



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



In the matter of:)
)
) ISCR Case No. 26-00010
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2026

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 February 3, 2026, 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 a response to the SOR dated March 2, 2026 (Answer) and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 11, 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 March 18, 2026, and provided a response that he dated April 8, 2026 (FORM Response). The case was assigned to me on May 8, 2026. The Government exhibits included in the FORM (Items 1-5) and the FORM Response are admitted in evidence without objection.

Findings of Fact

Applicant is a 31-year-old prospective employee of a government contractor that is sponsoring him for security clearance eligibility. He earned a high school diploma in 2012. He has never married and has no children. He has lived with a cohabitant since 2020. This is his first application for security clearance eligibility. (Items 3, 4)

In the SOR, the Government alleged the following: Applicant used marijuana with varying frequency from about November 2021 until at least December 2025 (SOR ¶ 1.a); he tested positive for marijuana on an employer issued urinalysis in July 2025 (SOR ¶ 1.b); and he intends to use marijuana in the future (SOR ¶ 1.c). In the Answer, he admitted the SOR allegations with no additional comment except adding the word, “medical” to his response to the allegation in SOR ¶ 1.c. His admissions are incorporated in my findings of fact.

Applicant completed a security clearance application in July 2025 (SCA). In it, he disclosed he has had a medical marijuana card issued by State C since November 2021. He purchased marijuana from a state dispensary and used it from November 2021 to July 2025 by ingesting edibles or vaping it daily before going to bed. He claimed that using it has greatly improved his quality of life and has not detracted from his work or ability to function in society. He wrote that he intended to use marijuana in the future. (Item 3)

During Applicant’s August 2025 security interview (SI), that he authenticated, he updated his marijuana use to earlier that same month. He claimed that he used it for nightmares and to sleep through the night. He acknowledged that he tested positive for marijuana on a urinalysis administered by his current sponsoring employer. He claimed that his positive marijuana test did not cause him a problem with this prospective employer because he showed them his medical marijuana card. He claimed that he does not use marijuana while he is working or if he is on call. He stopped using marijuana for about three months during an unidentified timeframe while he waited for a doctor’s appointment. He claimed it was tough to stop using it, but he was able and therefore knows that he can if he has to. He also acknowledged that he intended to continue to use marijuana but would stop if “required to” and would look at other treatment options. (Item 4)

In December 2025, Applicant responded to Government interrogatories. He updated the date he last used marijuana to earlier that same month and wrote that he used about five milligrams daily to help him sleep. He reiterated his intention to use marijuana in the future. He claimed he used it to alleviate post-traumatic stress disorder (PTSD) induced nightmares. He indicated that he understood that marijuana remains illegal under federal law and that its use could affect his security clearance eligibility. He acknowledged that he would be subject to random drug testing if he worked for his sponsoring employer. (Item 5)

In the FORM Response, Applicant wrote about his career path and his positive employment record. He noted his willingness to acknowledge wrongdoing through his

disclosure of past work-related and traffic infractions and presented their scarcity as evidence of his following rules and regulations. He claimed that he is responsible with money and recently saved up enough money to buy a house. He wrote that he began exploring marijuana after his psychiatrist recommended it while treating him for PTSD. One of the symptoms of his PTSD was having vivid nightmares. He claimed that using the small dose of marijuana right before bed has stopped those nightmares and helped him sleep. He wrote that he had no plans to stop using marijuana because of how much it helped him but also claimed he might have “to think about something else again” if his marijuana use prevents him from being awarded security clearance eligibility. (FORM Response)

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; 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 therefore possessed marijuana, an illegal drug pursuant to federal law, with varying frequency from about November 2021 until at least December

2025. He tested positive for marijuana after taking an employer issued urinalysis in July 2025. He repeatedly indicated he intends to use marijuana in the future. AG ¶¶ 25(a), 25(b), 25(c), and 25(g) are established.

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

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