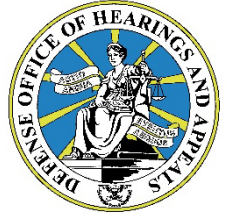




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-02233

Appearances

For Government: Nicholas Temple, Esq., Department Counsel

For Applicant: *Pro se*

08/03/2026

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 19, 2024, Applicant submitted and certified a security clearance application (SCA). On December 10, 2025, the Department of Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). Applicant responded to the Statement of Reasons (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 11, 2026.

The hearing was convened as scheduled on July 14, 2026, over the Microsoft Teams online network. Government Exhibits (GE) 1 through 3 were admitted in evidence, without objection. Applicant testified and called one witness but did not offer any documents into evidence. DOHA received a transcript of the hearing (Tr.) on July 23, 2026.

Findings of Fact

Applicant is a 32-year-old employee of a government contractor for which he has worked since January 2022. He is employed as a fabricator. He earned an associate's degree in 2016. (GE 1, 3)

From about 2012 to May 2024, Applicant used marijuana with varying frequency (SOR ¶ 1.a). He started using marijuana in high school with friends. He continued to use it a handful of times with friends every year until about January 2024. In the SCA, Applicant did not disclose his marijuana use, as required (SOR ¶ 2.a). In his response to the SOR, Applicant admitted both allegations without additional comment. On April 9, 2024, Applicant had a security interview (SI) with a government investigator. During the SI, he volunteered his marijuana use. He told the investigator he had no future intent to use marijuana or any other illegal substance because he had matured, and illegal substances are incompatible with his career aspirations. He claimed that he did not include his marijuana use on the SCA because he "buzzed by" the question and was not paying close enough attention to his responses. During his testimony, he stated that he did not make a conscious decision to omit his marijuana use when he completed the SCA. He failed to disclose an earlier arrest related to alcohol, but he volunteered that information during the SI. He testified that he now understands the importance of accurately completing security clearance documentation. (Tr. 34-52; Answer; GE 1-3)

Applicant provided responses to DOHA interrogatories in late-July 2024. His responses detailed his marijuana involvement, including one additional use of THC in May 2024. He again claimed that he had no intent to use marijuana in the future because of health reasons. He claimed his workplace does not have a drug-use policy (GE 2)

Applicant testified that he suffers from memory issues as a result of an automobile accident in 2022. He had this accident after suffering from cardiac arrest while he was driving. His cardiac arrest starved his brain of oxygen and caused him to have an anoxic brain injury. He has a permanent internal defibrillator in his chest. He testified that this memory issue may have affected his recollection of specific dates and events, as well as his recitation of that information during the security clearance process. He testified that part of the reason he stopped using marijuana was because his doctor told him at the end of 2023 that marijuana use was not good for his heart. He has not used marijuana since May 2024 and has no intention of using it in the future. He never purchased marijuana and has disassociated from anyone who uses illegal drugs. When he was questioned about why he used marijuana again after completing the SCA and the SI, he testified his one use in May 2024 was because of peer pressure. He claimed that he is better able to resist peer pressure now because he is more mature. (Tr. 30-41; Answer; GE 1-3)

Ms. J, the assistant facility security officer (AFSO) for the contractor that employs Applicant, testified during his case-in-chief. She has known Applicant since she began working for the government contractor about two and one-half years ago. She knows

him professionally, but not outside of work. She is familiar with the allegations contained in the SOR. Her opinion of Applicant is that he is honest, cooperative, dependable, and reliable. She believes that, if awarded security clearance eligibility, he does not pose a national security risk. While she is not his direct supervisor, she testified that he is a project lead on a few different projects at work. To her knowledge, he has never had any performance issues and has not used marijuana at work or been under the influence of marijuana while at work. She acknowledged that her company has a vested interest in Applicant obtaining security clearance eligibility because he would be difficult to replace as a team lead. (Tr. 21-29)

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

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Controlled substance means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual’s judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications (*Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*). It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a “whole-person concept.” This requires adjudicators to carefully weigh a number of variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

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

Appellant used marijuana with varying frequency from 2012 until May 2024. By using marijuana, he would have had to possess it. Possession of marijuana is a federal criminal offense. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

It has been a little over two years since Applicant used or was involved with marijuana or other illegal substances. It has taken multiple notices in the form of the SCA and the SI to impart upon him the incompatibility of marijuana use with holding security clearance eligibility. However, these two years of abstention, combined with his credible testimony that he has matured and is more concerned with his career and health convince me that this behavior happened under circumstances unlikely to recur. He has acknowledged his marijuana use, abstained from marijuana use for over two years, disassociated with anyone who uses illegal drugs, and credibly denied that he intends to use marijuana in the future. For these reasons, AG ¶ 26(a) and AG ¶ 26(b) both apply. I find that he has mitigated the drug involvement and substance misuse security concerns.

Guideline E, Personal Conduct

The security concern for personal conduct is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In the Answer, Applicant admitted that he deliberately failed to disclose his marijuana use in the SCA, despite being required to do so. While his testimony as to his intent tends to undermine this admission, I find the admission meets the Government's burden of providing substantial evidence of that deliberate failure. AG ¶ 16(a) is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

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

Applicant volunteered his marijuana use to the investigator before being confronted about two months after completing the SCA. The disclosure was prompt. It was made in good faith and made before being confronted with the facts. There is significant evidence that Applicant's failure to divulge his marijuana use resulted from his inattention to detail and not from malicious intent to deceive. He testified that he understands the importance of carefully completing clearance documentation, and I believe this chastening experience has solidified his understanding, making it unlikely to recur. Both of the above mitigating conditions are applicable. I find he mitigated the Guideline E security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my

comments under Guidelines H and E in my whole-person analysis. I considered his positive character evidence with an understanding that it is somewhat marginalized by his employer's business interest in his being awarded security clearance eligibility. I am confident that his marijuana involvement has ceased, he was not trying to hide his marijuana use from the Government, and he understands the importance of carefully completing documents regarding security clearance eligibility. Overall, I have no doubts regarding his judgment, reliability, and trustworthiness.

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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge