



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



In the matter of:)
)
) ISCR Case No. 25-00431
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2026

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 October 24, 2024. (Item 5) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on May 20, 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 September 4, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On November 25, 2025, Department Counsel submitted the Government’s File of Relevant Material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on December 29, 2025. He was afforded 30

days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional matters in response to the FORM. The case was forwarded to the Hearing Office on March 3, 2026, and assigned to me on that same 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 admits the allegations in SOR ¶¶ 1.a - 1.c but denies the allegation in SOR ¶ 1.d. Applicant's admissions are accepted as findings of fact. (Item 4)

Applicant is a 49-year-old employee of a DOD contractor. He has worked there since August 2021. This is his first time applying for a security clearance. He has no military experience. His highest level of education is a bachelor's degree. He is married and has no children. (Item 3)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from approximately October 2024 to approximately March 2025 (SOR ¶ 1.a: Item 5 at 30-31; Item 6 at 10); that he used and purchased THC with varying frequency from about 2016 to about November 2024 (SOR ¶ 1.b: Item 5 at 30-31; Item 6 at 10) that he used THC with varying frequency from about September 1992 to about January 2004 (SOR ¶ 1.c: Item 5 at 30-31; Item 6 at 5); and that he intends to use THC in the future (SOR ¶ 1.d: Item 6 at 5-6, 8).

Guideline H - Drug Involvement and Substance Misuse

Applicant began to use illegal drugs in approximately September 1992. He used marijuana about three to four times a week between approximately September 1992 and approximately 2004. He would obtain drugs from friends and would use the drugs with his friends. He abstained from marijuana use between 2004 and 2016. In 2016, he started to use marijuana again when it became legal under the state law where he resides. He ingests the marijuana in gummy form. He uses it about once or twice a week to help him sleep. He purchased the marijuana at state dispensaries. (Item 6 at 10)

In response to questions in Section 23 – Illegal Use of Drugs or Drug Activity, on his October 24, 2024, security clearance application, Applicant listed that he illegally used marijuana from approximately September 1992 and September 2024. He began using marijuana during his junior year of high school in 1992 and he stopped using marijuana around 2004 because he decided to go back to college and wanted to focus on his studies. After his home state legalized marijuana in 2016, he began to use an edible form of marijuana at night as a sleep aid. The version he uses is a low-dose combination of THC, CBD, and melatonin that he takes at bedtime three to five times a week. (Item 5 at 31)

Regarding whether he intended to use marijuana in the future, he wrote:

To be clear, I would like to continue using the sleep aid as described above. I sought treatment years ago for trouble sleeping and it has been helpful for the past many years. But I do understand that while legal in California, it remains illegal at the federal level. If the agency deems this usage to be unacceptable, I will talk to my doctor to find an acceptable alternative. *Id.*

At some point during his subject interview on November 26, 2024, he indicated that he learned that marijuana use remained illegal under federal law. He intends to stop using marijuana and will look for other sleep aids. (Item 6 at 10)

On March 30, 2025, Applicant replied to a set of DOHA interrogatories about his illegal marijuana use. He listed that he first used marijuana in September 1992 and his last use was on March 28, 2025. The frequency of use was three to five times a week. He wrote the following regarding his intentions of future use:

I use an edible form of THC at night as a sleep aid and have found it helpful for the stated purpose with little to no side effects. If the government deems this usage to be unacceptable for a person holding a security clearance, I am willing to talk to my doctor to find an acceptable alternative. (Item 5 at 12)

In his Answer to the SOR, dated September 4, 2025, Applicant admitted the allegations in SOR ¶¶ 1.a – 1.c. He denies the allegation in SOR ¶ 1.d, which alleges he intends to use THC in the future. He indicates that he has been honest and consistent about his THC use. He has only used THC as a sleep aid the past several years and is willing to find an acceptable alternative should the government find such usage to be unacceptable. This is his first time applying for a security clearance. He was initially uninformed on the government's position on this issue. When he received the SOR, he became aware that any use of THC is unacceptable. He has consulted with his physician and is finding an alternative treatment for his sleep issues. The last time he used a THC product was August 17, 2025, and he has no intention to use a THC product in the future. He is committed to meeting and maintaining the standards required for a security clearance. He hopes to serve his company and his government with integrity. (Item 4)

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 to using marijuana on various occasions from September 1992 to January 2004 and from 2016 to August 2025. Marijuana was illegal under federal and state law when he first used marijuana between September 1992 to January 2004. He stopped using marijuana products in 2004. In 2016, marijuana use became legal in the state where he resides. He started taking a THC gummy at night as a sleep aid several times a week. He purchases the THC gummies from a state dispensary. Applicant acknowledged that he was aware that marijuana remained illegal under federal law since at least October 2024 when he completed his SCA.

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. Questions are raised about his reliability, trustworthiness, and judgment because he continued to use marijuana after submitting his security clearance application in October 2024 and after acknowledging that marijuana remained illegal under federal law even though it was legalized in the state where he resides. While he said that he was willing to stop using marijuana if he was told it was not compatible with holding a security clearance, he continued to use a THC gummy as sleep aid several times a week throughout the security clearance process. He indicated in his response to the SOR that the last time he used marijuana was August 17, 2025. He continued using marijuana after receiving the SOR, dated May 2025. His decision to continue using marijuana after becoming aware the use of marijuana remained illegal under federal law raised questions about his judgment.

AG ¶ 26(b) partially applies, because Applicant expressed his intent to stop using marijuana as of August 17th. He has sought other remedies for his sleep issues. This mitigating condition is given less weight because Applicant continued using marijuana even though he was aware it remained illegal under federal law after submitting his security clearance application, after his personal subject interview, after responding to interrogatories, and after receiving his SOR. He either did not get the message or did not want to get the message that marijuana use remains a security concern. While he finally stopped using marijuana in August 2025, it is too soon to tell if Applicant will be able to successfully discontinue using marijuana. Not enough time has passed to conclude he is serious about abstaining from marijuana 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 public trust position 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 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 AG ¶ 2(d) factors in this whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of marijuana to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered Applicant is applying for a security clearance for the first time. I considered his honesty when disclosing his history of marijuana use during his background investigation. However, questions remain because he continued to use marijuana after submitting his October 2024 security clearance application where he acknowledged marijuana use remained illegal under federal law. No federal government agency is going to condone the use and purchase of marijuana when it remains unlawful under federal law. While he indicates he stopped using marijuana in August 2025, that was only eight months ago. Considering his history of illegal marijuana use, 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, I conclude 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