



**DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



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In the matter of: )  
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Applicant for Security Clearance )  
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ISCR Case No. 25-01143

**Appearances**

For Government:  
Rhett E. Petcher, Esq., Department Counsel

For Applicant:  
*Pro se*

06/04/2026

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Abuse). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a Questionnaire for National Security Positions on October 9, 2024 (Questionnaire). On December 9, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (Financial Considerations). The action was taken under Executive Order 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) effective within DoD after June 8, 2017.

On December 10, 2025, Applicant responded to the SOR in writing (Answer) and requested that this case be decided on the written record in lieu of a hearing. In his Answer, he admitted to the drug use allegations in the SOR. On February 5, 2026, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). A complete copy of the FORM, consisting of Government's Exhibits (GE) 1 to 4, and the Government's arguments in support of the SOR, was received by the Applicant on March 9, 2026. He was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns, but did not respond within the specified 30-day period. The case was assigned to me on May 26, 2026, and all exhibits were admitted without objection. Included in the Government's evidence was GE 4, which was a set of interrogatories regarding tax issues. As no tax issues were alleged in the SOR, I did not give GE 4 any weight in my analysis.

### **Findings of Fact**

Applicant is 48 years old and has worked for a DoD contractor since 2018 as a general foreman. He completed his first application for a security clearance in connection with this employment. Applicant was married from 2009 – 2017, then remarried in 2021. He has five children, including three stepchildren. He has completed some college coursework. (GE 2 at 5, 9-11, 20, 25-27, 38)

#### **SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)**

The Government alleged that Applicant is ineligible for a security clearance because he used marijuana over a three-year period, including after becoming aware of federal law prohibitions. Based upon the evidence presented in the administrative record, I find the following facts regarding the history and status of Applicant's drug use:

**1.a. Marijuana use from July 2022 – September 2025.** Applicant did not mention marijuana use in his Questionnaire but admitted to the allegation as drafted in both his December 10, 2025, Answer and his September 16, 2025, responses to interrogatories. In a December 2, 2024, discussion with a DoD investigator, Applicant elaborated that he smoked marijuana perhaps once per year but had consumed CBD gummies monthly with his wife for "about two to three years." He also clarified that his first use of marijuana *within the last seven years*, as asked in the Questionnaire, was approximately in July 2022. In his responses to interrogatories however, he acknowledged smoking marijuana approximately two times per year from 1994 through September 14, 2025.

When he smoked marijuana, it was typically with his grown sons "who use marijuana frequently." During the same interview, Applicant stated that he would not use the drug again "due to his current job." In conjunction with his responses to interrogatories, Applicant also provided a September 16, 2025, sworn statement of intent suggesting that his last marijuana use had been December 24, 2024, in the form of a gummy. He also indicated his intent to cease use of the drug in the future. (Answer; GE 2 at 35-36; GE 3 at 5, 13-14, 17)

**1.b. Marijuana use after awareness of federal prohibition.** In a December 2, 2024, discussion with a DoD investigator, Applicant explained that he had not listed marijuana use in his Questionnaire because he did not know marijuana was federally illegal when he filled it out. As discussed above, he then acknowledged understanding that even though marijuana was legal in his state, federal law still applied. Subsequent to that interview, Applicant admitted having used marijuana at least twice: December 24, 2024, and September 14, 2025. (Answer, GE 3 at 5, 14, 17)

## **Whole Person and Mitigating Evidence**

Applicant submitted no comments or explanations in his Answer as whole person evidence in mitigation of the security concerns alleged in the SOR. The comments and explanations Applicant included in both his Questionnaire and interrogatories, however, were reviewed in their entirety.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)**

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

The facts of this case establish the following potentially disqualifying conditions set forth in AG ¶ 25:

- (a) any substance misuse (see above definition); and
  
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such use.

Regarding SOR ¶ 1.b, Guideline H contains no knowledge requirement as to the illegality of the controlled substance in question. Moreover, it is well established that ignorance or mistake of the law is generally not an excuse for failing to abide by legal obligations. This remains true regarding a claim of ignorance as to the application of federal law to marijuana. [ISCR 19-00540 at 3 (App. Bd. Dec. 13, 2019)]. As such, marijuana use, with or without knowledge of the applicability of federal law, is proscribed by Guideline H; therefore, use *with knowledge* is not a viable, separate allegation.

Use of marijuana after learning about federal law applicability is of course a proper matter in *aggravation*. The Appeal Board has clearly stated as much, noting that use of the drug after being placed on notice is incompatible with security clearance eligibility standards and raises substantial questions about an applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. [ISCR 20-02974 at 6 (App. Bd. Feb. 1, 2022)]. This is further discussed in conjunction with SOR ¶ 1.a below. But SOR ¶ 1.b merely alleges conduct that falls under the already-alleged conduct in SOR ¶ 1.a. SOR ¶ 1.b, therefore, cannot stand alone and is found for Applicant

As to SOR ¶ 1.a, Applicant admits to use of marijuana over several years, including after completing the Questionnaire and after learning of the federal prohibition. He also continued use after telling the DoD investigator he would stop – and even after signing a statement of intent to abstain. Therefore AG ¶¶ 25(a) and (g) apply. The burden then shifts to Applicant to mitigate security concerns under Guideline H.

The guideline includes the following conditions in AG ¶ 26 that can mitigate security concerns arising from Applicant's drug use:

(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 the 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.

Applicant's use of marijuana over the last few years has largely been with his spouse and his sons – with whom he presumably has no intention of disassociating himself from. And while he signed a statement of intent, his interrogatory responses show he used the drug only two days prior to executing the document – and nine months after the professed “last use” in the statement of intent. With his last known use being just three months before issuance of the SOR, Applicant has failed to clearly and convincingly commit to discontinue marijuana use. Consequently, Applicant's drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. Accordingly, none of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome the issues surrounding Applicant's drug involvement.

### **Whole-Person Concept**

Applying the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given the appropriate weight to Applicant's statements included in his Questionnaire and his responses to interrogatories. Overall, however, the majority of the Guideline H issues in the record evidence leave me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b:

For Applicant

**Conclusion**

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

RICHARD A. CEFOLA  
Administrative Judge