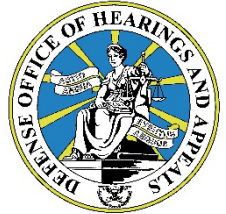




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
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Applicant for Security Clearance)
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ISCR Case No. 24-01036

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro se*

07/30/2026

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and J (Criminal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 28, 2025. On December 10, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and J. Applicant answered the SOR on December 18, 2025, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 22, 2026. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 26, 2026, and responded. The case was assigned to me on July 20, 2026.

The Government's FORM consists of the SOR (Government Exhibit (GE) 1), Applicant's answer to the SOR (Answer) which includes Applicant's narrative response, two character letters, a hair follicle drug test result, and his election form (GE 2), and the documents in support of the allegations in the SOR (GE 3-5). GE 3 through 5 are admitted into evidence, without objection.

Applicant responded to the FORM in a written narrative and attached two additional character letters, and a more recent hair follicle drug test result. I marked his exhibits as follows: Applicant's Exhibit (AE) A, two character reference letters submitted with his Answer; AE B, two character reference letters submitted with his FORM response; AE C: December 2025 hair follicle drug test result; and AE D: June 2026 hair follicle drug test result. AE A through D are admitted into evidence, without objection.

Findings of Fact

The SOR alleges under Guideline H, and cross alleges under Guideline J, that Applicant used marijuana with varying frequency from June 2016 to November 2023 (SOR ¶ 1.a), that his marijuana use between August 22, 2023 and November 2023 was after he submitted a SCA (SOR ¶ 1.c), and that he used cocaine with varying frequency from June 2016 to May 2020 (SOR ¶ 1.b). Applicant disclosed his drug use in both his 2023 and 2025 SCA. (GE 3-4) In his Answer, he admitted all the allegations, and corrected the SOR dates of his cocaine use to August 2018 to July 2022, which was the same timeframe he had disclosed in his 2023 and 2025 SCA. (GE 2)

Applicant is 28 years old, has never married, and has no children. He received his bachelor's degree in May 2020 and was employed in his first career position after college from June 2020 to September 2021. In September 2021, he switched jobs and began his employment with his current sponsor. He initially completed an SCA in August 2023, but that adjudication was never finalized due to a loss of jurisdiction in December 2024. He was sponsored again and submitted an SCA on July 28, 2025. (GE 4)

In his 2023 SCA, Applicant disclosed he used marijuana between June 2016 and July 2023 "to combat pain from sports and general anxiety." (GE 3 at 26) He also used marijuana socially and smoked frequently through college, but had decreased his use since graduation to help focus on his career and increase his work ethic. (GE 3 at 26) He stated that as of July 2023, he no longer used marijuana. However, he answered, "Yes," to the question, "Do you intend to use this drug... in the future?" He explained, "I am focused on my health and career. I have found using marijuana kills productivity... however, I am not completely ruling out the possibility of using again socially in the future in a safe environment." (GE 3 at 27) During his subject interview with an investigator in November 2023, he volunteered that he had used marijuana that month, and that he uses marijuana about once a week to help him relax. (GE 5 at 5-6)

Applicant disclosed in his 2023 SCA that he used cocaine no more than 10 times between August 2018 and July 2022. He marked, "No," to the question, "Do you intend to use this drug... in the future?" He explained, "It is too dangerous and usually leads to hanging around the wrong crowd." (GE 3 at 27) He elaborated during his 2023 SI that the

drug was given to him by his friends, and that he used it about eight to ten times in social settings while in college. He confirmed that he has not used it since and has no intent on future use. (GE 5 at 6)

During his November 2023 SI, Applicant disclosed that he still socialized with individuals who used drugs illegally, and that he intended to continue smoking marijuana socially with his friends, since it was now legal in his state. He did not smoke as much as he used to and stated he would probably quit in about a year. (GE 5 at 6)

In response to Government interrogatories in October 2024, Applicant stated that his intent was to not use any drugs or controlled substances in the future. He had stopped using marijuana after he submitted his 2023 SCA in August, but used again in November 2023, right after his state legalized recreational marijuana use. (GE 4 at 33-34) During his November 2023 interview, however, he was reminded by the investigator that marijuana use remains federally illegal, and this prompted him to once again stop using. (GE 5 at 12) He explained, "During the Holiday season of 2023, I committed my life to health and wellness. I joined a gym, increased my recreational activity... I do not plan to use illicit substances as they hinder my goals." (GE 5 at 12) He has also stopped associating with individuals who use illegal substances, and avoids environments where drugs are used. (GE 5 at 12-13)

In his 2025 SCA, Applicant again disclosed his 2018-2022 cocaine use, confirmed that he has not used since, and remains committed to never using cocaine again. Regarding his marijuana use, he disclosed he used marijuana between June 2016 and November 2023 for the same reasons he had described in his 2023 SCA. (GE 4 at 33) He stopped using marijuana after his November 2023 interview. He answered, "No," to the question, "Do you intend to use this drug... in the future?" in his 2025 SCA. He explained:

I do not intend to use any controlled substances again. I am focused on my career and my main hobby as a marathon runner... I understand the importance of maintaining a lifestyle that reflects responsibility, sound judgment, and personal integrity, especially as it relates to holding a security clearance. Any past use is behind me, and I have taken deliberate steps to ensure that my actions align with the trust placed in individuals working in sensitive roles. My current lifestyle, personal goals, and professional responsibilities all reinforce my commitment to remaining drug-free moving forward. (GE 4 at 33-34)

Four individuals provided character letters attesting to Applicant's positive character traits, to include two supervisors, and a First Lieutenant in the US Armed Services. All individuals praised him for his integrity, good judgment, and reliability. (AE A and B) He also submitted the results from two different hair follicle drug tests, December 2025 (5 Panel Hair) and June 2026 (11-panel Hair Strand Drug Test), both of which returned negative results. (AE C and D)

Policies

This case is adjudicated 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) implemented by the DOD on June 8, 2017.

“[N]o 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of War 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

Applicant used marijuana with varying frequency from June 2016 to November 2023, and cocaine on about 10 occasions between August 2018 to July 2022. His admissions and the record evidence establish the following disqualifying conditions under this guideline for SOR ¶¶ 1.a and 1.c:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

SOR ¶ 1.c distinguishes Applicant's marijuana use between August 22, 2023 and November 2023, which falls within the timeframe of the use alleged in SOR ¶ 1.a, as use after he submitted an SCA. Such a distinction without additional evidence to support disqualification,¹ is simply duplicative. As such, I find SOR ¶ 1.c duplicative.

¹ AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable:

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.

The Security Executive Agent (SecEA) promulgated clarifying guidance on December 21, 2021, concerning marijuana-related issues in security clearance adjudications as follows:

[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.

Additionally, the DOHA Appeal Board 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.")

Applicant is credited with disclosure of his marijuana and cocaine use on both his 2023 and 2025 SCA. He also volunteered his use after his 2023 SCA during his subject interview in November 2023. His use was not discovered through a polygraph test, investigative efforts, or a urinalysis test.

Applicant last used marijuana in November 2023. His decision to resume his marijuana use after completing his SCA was under the premise of state legality. In his 2023 SCA, although he had stated he had stopped using marijuana, he did mark "Yes" to the question asking about his intent for future use. He explained, "I am not completely ruling out the possibility of using again socially in the future." (GE 3 at 27) This distinction is important, because his use after his 2023 SCA was not after attesting that he would never again use marijuana. He confirmed this response during his November 2023 interview and volunteered his marijuana use after his 2023 SCA. However, once he was reminded by the investigator that marijuana use remains illegal under federal law despite any changes in state laws, he stopped using marijuana. There is no evidence to establish that he has used marijuana while holding a sensitive position or while granted access to classified information. In his 2025 SCA, he answered, "No," to the question, "Do you intend to use this drug... in the future?" He explained that he has no intent "to use any controlled substances again," and his current lifestyle choices reinforce his "commitment to remaining drug-free moving forward." (GE 4 at 33-34)

Applicant last used cocaine in July 2022. He attested in his SCA that he has used cocaine no more than 10 times total and has no intention on using it in the future as it is "too dangerous and usually leads to hanging around the wrong crowd." (GE 3 at 27)

Mitigation is established under AG ¶ 26. Although Applicant did not sign a statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse of drugs is grounds for automatic revocation of national security eligibility, he did impress that he understands that illicit drug use, which includes marijuana, remains federally illegal and he has no intent to use any controlled substances again. He attested that he avoids associations with known drug users and environments where illegal drugs are used. His last cocaine use was in July 2022. His last marijuana use was in November 2023. These facts, along with his two negative hair follicle tests from December 2025 and June 2026, establish a credible and sufficient pattern of abstinence of drug use. (AE C; AE D) He has satisfied the requirements of AG ¶ 26(b). His demonstrated abstinence and attested to change in environment and associates establish that drug use is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment AG ¶ 26(a). See *generally*, ISCR Case No. 24-00914 at 6 (App. Bd. Apr. 9, 2025).

Guideline J (Criminal Conduct)

The security concern for criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

The following disqualifying condition is potentially applicable under this guideline:

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant’s admissions and the record evidence establish disqualification under AG ¶ 31(b) for SOR ¶ 2.a.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Mitigation is established under AG ¶ 32. In addition to the passage of time without recurrence of criminal activity, Applicant was forthcoming about his behavior and acknowledged his poor judgment. He presented evidence of successful rehabilitation in the form of a demonstrated track record of good employment, positive references from his supervisors, and a change in behavior and lifestyle to ensure criminal behavior does not repeat. These changes coupled with the passage of time make it unlikely that criminal behavior will recur, as such it no longer casts doubt on the Applicant’s reliability, trustworthiness, or good judgment.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines H and J and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and J (Criminal Conduct).

Formal Findings

I make the following 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:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Wilford H. Ross
Administrative Judge