



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 25-01296

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2026

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant did not mitigate security concerns related to drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 1, 2024. On January 5, 2026, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement and substance misuse). Applicant answered the SOR (Answer) on February 10, 2026, and elected to have his case decided on the written record in lieu of a hearing. The case was assigned to me on June 20, 2026.

The Government's written case was submitted on April 30, 2026. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given an opportunity to file objections and to submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 12, 2026, and he did not submit a response.

Evidence

Government Exhibit (GE) 1 and GE 2 are the SOR and Applicant's Answer to the SOR, which are the pleadings in this case. GE 3 and GE 4 are admitted in evidence without objection. Applicant did not submit any evidence to support his case in mitigation.

Findings of Fact

Under Guideline H, the SOR alleges Applicant used marijuana from 2019 to about May 2025 (SOR ¶ 1.a), and that he used marijuana from November 2024 until about May 2025, after completing a SCA (SOR ¶ 1.b). Applicant denied both allegations.

In denying the allegation in SOR ¶ 1.a, Applicant said he last used marijuana "before May 2025," and stated he believed the date was provided because of the timing of his clearance investigation. In response to SOR ¶ 1.b, he said he had already stopped using marijuana before he completed the SCA in November 2024, and that he "wasn't cognizant of the last instance" of his use. (SOR Answer)

Applicant, age 28, has worked as a full-time employee of a defense contractor since April 2024. He earned his high school diploma in May 2016, attended college from 2016 to 2020, but after taking a one-year sabbatical, September 2018 to May 2019, he did not complete a degree program. He has never been married, does not have children, and has resided with his cohabitant girlfriend since 2019. (GE 3, 4)

Applicant completed a SCA in November 2024, and in Section 23 (illegal use of drugs, drug activity) of the SCA, he did not disclose that he used marijuana. In Section 25 (investigations and clearance record) of the SCA, he said he was granted public trust eligibility in 2023, a statement he confirmed in his November 2025 response to DOHA interrogatories. (GE 3 at 44, GE 4 at 7)

Applicant disclosed he used marijuana in April 2025 during his background interview with a DOD investigator, an interview which he later adopted as true and accurate. He said he began using marijuana around August 2019 and estimated that he used marijuana about once every few months, at parties and other social gatherings, to partake in the social fun he experienced. (GE 3, 4)

Applicant said he did not disclose his marijuana use in the SCA because he was not thinking about the federal illegality of marijuana use at the time. He also informed the investigator that he was still using marijuana at that time. He said he received the marijuana that he used from friends with whom he socialized, and said he was likely to use marijuana again. Though he responded affirmatively to the question of whether his involvement with illegal drugs occurred while employed in a position affecting public safety or holding a security clearance, he explained that he was unaware that marijuana use was not allowed while employed in a position affecting public safety or holding a security clearance. (GE 4) He stated:

I have never held a security clearance other than Public Trust [eligibility]. Also, I was unaware that you weren't allowed to consume marijuana while holding a security clearance. (GE 4 at 4-6)

An investigator reinterviewed Applicant in May 2025, and during the interview, Applicant admitted he had not stopped using marijuana at that time but stated he would stop using marijuana for security clearance purposes. (*Id.*)

In response to DOHA interrogatories, Applicant listed "January 1, 2025" as the last time he used marijuana, and said he had "no intent of future [marijuana] use." (GE 4 at 9) He also commented as follows to questions regarding his association with persons who use marijuana and visiting places where marijuana is used:

I occasionally visit friend's homes or social gatherings where other people may use marijuana. However, most if not all, are residents in a state where [marijuana] is legal for recreational or medicinal use. (GE 4 at 10)

Applicant said he would take the following action if he found himself in a situation where illegal substances were being used:

I am more than comfortable refusing offers of illegal substances. I have physically separated myself from environments or situations where illegal substances were being used on numerous occasions. (*Id.*)

Applicant denied having an intent to be involved with illegal drug and substance misuse in the future. He stated:

I have no future intent of [illegal] drug usage or substance misuse. Ever since I was made aware, I have avoided any and all illegal drug involvement. (*Id.*)

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 described 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable are:

(a) any substance misuse (see above definition); and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant said he used marijuana during his background interview and his use of marijuana during the time alleged is supported by other evidence in the record. AG ¶ 25(a) applies to the allegation in SOR ¶ 1.a. The allegation in SOR ¶ 1.b, however, does not allege a security concern under AG ¶ 25(f). Rather, it duplicates the concern in AG ¶ 25(a), which is already alleged in SOR ¶ 1.a. I find that SOR ¶ 1.b is insufficient to establish an independent security concern, but the alleged information will be considered in assessing mitigation and in my whole person analysis.

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.

The DOHA Appeal Board has identified several important factors to consider while assessing mitigation in marijuana use and possession cases, which includes: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; and broken promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 at 5 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying

sensitive position; marijuana possession and use permissible under state law; no marijuana use after notice that marijuana use was federally illegal; visible commitment to abandoning all future drug involvement).

Neither of the above mitigating conditions apply to the facts of this case, despite the Appeal Board's recent decision noting "the evolving landscape of marijuana law and policy in the United States," and particularly as it relates to the recreational use of marijuana when permitted under state laws. See ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025). None of the listed factors highlighted in recent Appeal Board decisions concerning the recreational use of marijuana would help to mitigate Applicant's marijuana use in this case.

In his initial background interview in April 2025, Applicant admitted he had not stopped using marijuana. A month later, during his reinterview in May 2025, he again admitted he had not stopped using marijuana but stated he would stop for the purpose of obtaining a security clearance. His subsequent claims that he last used marijuana in January 2025 (response to DOHA interrogatories) and that he stopped using marijuana before completing his SCA in November 2024 (Answer) are inconsistent with his two prior statements to a background investigator and with one another, uncorroborated by other evidence, and not credible. I find that Applicant used marijuana until at least May 2025 or about 14 months ago, and long after completing his SCA. He admitted he has not fully disassociated himself from his drug-using friends, and there is insufficient evidence to show he changed or avoided the environment where drugs were used.

Applicant's use of marijuana after submitting an SCA and after being interviewed twice by a DOD investigator reflects poor judgment and raises questions about his reliability, trustworthiness, and his overall willingness to comply with laws, rules, and regulations. His evidence is insufficient to mitigate drug involvement and substance misuse security concerns.

Whole-Person Analysis

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 Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant requested a determination based 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 Guideline H and evaluating all evidence in the whole-person context, I conclude Applicant did not mitigate the drug involvement and substance misuse security concerns in this case.

This decision should not be construed as a determination that Applicant cannot or will not attain the level of reform necessary to establish his eligibility for a security clearance in the future. With more time he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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.

Gatha LaFaye
Administrative Judge