



Applicant for Security Clearance

Decision

On February 19, 2026, Applicant answered the SOR and requested a hearing before an administrative judge. (HE 2) On March 16, 2026, Department Counsel was ready to proceed, and on March 19, 2026, the case was assigned to me.

On March 27, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on May 6, 2026. (HE 3) The hearing was convened as scheduled.

Department Counsel offered five exhibits; Applicant did not provide any exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 10, 14-15; GE 1-GE 5) Applicant did not request that the record remain open after the hearing. On May 21, 2026, DOHA received the transcript of the hearing.

Statement of Facts

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b. His admissions are accepted as findings of fact. He also provided extenuating and mitigating information. (HE 2) In his SOR response, he said:

Since receiving a security clearance, I have consumed THC on exactly one occasion. I consumed a single THC gummy at a holiday party in December 2024. While I consumed THC in a state where it is legal I understand it is still federally illegal and that is why I reported the incident. It was a mistake, and one I will not make in the future. (HE 2)

Applicant also said:

I have never lied or obfuscated about prior THC use. I self-reported the above incident and believe that my integrity in reporting such an incident demonstrates my intent to not consume any illicit drugs in the future. Additionally, I have not consumed any THC in over 15 months and have never consumed any other illicit drug in my life. (HE 2)

Applicant is a 29-year-old software engineer who has been employed by a Federal Government contractor since June of 2023. (Tr. 6-7, 16-17) In 2015, he graduated from high school. (Tr. 6) In 2019, he received a bachelor's degree with a major in engineering physics, and in 2024, he was awarded a master's degree in computer science. (Tr. 7) He has not served in the military. (Tr. 7) He has never married, and he does not have any children. (Tr. 7, 16-17) He currently holds a security clearance. (Tr. 8)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges, and Applicant admitted that from about January 2014 to about December 2024, he used marijuana with varying frequency. SOR ¶ 1.b alleges, and he admitted that he used marijuana with varying frequency from about March 2023 to at least December 2024, while holding a sensitive position, i.e., one in which he held a security clearance.

In 2022, Applicant worked for his current employer as an intern. He became a full-time employee in 2023. (Tr. 17) When he completed his November 17, 2022 SCA, he disclosed that he used marijuana numerous times since 2014, and he stated he would not use marijuana in the future. (Tr. 22-23; GE 1 at 35-36) He said, "The day I learned I may be eligible to receive a security clearance when interning this summer, I stopped using THC since I learned it could interfere with that." (GE 1 at 36) He also disclosed that he used ecstasy one time in college around November 2018. *Id.*

On March 7, 2023, Applicant received a security clearance. (Tr. 24; GE 3) In December of 2024, he used marijuana at a party. (Tr. 24) He believed his marijuana possession and use in December of 2024 was legal under state law. (Tr. 24) He denied that his girlfriend and other friends use marijuana. (Tr. 25)

In Applicant's April 3, 2025, SCA he said he used marijuana from about January of 2024 to January of 2025 "countless times 2014-2022 very infrequently, never habitually. Since 2022 maybe 1 or 2 times." (GE 2 at 34) He also said, "By and large I stopped using THC since I learned it could interfere with my clearance. The 1 or 2 times I have used it since having a clearance has been in legalized states." *Id.* at 34. He also disclosed that he used ecstasy once in about November 2018. *Id.* at 34-35.

On April 28, 2025, an Office of Personnel Management (OPM) investigator interviewed Applicant. (GE 5) His OPM summary of interview states:

Subject used marijuana once or twice since his previous investigation. He last used marijuana during the Christmas season of 2024. He ate a THC-laced gummy during his girlfriend's family's Christmas Party. The gummy was provided to Subject by his girlfriend's brother [name omitted]. When asked why he consumed the gummy, Subject stated that it was because of the Christmas festivities. Subject was aware that THC-laced gummies were illegal federally, especially for someone with a national security clearance. His employer does have a no drugs policy. He consumed the gummy anyway. Subject provided that he believed the subject was a grey area legally since it was legal to consume marijuana in [his state of residence]. Subject has no future intentions to use marijuana again; however, he did not provide any assurances on how the United States government could trust him after he used marijuana while cleared. (GE 5 at 4-5)

At his hearing, Applicant said he used marijuana with friends at parties about every couple of months from about 2014 to 2016 while he was in high school and from about 2016 to 2019 while he was in college. (Tr. 19-21) He smoked marijuana and ate gummies or brownies, which were infused with THC. (Tr. 21) He spent about \$50 to purchase marijuana at a marijuana dispensary in a state where the purchase of marijuana was legal under state law. (Tr. 22)

Character Evidence

On February 16, 2026, Applicant's supervisor said:

[Applicant] has maintained an active Secret security clearance since it was granted in 2023. Throughout this period, he has consistently demonstrated professionalism, sound judgment, and strict adherence to all security protocols. He has had no security violations of any kind. His reliability, integrity, and commitment to excellence have made him a trusted and highly valued member of our team.

Over the past three years, [Applicant] has received multiple leadership and peer recognitions for his contributions to a wide range of projects. These acknowledgments which are submitted by coworkers, project leads, supervisors, and customers highlight his technical expertise, teamwork, and consistent delivery of high-quality results. One project lead wrote, "Without [Applicant's] expertise and dedication, the project would not have achieved the same level of success. His efforts have been widely recognized and praised by both the project team and the customer."

Throughout his time [working for his supervisor, Applicant] has demonstrated [an] exemplary work ethic. He consistently arrives prepared, focused, and ready to give his best, regardless of the challenge. His professionalism, dependability, and dedication reflect great credit upon himself and the organization. [He] is a high value member of my team [employer omitted] using his exceptional technical, communication, and decision[-]making skills. (HE 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only 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 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. Thus, this decision should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

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 guidelines 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

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 lists conditions that could raise a security concern and may be disqualifying in this case including:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

AG ¶¶ 25(a) and 25(c) are established. Discussion of the disqualifying conditions is in the mitigating section *infra*. AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse security concerns:

- (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;
- (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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

SOR ¶ 1.a alleges, and Applicant admitted that from about January 2014 to about December 2024, he used marijuana with varying frequency. SOR ¶ 1.b alleges, and he admitted that he used marijuana with varying frequency from about March 2023 to at least December 2024, while holding a sensitive position, i.e., one in which he held a security clearance.

Marijuana is currently listed on Schedule I of the Controlled Substances Act. *See* 21 U.S.C. § 812(c); Drug Enforcement Administration (DEA) listing at <https://www.dea.gov/drug-information/drug-scheduling> (information link on bottom of web page). Applicant's multiple possessions of marijuana are federal crimes. Drugs listed as Schedule I Controlled Substances have "no 'currently accepted medical use in treatment.' 21 U.S.C. § 812(a)(1)(B)." ISCR Case No. 24-01307 at 3 (App. Bd. July 17, 2025). *See* DEA website, *supra*; Executive Order, *Increasing Medical Marijuana and Cannabidiol Research* (December 18, 2025). The scheduling of marijuana is under DEA review, and it may be downgraded from Schedule I to Schedule III, which would permit marijuana possession and use based on prescriptions. *Id.*

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possessions and use:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence's Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant's state-compliant marijuana use and use of other illegal drugs, holding that such differences are an important

aspect of the case that a reasonable person would expect to be addressed. See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. The Appeal Board said:

[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 few 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.

ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022) (citing SecEA Guidance at 2).

The DOHA Appeal Board has cited the importance of consideration of "the changing landscape of marijuana law and . . . of the Director of National Intelligence's *Clarifying Guidance Concerning Marijuana*." ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See *also* ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the "evolving landscape of marijuana law and policy," "the resulting increasing prevalence of marijuana use," and in some instances "recreational marijuana use deserves less, or even no negative inference on judgment.").

The Appeal Board has "never established a 'bright line' rule as to recency of drug use. The extent to which security concerns may have become attenuated through the

passage of time is a question that must be resolved based on the evidence as a whole.” See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See *also* ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Applicant used marijuana every couple of months for several years while he attended high school and college, and his most recent marijuana use was around December of 2024. “The [DOHA Appeal] Board has ‘long held that applicants who use marijuana [or other illegal drugs] after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.’” ISCR Case No. 24-01001 (App. Bd. Apr. 22, 2025) (quoting ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021)). See *also* ISCR Case No. 24-00468 at 6 n.7 (App. Bd. Apr. 16, 2025).

When he completed his November 17, 2022 SCA, Applicant disclosed that he used marijuana numerous times since 2014, and he would not use marijuana in the future. He said, “The day I learned I may be eligible to receive a security clearance when interning this summer, I stopped using THC since I learned it could interfere with that.” (GE 1 at 36) Applicant used marijuana after completion of this SCA and acknowledging that he knew marijuana use was inconsistent with holding a security clearance.

In ISCR Case No. 24-01001 at 3 (App. Bd. Apr. 22, 2025), the Appeal Board affirmed the revocation of a security clearance for an applicant who abstained from marijuana use for about one year before his hearing. While this case in some ways is factually different from Applicant’s case, the issue of notice about marijuana use being prohibited for security clearance holders was discussed as follows:

It is not necessarily Applicant’s history of marijuana use, *per se*, that raises questions about his judgment and reliability, but rather his continued use while aware that using marijuana is inconsistent with holding national security eligibility. . . . The evidence in this case establishes that Applicant was on notice when he completed his SCA submission but continued to use marijuana for four subsequent months, despite multiple intervening assertions that he had no intention of using in the future and in recognition that such use is illegal under federal law. Applicant’s post-SCA conduct demonstrated a disregard of national security eligibility standards that negatively reflects on his judgment and reliability and renders this decision sustainable.

Applicant provided some important mitigating information. He initially disclosed his marijuana use on his SCAs in 2022 and 2025. His possessions, purchases, and uses of marijuana were not discovered through a polygraph test, law enforcement investigation, or a urinalysis test. His marijuana involvement did not include selling marijuana.

Applicant established some mitigation under AG ¶¶ 26(a) and 26(b) because he acknowledged his marijuana involvement, and he provided evidence of actions taken to

overcome this problem by his abstinence since December of 2024. His relatively brief period of abstinence, included, but is not limited to: disassociation from his drug-using associates and contacts. These positive signs augur well for future access to classified information.

Applicant disclosed a single use of ecstasy on his SCAs in 2018, and then he denied use of any illegal drug, except marijuana, on his SOR response. In light of Applicant's credible disclosures of his marijuana involvement, this misstatement in his SCA response is accepted as a mistake and it does not establish a deliberate falsification.

Mitigation is not fully established because Applicant has not established a sufficient period of abstinence from marijuana possession and use while holding a security clearance. His decisions to possess and use marijuana may indicate he lacks the qualities expected of those with access to national secrets and continue to cast doubt on his current reliability, trustworthiness, and judgment.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guideline H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 29-year-old software engineer who has been employed by a Federal Government contractor since June of 2023. In 2019, he received a bachelor's degree with a major in engineering physics, and in 2024, he was awarded a master's degree in computer science. There is no evidence of security violations.

The disqualifying and mitigating information is discussed in the analysis section, *supra*. The reasons for denying Applicant's security clearance are more persuasive than the reasons for granting his security clearance at this time.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

Applicant provided a candid and credible description of his involvement with marijuana. His supervisor provided a powerful endorsement of his work and potential to contribute to the national defense.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence, to the facts and circumstances in the context of the whole person. Drug involvement and substance misuse security concerns are not mitigated at this time.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued abstention from involvement with illegal drugs, he will establish that he is an excellent candidate for a security clearance.

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 and 1.b:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge