



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



In the matter of:)
)
) ISCR Case No. 25-01105
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2026

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 20, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). Applicant provided an undated response to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 20, 2026. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 25, 2026, but he did not respond to it. The case was assigned to me on April 21, 2026. The Government exhibits included in the FORM (Items 1-6) are admitted in evidence without objection.

Findings of Fact

Applicant is a 56-year-old employee of a government contractor for whom he has worked since 2012. He earned a high school diploma in 1987 and has received multiple professional certificates. He was married from 1993 until a divorce in 2011. He remarried in 2023. He has three adult children. (Items 3, 5)

In the SOR, the Government alleged the following: Applicant used marijuana with varying frequency from June 1988 until at least June 2025 (SOR ¶ 1.a); he purchased marijuana from June 1988 until at least 2025 (SOR ¶ 1.b); he took a hair follicle drug test in September 2012 and tested positive for marijuana (SOR ¶ 1.c); from September 2024 to about June 2025, he used marijuana while in a sensitive position, i.e., one in which he held a security clearance (SOR ¶ 1.d); and he intends to use marijuana in the future (SOR ¶ 1.e). In the Answer, with the exception of the allegations in SOR ¶ 1.d, he admitted the SOR allegations with additional comments. He denied the allegations in SOR ¶ 1.d because he claimed that, “no security clearance was ever given to him.” He qualified his admission of the allegations in SOR ¶ 1.e by claiming that he intended to continue to use marijuana unless his doctor prescribed him something else for migraines. His admissions are incorporated in my findings of fact.

Applicant completed a security clearance application in September 2024 (SCA). In it, he listed his marijuana involvement up to that time. He claimed that he used a doctor-prescribed combination of tetrahydrocannabinol (THC) and cannabidiol (CBD) two to four times per week or as needed for treatment of migraine headaches, which he described as a debilitating condition. He wrote that he intended to use marijuana in the future as long as his physician for the past 30 years thinks it is the best option. He elaborated that pharmaceutical options have had adverse side effects but hoped that will change in the future. He denied that his marijuana use occurred while he held a security clearance. (Item 3)

During Applicant’s December 2024 security interview (SI), he told the investigator that he has held a medical marijuana card since medical marijuana became “legal” pursuant to state law in State R where he has resided. He said that he purchased marijuana from a State R dispensary. He claimed that he has tried other prescription medication to address his migraines, but they have been too expensive, made him sick, or were ineffective. He told the investigator that he has not used marijuana while holding a security clearance, but that he will continue to use marijuana while his doctor believes it is the best treatment for his migraines. He has not undergone any substance abuse treatment or counseling. (Item 5)

In June 2025, Applicant responded to Government interrogatories. He updated the date he last used and purchased marijuana to that same month. He reiterated his intention to use marijuana in the future as long as his doctor prescribed it, and unless some other effective medication became available that did not have negative side effects. He indicated that he understood that marijuana remains illegal under federal law and future use could affect his security clearance eligibility. He acknowledged the 2012 hair follicle test where he tested positive for marijuana when he first started with his current employer

and again claimed that he did not hold a security clearance or occupy a position of trust while he used illegal drugs or controlled substances. (Item 4)

Applicant does not hold security clearance eligibility, and there is no evidence to show that he has held such eligibility while he used marijuana. He has been sponsored by his employer for security clearance eligibility since September 2024. (Item 6)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(c), 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified 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 and substance misuse 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which 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.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications (*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 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.

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

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used and purchased marijuana, an illegal drug pursuant to federal law, with varying frequency from about June 1988 until at least June 2025. He tested positive for marijuana after taking a hair follicle test in 2012. He repeatedly indicated he intends to use marijuana in the future. AG ¶¶ 25(a), 25(b), 25(c), and 25(g) are established.

AG ¶ 25(f) is not established. There is insufficient evidence that Applicant has been granted access to classified information while he used marijuana. While he has been sponsored for security clearance eligibility since September 2024, and used

marijuana regularly after that time, there is insufficient evidence to prove that sponsorship means he holds a sensitive position.

AG ¶ 26 provides conditions that could mitigate security concerns. 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.

None of the mitigating conditions are applicable. I am sympathetic to Applicant given his medical issue, which appears to respond well to marijuana use. However, I am constrained by the requirements contained in the Directive. At every stage of the security clearance process, when Applicant was asked to update his marijuana involvement timeline, he continued to use and purchase it. He consistently indicated his intent to continue to use marijuana. He knew that marijuana use was illegal pursuant to federal law while he was involved with it. These considerations mean that he failed to provide sufficient evidence that his marijuana involvement is unlikely to recur. His continued use and stated intention to continue also mean he has not provided evidence of an established pattern of abstinence. AG ¶¶ 26(a) and 26(b) do not apply.

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 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 in my whole-person analysis. I note that the seriousness of the conduct and motivation for the conduct are factors that militate in his favor. However, the remainder of the nine whole-person factors tend to work against him. These considerations show his frequent and willful disregard for well-established rules and a high likelihood that he will continue the problematic conduct.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the drug involvement and substance misuse security 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge