



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



In the matter of:)
)
) ISCR Case No. 25-01032
)
)
Applicant for Security Clearance)

Appearances

For Government: Lauren Shure, Esq., Department Counsel
For Applicant: *Pro Se*

04/27/2026

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate drug involvement and substance misuse, criminal conduct, and personal conduct security concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On September 10, 2025, the Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse, criminal conduct, and personal conduct guidelines the DCSA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security*

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017.

Applicant responded to the SOR on September 24, 2025, and elected to have his case decided on the written record in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on January 29, 2026, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not respond to the Government's FORM and did not object to the Government's materials included in the FORM. The Government's exhibits were admitted as Government's Exhibits 1-9. (GEs 1-9) This case was assigned to me on April 14, 2026.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana with varying frequency from at least about May 2009 to present; (b) used marijuana from at least about May 2024 to present, after completing an Electronic Questionnaires for Investigations Processing (e-QIP) on May 7, 2023, to obtain a security clearance with the DoD; (c) was arrested in his state of residence in April 2024, charged with possession of marijuana, and fined with the charges dismissed upon payment of the fine; (d) used marijuana with varying frequency, from at least about September 2014 to at least about November 2024, while holding a sensitive position, i.e., one in which he held a security clearance; (e) failed a urinalysis in December 2017 when he tested positive for THC, and was processed for discharge from his state's National Guard (later allowed to fulfill his contract); (f) used marijuana from at least about July 2014 to at least about June 2023, after completing an e-QIP on July 2014 to obtain a security clearance with the DoD; and (g) intends to continue to use marijuana in the future. Allegations raised under sub-paragraph 1.c of Guideline H are cross alleged under Guideline J.

Under Guideline E, Applicant allegedly (a) falsified the e-QIP he completed in May 2024, by failing to disclose his use of marijuana from at least about 2014 until at least about 2024. Allegedly, the marijuana use he failed to disclose was material; (b) falsified his May 2024 e-QIP by failing to disclose his use of marijuana while holding a security clearance; (c) falsified his May 2024 e-QIP by failing to disclose his April 2024 arrest for possession of marijuana and disorderly conduct; (d) falsified his e-QIP by failing to disclose his April 2024 arrest for possession of marijuana (e) falsified material facts in his interrogatory response of November 2024 by failing to disclose his failed military drug test administered by his Army National Guard Unit in December 2017; and (f) falsified material facts in his November 2024 interrogatory response by failing to disclose his ongoing marijuana use from at least about 2014 through the present, while holding a sensitive position, i.e., one requiring a security clearance.

In Applicant's SOR response, he admitted some but not all of the allegations. He denied being arrested, and he denied any future intention to use marijuana. For explanations and clarifications, he claimed he has never failed a urinalysis besides his 2017 urinalysis failed test. And, he claimed to have paid his fines and learned from his lessons without claiming any change of intent on his previously expressed intent to

continue using marijuana. Addressing the falsification allegations covered by Guideline E, Applicant admitted the allegations without any explanations or clarifications.

Findings of Fact

Applicant is a 31-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in April 2019 and divorced in May 2020. (GE 4) He has no children. (GEs 3-4) He earned a high school diploma in May 2012 and an associated arts degree in May 2016. (GEs 3-4) He enlisted in the Marine Corps in 2014 and served two years of active duty before transitioning to his state's Army National Guard in 2017. (GEs 3-4) He was honorably separated from his National Guard unit in 2023 following a positive urinalysis. (GEs 6 and 9) After initially being reduced in rank, he was apparently allowed to complete his contract with a restored rank and receive an honorable discharge. (GEs 3-4, 6, and 9)

Since August 2024, Applicant has been employed by his current employer while he continues to operate his own private business as an avionics technician. (GEs 4 and 9) He was granted an interim clearance in May 2024 and briefly enjoyed limited access to classified information before his clearance was pulled in 2025 based on his prior positive drug test. (GEs 5-6)

Illegal drug involvement and diagnosed substance misuse disorders

Between May 2009 and September 2025, Applicant used marijuana in varying frequency (daily or recency). (GEs 3-9) Because he told the investigator from the Office of Personnel Management (OPM) who interviewed him in a personal subject interview (PSI) in June 2024 that he intended to continue using marijuana in the future, it remains unclear whether he ceased using the drug after 2025. (GEs 6 and 9) The evidence is insufficient, however, to characterize Applicant as an active drug user for purposes of the Bond Amendment covered by App. B of the Directive.

In April 2024, Applicant was arrested in his state of residence and charged with disorderly conduct and possession of marijuana. (GE 4) He was subsequently fined in the amount of \$346 with added court costs of \$190. (GE 2). Upon proof of payment of the levied fine, the charges were dismissed. (GE 2) This arrest and charge is cross alleged under Guideline J.

Records document that Applicant continued to use marijuana after completing his first e-QIP in July 2014, to obtain a security clearance. (GEs 5-9) Records further document his continuing to use marijuana after completing a second e-QIP in May 2024. His November 2024 interrogatory responses further document his expressed intention to continue using marijuana in the future (at the rate of daily use) to self-medicate his sickle

cell disorder despite the absence of medical card. (GE 7) Afforded opportunities to supplement the FORM with supporting counseling assessments, endorsements, and performance evaluations, Applicant did not provide anything.

E-QIP and interrogatory omissions.

Asked to complete an e-QIP in May 2024, Applicant deliberately failed to disclose his years of use of marijuana from at least May 2009 to at least 2024. (GEs 1-4, 7, and 9) By failing to disclose his marijuana use, he falsified his May 2024 e-QIP. He further falsified his 2024 e-QIP by deliberately failing to disclose his November 2017 positive drug test and his April 2024 arrest and charges for disorderly conduct and possession of marijuana. (GEs 2-4 and 9)

When interviewed by an investigator from the Office of Personnel Management (OPM) in June 2024, Applicant failed to voluntarily disclose his past marijuana use, positive drug test, and April 2024 arrest for marijuana possession and disorderly conduct, and only acknowledged his arrest and positive test after being confronted by the investigator. (GE 9) When responding to propounded interrogatories in November 2024, he acknowledged his marijuana use (past and present) and April 2024 arrest, but failed to disclose his positive drug test in December 2017. (GE 7) Applicant also falsified his 2024 e-QIP by failing to disclose his past use of marijuana between 2014 and at least September 2025, while holding a sensitive position. (GEs 1-4 and 7) Afforded opportunities to correct his interrogatory responses to reconcile with his PSI acknowledgements, he never did so.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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.

Eligibility for access to classified information may only be granted “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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a

potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are considered together with the following AG ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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 ¶ 24.

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness, and trustworthiness. By its very nature, it calls into question a person's ability to or willingness to comply with laws, rules, and regulations.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and 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. AG ¶ 15.

Burdens of Proof

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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 AGs 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

Security concerns are raised over Applicant's positive drug tests for marijuana (one in 2019 during his AF enlistment and the other in 2023 associated with a monthly drug test mandated by his employer's drug policy) and his admitted use and purchases of marijuana between 2017 and 2023 while holding a sensitive position requiring a security clearance. Additional security concerns are raised over Applicant's falsifications of the e-QIP he completed in May 2024 covering his past marijuana involvement and the false responses he provided in his responses to interrogatories propounded to him in November 2024.

Drug and Substance Abuse Concerns

Applicant's admissions and otherwise documented evidence of his using federally banned marijuana (claiming his use of marijuana to treat his sickle cell disorder), his being arrested and charged with marijuana possession, his testing positive for marijuana use, and his expressing an intention to continue using marijuana conflate to raise security concerns over his reliability, trustworthiness, judgment, and risks of recurrence. The Director of National Intelligence (DNI) has made it very clear that state laws legalizing the use of marijuana and any other drugs considered illegal under federal law do not permit individuals to preempt or otherwise violate federal laws banning or restricting the possession of drugs covered by Schedules 1 and 2 of the CSA.

On the strength of the evidence presented, five disqualifying conditions (DCs) of the AGs for drug involvement and substance misuse are applicable. DC ¶¶ 25(a), "any substance misuse"; 25(b), "testing positive for an illegal drug"; 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia"; 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position"; and 25(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse," apply to Applicant's situation. Applicable DCs covered by cross alleged Guideline J consist of DC ¶ 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted."

Considering all of the circumstances surrounding Applicant's past involvement with marijuana (inclusive of a positive drug test and marijuana possession arrest), much of the time while he held a sensitive position, and his documented expressed intent to continue using marijuana in the future, he is not entitled to any of the potentially available mitigating conditions (MCs) of either the drug involvement and substance misuse guideline or the criminal conduct guideline. See ISCR Case No. 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case No. 01-20579 (App. Bd. Apr. 14, 2004).

Personal Conduct Concerns

Of further security concern are Applicant's multiple drug possession omissions he made in his May 2024 e-QIP. DC ¶ 16(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," applies to Applicant's situation.

Potentially applicable mitigating conditions (MC) are: MC ¶¶ 17 (a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts"; and 17(e), "the individual has acknowledged the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur."

After initially omitting his possession and use of illegal drugs in his May 2024 e-QIP and ensuing November 2024 PSI, he came forward with his use (much of which occurred while he held a sensitive position requiring a security clearance), his positive drug testing, and arrest and charge of marijuana possession in his ensuing June 2024 PSI, but only after confrontation from the investigating OPM agent. Disclosures of adverse information are always encouraged, but require voluntary, good faith disclosure to meet mitigation requirements. Not only did Applicant require confronting to produce his disclosures, but he repeated his previous e-QIP positive drug test omission in his responses to the Government's November 2024 interrogatories. Applicant's multiple candor lapses preclude him from taking advantage of any of the potentially available mitigating conditions covered by Guideline E.

Whole-person Assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his established pattern of illegal drug activity, his expressed intention to continue using marijuana and his deliberate omissions of material information covering past illegal drug activity, can be reconciled with minimum standards for holding a security clearance. Applicant's past positive drug test, marijuana possession arrest, use of marijuana while holding a sensitive position, and his documented expressed intent to continue using marijuana, when considered contextually are still too recent to facilitate safe predictions of sustained abstinence from illegal drugs and consistent exercise of candor in the foreseeable future.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that illegal drug involvement and substance misuse concerns, criminal conduct, and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	Against Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge