



DEPARTMENT OF WAR
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 25-01153
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2026

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline H (drug involvement and substance misuse) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA) on October 4, 2023. (Government Exhibit (GE 1)) On December 4, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H. (Hearing Exhibit (HE) 1) The 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On January 8, 2026, Applicant answered the SOR and requested a hearing before an administrative judge. (HE 2) On February 6, 2026, Department Counsel was ready to proceed, and on February 10, 2026, the case was assigned to me.

On March 3, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on March 31, 2026. (HE 3) The hearing was convened as scheduled.

Department Counsel offered three exhibits; Applicant provided one exhibit; and all proffered exhibits were admitted into evidence without objection. (Tr. 10, 14-17; GE 1-GE 3; Applicant Exhibit (AE) A) On April 13, 2026, DOHA received the transcript of the hearing. Applicant did not request that the record remain open after the hearing.

Statement of Facts

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b. His admissions are accepted as findings of fact. He also provided extenuating and mitigating information. (HE 2)

Applicant is a 55-year-old chief executive officer (CEO) of a Department of War (DoW) contractor and a consultant. (Tr. 6, 8) He has worked in these roles since 1999. (Tr. 8) In 1989, he graduated from high school. (Tr. 7) In 1992, he received a bachelor's degree in economics, and he was awarded a juris doctor (J.D.) degree in 1997. (Tr. 7) He is a licensed member of his state bar association; however, he does not engage in the practice of law. (Tr. 7) He has been married four times. (Tr. 7) He married his current spouse in 2019, and he does not have any children. (Tr. 8) Applicant has never held a security clearance, and he does not need a security clearance to retain his employment. (Tr. 18) A security clearance will enable him to be more efficient and effective in his employment. (Tr. 18-19)

Drug Involvement and Substance Misuse

The SOR alleges from about August of 2021 to September of 2025, Applicant used (SOR ¶ 1.a) and purchased (SOR ¶ 1.b) tetrahydrocannabinol (THC) on varying occasions. In his October 4, 2023 SCA, he disclosed that he possessed and used marijuana as alleged in the SOR, and he intended to continue to use it. (GE 1 at 46) In the SCA, he offered to stop using THC if necessary for a security clearance. (GE 1 at 46) No one specifically told him to stop using marijuana if he wanted to have access to classified information.

In Applicant's February 28, 2025 response to DOHA interrogatories, he was informed that marijuana and marijuana extracts are classified as Schedule I drugs and use of these substances is federally illegal. (GE 2 at 2) He indicated he was using marijuana, and he checked, yes, on a DOHA interrogatory indicating he intended to use marijuana in the future. (GE 2 at 2) He said on a continuation sheet that he was willing to stop using marijuana if it was necessary to obtain a security clearance. (Tr. 32; GE 2 at 9) He continued to use marijuana after completion of the DOHA interrogatories because he hoped an exception could be made for his use of marijuana. (Tr. 33)

Applicant's company does not discriminate against THC users with marijuana medical cards; however, employees are not permitted to bring marijuana into the workplace or to work while impaired by marijuana. (Tr. 30-31)

In his SOR response, Applicant said:

Going back to my original SF86 submission, I offered to cease/desist from using THC for sleep to support my clearance investigation. I made the same offer during my in-person interview, and again the same offer in responses to interrogatories. I did not receive direction that I should do so, but perhaps it is not the Government's role to make such indications. I take responsibility if my approach looking to Government guidance was ill-advised or inappropriate.

I respectfully request a finding that my behavior happened under such circumstances that it is unlikely to recur and that it does not cast doubt on my current reliability, trustworthiness, or good judgment. I acknowledge my drug involvement and substance misuse (see SOR responses above) and I have taken actions to overcome this problem and have established a pattern of abstinence.

I began abstinence in September 2025 to support an in vitro fertilization (IVF) effort, which remains ongoing. Since that time, I have remained 100% abstinent from drug involvement or substance misuse, specifically to include THC. By my signature below, I commit and affirm my intent to abstain from all drug involvement and substance misuse, and acknowledge that any future involvement or misuse would be grounds for revocation of national security eligibility.

I make these statements with certainty for the following reasons:

1. I was never addicted to THC. I took a small dose (10 or 20 mg) most nights as a sleep aid only. When I stopped using THC as a sleep aid in September 2025, I suffered no noticeable symptoms upon stopping (other than a decrease in quality of sleep). I did not experience a sense of withdrawal, and it has not been at all difficult for me to remain abstinent.
2. I was never a recreational user of THC. It was never a party drug, or a feel-good drug, or anything of the sort for me. I did not take the drug socially with others, I never smoked THC, and I think stoner culture is, frankly, foolish. I used THC to more reliably fall asleep and remain asleep.
3. It is materially important to me for my company to obtain its clearance, and I would not jeopardize my company's good standing for a personal sleep quality preference.

4. I am a person of my word, and I'm a person who still believes in keeping his word, regardless of whether penalties attach; promises are kept because promises are made.

I would pass a drug test today, and I would pass a drug test each and every future day I remain in a position of trust with the Government. If it would provide confidence, my company will establish random and/or routine drug testing for me and provide results to a designated Government contact. Drug testing is not what will guarantee my abstinence – I am guaranteeing that; however, testing would provide evidence that my word is being kept, and we will gladly provide that evidence if it would be helpful. (HE 2)

For many years, Applicant had trouble sleeping and he consumed alcohol to help him sleep. (Tr. 20) In 2020, his state legalized medical marijuana. (Tr. 20) He obtained a medical marijuana card or license, and in August 2021, he began using marijuana to help him sleep. (Tr. 20, 21) He consumed marijuana oil and then later THC edibles. (Tr. 21) He said, "I found it to be incredibly effective, cost a lot less money, and I think it was probably better for my health. So once I found that to be effective, I switched to that instead [of alcohol] and continued in that mode." (Tr. 20) From about August 2021 to September 30, 2025, he used THC on a daily basis. (Tr. 19, 21) His medical marijuana card expires on June 9, 2027. (Tr. 22)

During the August of 2021 to September of 2025 timeframe, he spent about \$100 to \$150 a month purchasing marijuana. (Tr. 26) He procured it about once or twice a month. (Tr. 26) At the time of his hearing, he had some marijuana at his residence. (Tr. 27) He does not intend to use it if his security clearance is granted. (Tr. 27)

Applicant has not engaged in drug counseling or treatment. (Tr. 36) He never engaged in recreational marijuana use. (Tr. 38) He never used marijuana before driving. (Tr. 38) The only federally illegal drug he used was marijuana. (Tr. 43) His spouse does not use marijuana; however, his grandmother uses marijuana to treat her chronic insomnia. (Tr. 38-39) He is unaware of anyone else with whom he associates who uses marijuana. (Tr. 43) He does not intend to use marijuana in the future because he and his wife are undergoing IVF treatments. (Tr. 35) He provided hair-follicle drug test results from samples he provided on March 11, 2026. (AE A) His hair samples tested negative for illegal substances. (AE A) The hair-follicle drug test shows he did not use marijuana for about 90 days prior to March 11, 2026. (Tr. 42)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy" to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for

access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, this decision should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 lists conditions that could raise a security concern and may be disqualifying in this case including:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

AG ¶¶ 25(a) and 25(c) are established. Discussion of the disqualifying conditions is in the mitigating section *infra*. AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse security concerns:

- (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;
- (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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

Applicant admitted that he purchased, possessed, and used marijuana on a daily basis from August of 2021 to September of 2025. He believes it has therapeutic value for him because it helps him to sleep.

Marijuana is currently listed on Schedule I of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration (DEA) listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). His multiple possessions of marijuana are federal crimes. Drugs listed as Schedule I Controlled Substances, have "no 'currently accepted medical use in treatment.' 21 U.S.C. § 812(a)(1)(B)." ISCR Case No. 24-01307 at 3 (App. Bd. July 17, 2025). See DEA website, *supra*; Executive Order, *Increasing Medical Marijuana and Cannabidiol Research* (December 18, 2025). The scheduling of marijuana is under DEA review, and it may be downgraded from Schedule I to Schedule III, which would permit marijuana possession and use based on prescriptions. *Id.*

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possessions and use:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence's Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant's state-compliant marijuana use and use of other illegal drugs, holding that such differences are an important aspect of the case that a reasonable person would expect to be addressed.

See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications the Appeal Board cited states as follows:

[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 few 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.

SecEA Guidance at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board has cited the importance of consideration of "the changing landscape of marijuana law and . . . of the Director of National Intelligence's *Clarifying Guidance Concerning Marijuana*." ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the "evolving landscape of marijuana law and policy," "the resulting increasing prevalence of marijuana use," and in some instances "recreational marijuana use deserves less, or even no negative inference on judgment.").

The Appeal Board has "never established a 'bright line' rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole." See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See also ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Applicant frequently used marijuana, and his most recent marijuana use was around September 30, 2025. At the time of his hearing, he had marijuana in his residence. “The [DOHA Appeal] Board has ‘long held that applicants who use marijuana [or other illegal drugs] after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.’” ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (quoting ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021)). See *also* ISCR Case No. 24-00468 at 6 n.7 (App. Bd. Apr. 16, 2025). Applicant used marijuana after completion of his SCA, receipt of the SOR, and responding to DOHA interrogatories.

In ISCR Case No. 24-01001 at 3 (App. Bd. Apr. 22, 2025), the Appeal Board affirmed the revocation of a security clearance for an applicant who abstained from marijuana use for about one year before his hearing. While this case in some ways is factually different from Applicant’s case, the issue of notice about marijuana use was discussed as follows:

It is not necessarily Applicant’s history of marijuana use, *per se*, that raises questions about his judgment and reliability, but rather his continued use while aware that using marijuana is inconsistent with holding national security eligibility. . . . The evidence in this case establishes that Applicant was on notice when he completed his SCA submission but continued to use marijuana for four subsequent months, despite multiple intervening assertions that he had no intention of using in the future and in recognition that such use is illegal under federal law. Applicant’s post-SCA conduct demonstrated a disregard of national security eligibility standards that negatively reflects on his judgment and reliability and renders this decision sustainable.

Applicant provided some important mitigating information. He initially disclosed his involvement with marijuana on his SCA. His possessions, purchases, and uses of marijuana were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. His marijuana involvement did not include selling marijuana.

Applicant established some mitigation under AG ¶¶ 26(a) and 26(b) because he acknowledged his marijuana involvement, and he provided evidence of actions taken to overcome this problem by his abstinence since September 30, 2025. He has established a relatively brief period of abstinence, including, but not limited to: disassociation from his drug-using associates and contacts, except for his grandmother; changing or avoiding the environment where drugs were used; and 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. These are positive signs augur well for future access to classified information.

Mitigation is not fully established because Applicant has not established a sufficient period of abstinence from marijuana purchase, possession, and use. His decisions to purchase, possess, and use marijuana may indicate he lacks the qualities expected of

those with access to national secrets and continue to cast doubt on his current reliability, trustworthiness, and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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), "[t]he 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. My comments under Guideline H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 55-year-old CEO of a DoW contractor and a consultant. He has worked in these roles since 1999. In 1992, he received a bachelor's degree in economics, and he received a J.D. degree in 1997. He is a licensed member of his state bar association; however, he does not engage in the practice of law. A security clearance will enable him to be more efficient and effective in his position, and it will contribute to the success of the DoW contractor.

The disqualifying and mitigating information is discussed in the analysis section, *supra*. The reasons for denying Applicant's security clearance are more persuasive than the reasons for granting his security clearance at this time.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

Applicant provided a candid and credible description of his involvement with marijuana. He has had a remarkable career and has great potential to contribute to the national defense.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence, to the facts and circumstances in the context of the whole person. Drug involvement and substance misuse security concerns are not mitigated at this time.

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 continued abstention from involvement with illegal drugs, he will establish that he is an excellent candidate for a security clearance.

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 and 1.b:	Against Applicant

Conclusion

Considering all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge