



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



In the matter of:)
)
) ISCR Case No. 24-01248
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2026

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant mitigated the security concerns raised under Guideline H (drug involvement and substance misuse) but failed to mitigate security concerns under Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 1, 2023. On January 30, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H. Applicant answered the SOR (Answer) on April 24, 2025, and requested a hearing before an administrative judge. He retained counsel for the limited purpose of preparing the SOR Answer.

On July 15, 2025, the Government amended the SOR and alleged new security concerns under Guideline E. Applicant answered the Amended SOR on August 18, 2025. The case was assigned to me on January 16, 2026.

On February 3, 2026, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for March 3, 2026. On March 2, 2026, I granted Applicant's request for a one-week delay without objection. The new hearing was scheduled to take place on March 12, 2026, at the DOHA hearing office in Arlington, Virginia. The hearing was held as scheduled.

The Government offered four exhibits at the hearing, Government Exhibit (GE) 1 through GE 4. GE 1 through GE 3 were admitted in evidence without objection. Applicant expressed concerns about GE 4, his response to DOHA interrogatories, which I accepted as an objection to the document. I overruled the objection and admitted GE 4 in evidence.

Applicant testified and offered nine exhibits, Applicant Exhibit (AE) A through AE I, which were admitted in evidence without objection. Applicant also offered a document from his state's cannabis administration, which I marked as Hearing Exhibit (HE) I. Applicant called one witness. I left the record open until March 25, 2026, to allow Applicant time to submit additional evidence. No additional evidence was received and the record closed on March 26, 2026. DOHA received the hearing transcript (Tr.) on March 27, 2026.

Findings of Fact

In his Answers, Applicant admitted the allegations in SOR, ¶¶ 1.a and 1.b, and denied the allegations in SOR ¶¶ 2.a and 2.b. His admissions are incorporated in my findings of fact. After thorough review of the pleadings, evidence, and testimony at the hearing, I make the following additional findings of fact.

Applicant is 29 years old. He earned his high school diploma in 2015, enrolled in college in August 2015 and earned a bachelor's degree in May 2019. He married in October 2025 and does not have children. (GE 1, 3; Tr. 21)

Applicant said it took time after graduation to find a position. In January 2020, he accepted an engineering technician position with a private company that was acquired by another company six months later. He excelled in the position, was promoted four times in 30 months, and then plateaued. He left the company in July 2022 and also accepted an engineering position with defense contractor no. 1 in July 2022. (Tr. 28-29)

Applicant worked with defense contractor no.1 for about 11 months, from about July 2022 to about June 2023. He said there was a "very drastic change" in the size of the team, which was cut by 50%, and which required him to take on a lot more responsibility. He also learned he was hired at a pay level lower than he should have been. After months of discussions with his supervisor about a promotion, which did not happen, he said he "felt slightly cheated," and he left the job in June 2023. He accepted a similar position in June 2023, working for defense contractor no. 2.

Applicant denied having problems working for defense contractor no. 2. He said he enjoyed the work, which was more hands-on than his previous position. He said there were federal contract complications, and engineers were being laid off. He was a relatively new employee, and he lacked seniority. He was laid off in July 2024. (Tr. 30-32)

Applicant said he worked with a recruiter to find a new engineering position, and in August 2024, he was hired into his current position. He currently works as a computer-based test engineer for defense contractor no. 3.

Applicant completed his first SCA in October 2022 and in Section 23 (illegal use of drugs or drug activity), he disclosed that he “Experimented with [marijuana] while attending college” from January 2016 to June 2022, and he described the nature and frequency of his marijuana use as follows:

Use of [marijuana] was recreational. Frequency was very rare. Number of times used is less than 20. Most recent use was while on New York Tribal land where recreational use has been legalized by New York. (GE 1 at 31)

When asked whether he intended to use marijuana or a controlled substance in the future, he responded “no” and stated, “I do not intend to use [marijuana] in the future as it impairs judgment in a way that is not well controlled.” (GE 1 at 31)

Applicant also responded “no” to the question of whether, in the last seven (7) years he had been involved in the “illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance.” (GE 1 at 32) He was granted eligibility for access to classified information in about January 2023 and signed a classified information nondisclosure agreement (NDA) in February 2023. (GE 1 - 3; Tr. 9-10)

In November 2023, Applicant completed a second SCA for a top-secret security clearance and reported the same marijuana use previously disclosed in his October 2022 SCA, discussed above. (GE 1, 3; Tr. 45-48)

Under Guideline H, the SOR alleges Applicant used marijuana from January 2016 to about July 2023, including in July 2023 while holding a sensitive position, *i.e.* one in which he held security clearance (SOR ¶ 1.a). It also alleges Applicant purchased marijuana at least twice, between June 2022 and July 2023, including once while holding a sensitive position, *i.e.* one in which he held a security clearance (SOR ¶ 1.b).

Under Guideline E, the amended SOR alleges Applicant falsified material facts in Section 23 (illegal use of drugs or drug activity – illegal use of drugs or controlled substances) of the November 2023 SCA, in that he deliberately failed to disclose his July 2023 marijuana use (SOR ¶ 2.a); and he deliberately failed to disclose his July 2023 marijuana use, which occurred after he was granted national security eligibility (SOR ¶ 2.b).

Applicant denied the allegation in SOR ¶ 2.a, stating he believed his use of marijuana in July 2023 “was not illegal use” and that he “was not aware of the discrepancy between federal and state law.” He also denied the allegation in SOR ¶ 2.b, reiterating his response in SOR ¶ 2.a and asserting that he “was not aware of the additional abstinence and reporting requirements for clearance holders regarding the recreational use of [marijuana].” He also expressed a belief that he held an “idle” clearance and he “did not have access to controlled information.” (Answer to Amended SOR)

As part of his evidence, Applicant submitted portions of the report of investigation, which includes several interviews conducted by the DOD investigator as part of the background investigation. (AE H, I) In interviews conducted in 2022 and 2024, Applicant provided more details about his marijuana use, which is further discussed below. (AE H - I; Tr. 51-52)

Applicant first used marijuana in 2016 as a freshman in college. He typically smoked marijuana with friends at parties or social gatherings and said he used marijuana a few times a year. He said that using marijuana made him relaxed and silly, and altogether he estimated he used marijuana 20 times between 2016 and 2017. He used marijuana a few times in 2018 but said he abstained from using marijuana in 2019 and that he did not use marijuana again until June 2022. (Tr. 24-25)

Applicant disclosed that, in June 2022, he and a friend purchased and used marijuana on Tribal Lands located in another state. He said the purchase and use of marijuana was legal under Tribal laws. He and his friend purchased and consumed a marijuana smoothie. He stated this was not the reason for the visit to the store. Rather, he noticed the marijuana smoothie, was curious, and he decided to try it. (Tr. 54-57)

In his December 2022 background interview, Applicant said he last used marijuana in June 2022, and he denied an intent to use marijuana in the future, stating marijuana negatively impacted his ability to concentrate. In the same interview, he acknowledged his understanding that marijuana use was still federally illegal, and he expressed his desire to obtain a security clearance. (AE I at 6; Tr. 24-25, 52-56) Regarding this interview, the following exchange took place at the hearing:

MR. TEMPLE: Could you read the bracketed text for me?

[APPLICANT]: Subject does not have any future intent to smoke marijuana again due to not being able to engage in concentration while impaired because it is still federally illegal to do so and because he would like to obtain a security clearance.

MR. TEMPLE: Is that a fair and accurate summary of your statements to the background investigator?

[APPLICANT]: From what I can remember, yes. (AE H at 6; Tr. 52-53)

In a March 2024 interview, conducted after his November 2023 SCA, Applicant informed the investigator in the first interview that he last used marijuana in June 2022. After the first interview, the investigator continued to collect documents and interview other witnesses, including Applicant's cohabitant girlfriend at the time, who disclosed that Applicant used marijuana in July 2023. (AE H at 6-11; Tr. 63-66)

The investigator contacted Applicant for reinterview, although the exact sequence of interviews conducted is unclear. Applicant mentioned during the hearing that the

investigator combined and summarized information he provided from interviews taken on different dates. (AE H; Tr. 63-66, 85-86)

Applicant said that during his reinterviews, which occurred in March and April 2024, the investigator would repeat the same questions previously asked about his drug use. He recalled that some of the questions about marijuana use were asked differently and claimed that this led him to disclose his July 2023 involvement with marijuana, based on the way the investigator asked questions. (AE H; Tr. 24, 53-63)

In explaining his July 2023 marijuana involvement, Applicant said he mistakenly believed that his marijuana use was not illegal because his resident state passed a law in July 2023 that legalized the recreational use of marijuana. He claimed that “[he] was not aware of the discrepancy between federal and state law.” (See Amended SOR ¶ 2.a Answer) He said the investigator initially asked about “illegal drug use” but in a later interview, she rephrased the question and asked about “any” drug use, which is when he disclosed his July 2023 marijuana use. (*Id.*)

Applicant said he did not list his July 2023 marijuana use in the November 2023 SCA, Section 23 (illegal use of drugs or drug activity - while possessing a security clearance) because he believed his marijuana use was not illegal, as discussed above. He confirmed in his testimony that he intentionally answered “no” to the question based on his belief. (Tr. 53-64)

Regarding the July 2023 incident, Applicant said he and his cohabitant girlfriend at the time purchased marijuana “candy or gummy” at a nearby dispensary, and he consumed the marijuana product at his home. (AE H at 6; Tr. 26-27) He stated:

I mistakenly believed that it was perfectly fine for myself to go partake, sort of join in, in the celebration, I suppose. After which I had been alerted, and I tried my best to move away from that and mitigate as much as possible.
(Tr. 27)

Applicant submitted evidence to support his case in mitigation (AE A – AE I). He provided a signed statement of intent, declaring that he would never misuse controlled substances in the future, acknowledging that any misuse of controlled substances is grounds for revocation of national security eligibility. (AE A) He provided proof that he participated in certified drug urinalysis testing between October 2024 and May 2025, and all tests showed negative results for illegal drugs. (AE B) He completed security training for cleared employees; provided copies of recent performance evaluations showing he performed his duties satisfactorily; and he completed a drug education course focused on marijuana in 2024. (AE C – AE E)

Applicant’s witness, who also provided a letter of support, is a former co-worker who has known Applicant for five years. He testified favorably regarding Applicant’s honesty, integrity, reliability, and trustworthiness. (AE F; Tr. 68-76) Another co-worker, a U.S. Army veteran, provided a letter of support attesting to Applicant’s integrity, discipline,

reliability, and strong sense of responsibility. Both witnesses favorably endorsed his application for a security clearance. (AE F)

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 following conditions are potentially applicable:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted he used marijuana from 2016 to July 2023, and his marijuana use in July 2023 occurred while working in or holding a sensitive position. He was working for a defense contractor at the time and had held a security clearance since January 2023. He also purchased marijuana in June 2022 and July 2023. AG ¶¶ 25(a), 25(c), and 25 (f) apply.

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.

AG ¶¶ 26(a) and 26(b) are established. Applicant disclosed his history of marijuana use starting in 2016 during his freshman year in college. He has not used marijuana since July 2023, three years ago, and through his actions, testimony, and the testimony of his witness, he has demonstrated a strong commitment to abstaining from using marijuana and other controlled substances in the future. He participated in certified drug urinalysis testing between 2024 and 2025 and all tests showed negative results for illegal drugs. He also participated in a training course and learned more about marijuana. His marijuana use occurred three years ago and is unlikely to recur.

Applicant, after having refrained from using marijuana for three years, has also established a pattern of abstinence. He completed a statement of intent acknowledging that any future drug involvement or substance misuse is grounds for revocation of national security eligibility. He married recently, and he is more serious about his career and has demonstrated a commitment to staying away from environments where drugs are used.

Applicant's evidence is sufficient to overcome concerns and doubts about his trustworthiness, reliability, and judgment as it relates to drug involvement and substance misuse.

Guideline E, Personal Conduct

The security concern under this guideline is described in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,

award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant did not disclose his July 2023 marijuana involvement in his November 2023 SCA. In his Answer and during the hearing, he said he did not disclose his illegal marijuana involvement because he believed his activities were not illegal, and that he misunderstood the distinction between federal and state laws relating to marijuana use. However, Applicant acknowledged his understanding that marijuana use was still federally illegal in his December 2022 background interview. After considering these divergent statements and other evidence in this case, I conclude Applicant deliberately provided false information about his July 2023 marijuana involvement in his November 2023 SCA. AG ¶¶ 16(a) and 16(b) apply.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶¶ 17(a), 17(c), and 17(d) are not established. In his November 2023 SCA, Applicant did not disclose he used marijuana in July 2023. (SOR ¶ 2.a) He was granted a security clearance in January 2023, and his July 2023 marijuana involvement occurred while holding a security clearance (SOR ¶ 2.b). Applicant's claim that he did not know the distinction between federal and state law as it relates to the recreational use of marijuana is not persuasive. He admitted understanding that distinction in December 2022, and he demonstrated a sophisticated understanding of applicable laws when discussing his June 2022 marijuana purchase and use on Tribal lands.

Applicant's assertion that he belatedly disclosed his July 2023 marijuana involvement based on the way the investigator phrased questions in March or April 2024, is simply not credible. His after-the-fact discussion about his July 2023 marijuana involvement is insufficient to mitigate personal conduct security concerns. His disclosures about his July 2023 marijuana involvement, almost a year after the event, did not amount to a prompt, good-faith effort to correct his prior nondisclosure.

The evidence in this case leaves me with questions and doubts about whether he has overcome his personal conduct 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 Guidelines H and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I also considered information Applicant provided in HE I. After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all evidence in the whole-person context, I conclude Applicant mitigated security concerns raised under Guideline H (drug involvement and substance misuse) but failed to mitigate security concerns under Guideline E (personal conduct).

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 the passage of time and continuation of his efforts to reestablish the trust placed in him in January 2023 when he was granted eligibility for access to classified information, he may well be able to demonstrate persuasive evidence of his security clearance worthiness in the future.

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: FOR APPLICANT

Subparagraphs 1.a, 1.b: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a, 2.b: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge