happened with my friends and stuff that I've seen happen and the level of Marijuana that there is right now and the danger that has occurred with it because you don't even know what you're getting and what's happening. It's just, it just doesn't appeal to me at all anymore. (Tr. at 28, 29)

Three witnesses testified on Applicants behalf, and he submitted a character reference from another person who could not make the hearing. They attested to Applicant's trustworthiness, responsibility, reliability, honesty, and dedication. (Tr. at 54-70, AE B)

### **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).

Applicant admitted he began using marijuana recreationally in California when he was in college and continued thereafter. Between 1991 and 2000, before he moved to Colorado, his use of marijuana in California was illegal under state law. He continued to use marijuana recreationally in Colorado after his move in 2000. His use of marijuana in Colorado between 2000 and 2012 was illegal under state law. His recreational use of marijuana in Colorado between 2012 and when he stopped using altogether in May of 2025 was legal under Colorado 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.

The guideline includes the following two conditions in AG ¶ 26 that could mitigate security concerns arising from Applicant’s drug use:

(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 the 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 used marijuana on various occasions over a 35-year period. However, in the last 15 years he has used it in Colorado where recreational use is legal. Applicant stopped using it once he received a job offer from his company knowing he could not do so with his employment. This coming May will mark only one year since Applicant stopped using marijuana, which is of some concern. However, once he was hired, he firmly and credibly committed to being drug-free. He loves his job and does not want to do anything to jeopardize it and wants to be an example for his college age children. Applicant also had an epiphany about marijuana use vis-à-vis health concerns which have weighed on him heavily. He self-reported his marijuana use, which bolsters his credibility, and he signed a statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of his national security eligibility.

I conclude that Applicant's marijuana use happened under such unusual circumstances and his vowed commitment to not use marijuana again for both legal and health reasons make it highly unlikely to recur. His former use of marijuana no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) are applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's security eligibility by considering the totality of an 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 Guideline H in my whole-person analysis. I also considered Appellant's veracity, his documentary exhibits, and the testimony of his witnesses.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guideline H.

### **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

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility. Eligibility for access to classified information is granted.

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Jeff A. Nagel  
Administrative Judge