



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



In the matter of:)	
)	
)	ISCR Case No. 25-00528
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: Grant Couch, Esq.

05/14/2026

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, Drug Involvement and Substance Misuse, and Guideline E, Personal Conduct. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 4, 2024. (Government Exhibit (GE) 1) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on June 27, 2025, detailing security concerns under Guidelines H and E. 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 within the DOD as of June 8, 2017.

On July 21, 2025, Applicant answered the SOR and elected a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The DOHA Hearing Office received the case on September 3, 2025, and it was assigned to me on December 19, 2025. The hearing was scheduled for February 26, 2026, and held on that date. Department Counsel offered three exhibits which were marked and admitted

as Government Exhibits (GE) 1-3 without objection. Applicant through his counsel offered ten exhibits, which were marked and admitted as Applicant Exhibits (AE) A-J without objection. Applicant testified during the hearing. The transcript (Tr.) was received on March 19, 2026.

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 admitted the allegations in the SOR ¶¶ 1.a, 1.b, 2.b - 2.d, and denied the allegation in SOR ¶ 2.a. At hearing after examination by Department Counsel and conferring with his counsel, Applicant changed his admissions to SOR ¶¶ 2.b - 2.d to denials. (Answer to SOR; Tr. 23-27)

Applicant is a 26-year-old employee of a DOD contractor, Employer A, since June 2025. He worked for another DOD contractor from January 2023 to December 2024, Employer B. This is his first time applying for a security clearance. He has a high school diploma and attended a trade school. He is single and has no children. (Tr.12-15; GE 1; AE A)

SOR Allegations

The SOR alleges under Guideline H, Drug Involvement and Substance Misuse, that Applicant used marijuana with varying frequency from about 2018 to February 2024. (SOR ¶ 1.a: GE 2); and he failed a urinalysis test in February 2024, testing positive for marijuana. (SOR ¶ 1.b: GE 2);

Under Guideline E, Personal Conduct, the allegations include that Applicant was suspended from about February 2024 to about March 2024 from his employment with Employer B for a failing a drug test (SOR ¶ 2.a: GE 2 at 6); falsified material facts on a SCA he completed in March 2023 when he answered, "No" in response to "Section 13A – Employment Activities – Received Discipline or Warning – In the last seven (7) years have you received a written warning been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" He failed to disclose his suspension from Employer 2 for failing a drug test (SOR ¶ 2.b: GE 1 at 10; GE 2 at 6), he falsified material facts on his March 2024 SCA in response to "Section 23-Illegal Use of Drugs or Drug Activity – In the last seven (7) years, have you illegally used any drugs or controlled substances?" He answered, "No" and failed to disclose his marijuana use in 2018 and February 2024 (SOR ¶ 2.c: GE 1 at 8; GE 2 at 8); and he falsified material facts during a personal subject interview on July 5, 2024, with an authorized investigator with the United States Office of Personnel Management, when he deliberately omitted his failed drug test in February 2024. (SOR ¶ 2.d: GE 2 at 6-8, 14)

Summary of the Facts

Applicant testified that he first tried marijuana in 2018 when he was in high school. He was curious about marijuana, so he tried an edible containing marijuana on one occasion while on a school field trip. He only used it once in high school and did not use marijuana again until around February 2024 after he sprained his ankle while playing basketball. A friend of his recommended that he try a marijuana edible for the pain. He took one edible. When he ingested it, he was aware that marijuana use was legal in the jurisdiction where he lived. He was not aware that it remained illegal under federal law until the investigator during his second background investigation interview told him. (Tr. 15-17, 28-33)

Applicant worked for Employer B when he used marijuana for a second time in February 2024. Shortly after ingesting the marijuana edible, he was required to provide a urine sample as part of Employer B's urinalysis program. His urine tested positive for THC. As a result of the positive urinalysis, Applicant was placed on leave for two weeks. He claims that he was never told that he was suspended from work. He never received a written letter of suspension. Employer B called him back into work after two weeks. He was required to meet with a drug counselor and to take another drug test. He passed the drug test, and the drug counselor approved him to return to work after meeting with Applicant. (Tr. 17-21, 39-41)

After he returned to work, Applicant was subject to random monthly drug tests. He passed all of them. He continued to work for Employer B until December 2024. He was terminated for a safety violation that was not related to illegal drug use. (Tr. 18, 20-21; 37, 48) Applicant's termination from Employer B was not alleged in the SOR. As a result, it will only be considered under matters of extenuation and mitigation.

Applicant did not possess a security clearance at the time of his February 2024 marijuana use. He submitted an SCA on March 4, 2024, when he worked for Employer B. This was his first time applying for a security clearance and no one helped him with filling out the SCA. He was never granted a security clearance during his period of employment with Employer B. (Tr. 21-22; 37-39; GE 1)

Under the Personal Conduct concern, Applicant is alleged to have falsified material facts on his March 2024 SCA when he answered "no" in response to "Section 13A – Employment Activities – Received Discipline or Warning. In the last seven (7) years have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" He failed to disclose that he was suspended from about February 2024 to about March 2024 from Employer B for failing a drug test. (GE 1 at 9-10; GE 2 at 6) In his Response to the SOR and during his hearing testimony, Applicant testified that he believed that he was not formally suspended because he was never told that he was suspended and never received anything in writing that he was suspended as a result of his positive drug test. He admits to being off work for two weeks. He took leave during this time. He was not allowed to return to work until he met with a drug counselor and passed a drug test. In his response to the SOR, he admits he should have disclosed that he failed a drug test. He did not fully

understand the scope of the question or the reporting requirements. It was not his intent to deceive. (Tr. 19, 20-22; GE 2 at 6)

Applicant is also alleged to have falsified material facts on his March 2024 SCA, in response to “Section 23-Illegal Use of Drugs or Drug Activity. In the last seven (7) years have you illegally used any drugs or controlled substances?” He answered “No” and did not disclose that he used marijuana on two occasions - once in about 2018 and once in about February 2024. (Tr. 15-16; GE 1 at 25) Applicant testified that he thought that he did not have to list his February 2024 marijuana use because he thought that his marijuana possession and use was legal in the jurisdiction where he used it. He was not aware that marijuana possession and use remained illegal under Federal law. (Tr. 17, 22)

On April 12, 2024, Applicant was interviewed the first time by an investigator conducting his background investigation. The investigator’s unsworn summary of the interview covered Applicant’s education history, employment history, reference, and family associates. He also discussed foreign travel. Applicant was interviewed a second time on July 5, 2024, to discuss a failed drug test at Employer B. Applicant did not disclose this information upfront. The investigator then questioned Applicant about his failed drug test in February 2024 while employed at Employer B. Applicant admitted that he failed a drug test in February 2024 while employed at Employer B due to marijuana use. He told the investigator that he was put on a company program that required him to see a therapist in order to determine whether he was abusing drugs. He was then subject to random drug tests over a period of several months. The subsequent drug tests were negative. He told the investigator that he has not used drugs since his failed drug test. (Tr. 37-39, 46; GE 2 at 6)

On July 10, 2024, the investigator contacted Applicant by telephone and asked him why he did not list his illegal drug use on his SCA. He told the investigator that he misread the question. (GE 2 at 9) Applicant testified that he only used marijuana on two occasions. Once around 2018 while in high school and once in February 2024. His use in high school was experimental. In February 2024, he took a marijuana edible that was provided to him by a friend after he sprained his ankle playing basketball. His friend told him that it would help treat the pain. He no longer associates with this friend. (Tr. 15 – 17, 29 – 34)

Applicant does not intend to use marijuana or illegal drugs in the future. On January 9, 2026, he signed a Statement of Intent declaring that he will never misuse substances in the future – to include use or possession of any illegal drug or the use of a legal prescription drug without a valid prescription or in a manner inconsistent with their intended purpose. He acknowledged that any future drug involvement or misuse is grounds for revocation of national security eligibility. (AE B) On January 8, 2026, he completed two on-line courses about illegal drug use. (AE D)

Whole-Person Evidence

Applicant provided an undated feedback form from an unnamed person, apparently, a supervisor, regarding his duty performance at Employer B. They note that he is a very reliable team member and has great attendance. He pays attention to detail and his performance is good. Applicant demonstrated a good foundation in required skills and the author recommended him for promotion to the next level of responsibilities. (AE E)

Mr. J.S. wrote an e-mail indicating that he worked with Applicant for approximately one year at Employer B. He wrote that Applicant consistently demonstrated that he is trustworthy, dependable, and hardworking. He took his responsibilities seriously and completed tasks efficiently and correctly. He always showed up prepared with a positive attitude. Mr. J.S. indicated Applicant handled himself professionally and has good character and a strong work ethic. He would not hesitate to work with him again or recommend him for future opportunities. (AE H)

Comments from employees at Applicant's current place of employment, Employer A, describe him as "always being extremely friendly, helpful, and efficient." He is described as a tremendous addition to the team who is always willing to go above and beyond to help team members. (AE F) Mr. K.M. has supervised Applicant at Employer A over the past seven months. He indicates Applicant has become an integral member of the team. He has kept the facility operating smoothly and is always eager to take on additional responsibilities. He is reliable, trustworthy, and dependable. (AE H)

Applicant's sister, J.C., wrote a letter on behalf of her brother. She describes him as someone the family can depend on. She describes him as the most selfless person she knows. Their father passed away when Applicant was five years old. More recently, their mother was diagnosed with cancer. Applicant provided support when their mother was in the hospital. When told by the doctors that her mother may pass soon, Applicant did not waver in his strength and support for her. He made sure she had emotional and mental support, helped with her care, and stayed present for the family. During this time, he demonstrated maturity, compassion, and a deep sense of responsibility. He has never been in legal trouble. He exercised poor judgment for two isolated instances of drug use and has taken full responsibility for those decisions. He has learned from the experience and moved forward with better judgment. She has witnessed his growth, increased discipline, and commitment to making positive choices. She is proud of her brother and fully supports him. She says that Applicant is trustworthy, capable of handling responsibility, and deserving of the opportunity to continue building a positive and stable future. (AE I)

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.

DOD and 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 states 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.

The record evidence shows Applicant used marijuana edibles two times. Once around 2018 when he was in high school and once in February 2024. AG ¶ 25(a) and AG ¶ 25(c) apply to Applicant’s case.

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 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.

AG ¶ 26(a) applies. Applicant's last use of marijuana occurred in February 2024. More than two years have passed since his last use of marijuana. His marijuana use was infrequent. He only used marijuana on two occasions, the first use was in 2018 when he was in high school and the second use occurred in February 2024, after he sprained his ankle while playing basketball. His friend provided him a marijuana edible to help with the pain. When he used marijuana in 2024, he was aware marijuana use was legal in the jurisdiction where he resides. He was not aware that marijuana use remained illegal under federal law. He has abstained from marijuana use since February 2024. He has learned a difficult lesson and has since matured.

AG ¶ 26(b) applies. Applicant acknowledged his illegal drug use at the beginning of his second background investigation interview in July 2024. He stopped using marijuana in February 2024. On January 9, 2026, he provided a statement of intent to abstain from illegal drug involvement and substance misuse. He acknowledged that any future illegal drug involvement may result in the revocation of his security clearance. He demonstrated a sufficient pattern of abstinence and avoids association with drug-using associates and contacts.

Overall, I find Applicant mitigated the security concerns raised under Guideline H, Drug Involvement and Substance Misuse.

Guideline E – Personal Conduct

The security concern relating to the Guideline for Personal Conduct is set out in AG ¶ 15:

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

The following disqualifying conditions under AG ¶ 16 potentially apply to Applicant's case:

AG ¶ 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;

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to national security eligibility determination, or other official government representative; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

I find SOR ¶ 2.a for Applicant. While Applicant was put on paid leave after his failed drug test, he never received an official notification that he was suspended. While he was placed on two weeks paid leave, I find it reasonable for an inexperienced employee like Applicant to have not understood that he was suspended absent being served a letter of suspension.

AG ¶ 16(a) applies with regard to SOR ¶ 2.b, and SOR ¶ 2.c. Applicant failed to indicate that he was disciplined for misconduct in the workplace after his positive urinalysis in February 2024. With regard to SOR ¶ 2.b, while there is no evidence that he was officially suspended for his positive drug test, he was told to take paid leave for two weeks, was required to meet with a drug counselor and was subject to additional random urinalysis tests for a period of several months. With regard to SOR ¶ 2.c, Applicant deliberately did not disclose his February 2024 marijuana use in response to Section 23 on his March 2024 SCA. He completed this SCA about a month after his positive drug test so he should have been aware that he was required to disclose this information. It is noted that he fully disclosed this information when he was asked about it.

AG ¶16(b) applies towards the allegation in SOR ¶ 2.d. During his July 5, 2024, interview with the investigator conducting his personal subject interview, Applicant initially failed to disclose his failed drug test in February 2024. However, he fully disclosed the information when he was asked about it.

AG ¶16(e) applies. Applicant's failure to disclose his past drug use and his failed drug test in February 2024 made him vulnerable to exploitation, manipulation or duress. If known, his conduct had the potential to his personal, professional or community standing.

Under Guideline E, the following mitigating conditions apply in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment: and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) applies. This was Applicant's first time completing a security clearance application. He was unaware of the importance of being accurate on his SCA and during his background investigation interview. When the investigator raised the issue of his positive urine test, and his past illegal drug use, Applicant admitted to the conduct and fully disclosed the information. He promised to be more thorough in future SCAs. Applicant testified during the hearing that he intends to be transparent and honest in future background investigations.

AG ¶ 17(e) applies because his disclosure of his illegal drug use and positive urinalysis reduced or eliminated any vulnerability to exploitation, manipulation or duress.

Considering all of the evidence, the security concerns under Personal Conduct are mitigated.

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 under the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E and the AG ¶ 2(d) factors in this whole-person analysis.

I considered Applicant's history of working with two DOD contractors. I considered the favorable comments from colleagues who worked with him at Employer A and at Employer B. I considered that he was praised for his reliability, trustworthiness, and duty performance at both places of employment. I considered the favorable reference from his sister.

Applicant only used marijuana twice, the first time in 2018 while in high school, and the second in February 2024, after spraining his ankle while playing basketball. The second usage resulted in his positive urinalysis test. I considered that he did not have a security clearance at the time he used marijuana. I considered that he has not used marijuana or other illegal drugs since his last use of marijuana in February 2024. He signed a statement of intent to abstain from illegal drug use and involvement in the future. While Applicant was not initially forthcoming about his past illegal drug usage and positive urinalysis, he fully disclosed the facts to the investigator when questioned about it during his background investigation. This was his first time applying for a security clearance. Applicant learned a difficult lesson and promises to be transparent and honest in future security clearance applications and investigations. He is aware that similar conduct in the future will likely result in the revocation of his security clearance. After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Guidelines E and H for Applicant.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented, it is 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 granted.

Erin C. Hogan
Administrative Judge