



DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

)
)
)
)
)
)
)

ISCR Case No. 25-01463

Applicant for Security Clearance

Appearances

For Government:
Jenny Bayer, Esq., Department Counsel

For Applicant:
Pro Se

09/02/2026

Decision

CEFOLA, Richard A. Administrative Judge:

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

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on March 20, 2025 (2025 Questionnaire). On March 2, 2026, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (Personal Conduct) and Guideline H (Drug Involvement and Substance Misuse). The action was taken 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) effective within DoD after June 8, 2017.

On or about March 5, 2026, Applicant responded to the SOR in writing (Answer) and requested that the case be decided on the written record in lieu of a hearing. In his Answer, Applicant admitted to all of the allegations in the SOR. On May 28, 2026, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). A complete copy of the FORM, consisting of Government Exhibits (GE) 1 to 7, and the Government's arguments in support of the SOR, was received by the Applicant on June 8, 2026. He timely submitted an additional statement in response to the FORM on June 12, 2026 (Response). The case was assigned to me on August 26, 2026, and all exhibits were admitted without objection.

Findings of Fact

Applicant is 59 years old, has been married since 1991, and has two grown children. He earned a bachelor's degree in 1989. Applicant has been employed by a defense contractor since 2025 as a Field Services Representative and reapplied for a security clearance in connection with this employment. He has previously held a secret clearance since 2013, submitting reapplications in 2017 (2017 Questionnaire) and 2023 (2023 Questionnaire). (GE 3 at 5, 9-10, 19, 24-25, 39; GE4; GE 5; GE 7 at 3)

The SOR paragraphs are reviewed below in reverse order for chronological continuity.

SOR Paragraph 2 (Guideline H: Drug Involvement and Substance Misuse)

The Government alleged that Applicant is ineligible for a security clearance due to his use of marijuana. The following facts pertain:

2.a. Use of marijuana from June 2021 – December 2024: Applicant admitted to the alleged conduct in both his 2025 Questionnaire and his Answer to the SOR. He specified that during the time period alleged, he used cannabidiol (CBD) gummies that contained tetrahydrocannabinol (THC) before bedtime three to four times per week. In his Response, Applicant averred that the product was not marijuana as the company selling it described it as "hemp-based" – which he understood to be legal nationwide.¹ Only in late 2024 did he come to realize the gummies contained a trace amount of THC and he read an article on a security clearance website advising against using the product. Though he proffered a caveat in his 2025 Questionnaire that he would cease using the product "if this use is disallowed under my future clearance," he had already ceased using the gummies by December 2024. Additionally, in his January 26, 2026 responses to interrogatories, he declared he had no intent to use marijuana or derivative products in

¹ The Agriculture Improvement Act of 2018, commonly known as the 2018 Farm Bill, removed hemp from the Controlled Substances Act where any part of the plant has a THC concentration of no more than 0.3% on a dry weight basis. This definition was codified in 2021 at 7 CFR Part 990.

the future because it “is federally illegal to do so.” (Answer; Response; GE 3 at 36-37; GE 7 at 4, 12, 14)

2.b. Use of marijuana with a security clearance from August 2023 – December 2024: The findings of fact in SOR ¶ 2.a above pertain. Applicant clarified in his Answer that while he admitted to the conduct, he was unaware at the time that the product would be considered illegal. When he learned as much, he ceased its use. (Answer)

SOR Paragraph 1 (Guideline E: Personal Conduct)

The Government alleged that Applicant is ineligible for a security clearance because he had engaged in conduct that involved questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. The following findings of fact pertain:

1.a. False Statement ONE in 2023 Questionnaire: On May 2, 2023, Applicant submitted his 2023 Questionnaire wherein in Section 23 – Illegal Drugs, he answered, “No,” to a question asking if, in the last seven (7) years he had illegally used any controlled substances. He admitted to this allegation in his Answer, but as discussed in the SOR ¶ 2.a discussion above, he was unaware at the time he filled out the 2023 Questionnaire that the gummies contained any THC. He also noted in his 2025 Questionnaire that he did not recall updating his Questionnaire in 2023 or he “would have updated [his] use of illegal drugs...” He further clarified the issue in his Response, noting “it was not my intent to deceive anyone, or lie, or obscure my behavior...” (Answer; Response; GE 3 at 43; GE 4 at 37)

1.b. False Statement TWO in 2023 Questionnaire: On May 2, 2023, Applicant submitted his 2023 Questionnaire wherein in Section 23 – Illegal Drugs, he answered, “No,” to a question asking if he had EVER illegally used drugs while possessing a security clearance. He admitted to this allegation in his Answer, but again, per the SOR ¶ 1.a discussion above, he was unaware at the time he filled out the 2023 Questionnaire that the gummies contained any THC. (Answer; Response; GE 4 at 37)

Whole Person and Mitigating Evidence

Applicant’s Response elaborated on his use of THC. As discussed above, he emphasized he believed the gummies were legal when he used them and stopped using them as soon as he learned they contained a trace amount of THC. He asserted that he does not smoke or drink and only takes prescribed medication for a medical issue. He loves his work supporting the military and wants to continue in that role.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

SOR Paragraph 2 (Guideline H: Drug Involvement and Substance Misuse)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

The record evidence does not show that Applicant's hemp-based gummies contained greater than 0.3 percent THC. However, given Applicant's admissions in the Questionnaire and Answer, the facts of this case establish the following potentially disqualifying conditions set forth in AG ¶ 25 to the allegations under Guideline H:

- (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.

The burden therefore shifts to Applicant to mitigate security concerns under Guideline H. The guideline includes the following conditions in AG ¶ 26 that could potentially mitigate security concerns arising from Applicant's drug use:

- (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 the 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 evidence that Applicant used any THC at all is based solely on his own speculation that the hemp-based product he ingested did in fact contain an amount of THC that was illegal. As the Government made no effort to learn the name of the product or discern whether it did or did not actually contain a THC amount proscribed by federal law, the evidentiary trail ends here. But assuming for the sake of discussion that Applicant did in fact ingest gummies that contained amounts of THC in excess of federal limits, his use was without knowledge of its presence. And he ceased use of the product nearly two years ago – as soon as he learned there might be an issue. The evidence clearly supports the premise that Applicant’s alleged use of marijuana and/or THC happened under such circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment. Moreover, he specifically stated in his signed responses to the Government’s interrogatories that he would abstain from future use because it was federally illegal. AG ¶¶ 26(a) and (b) apply. SOR ¶ 2 is found for Applicant.

SOR Paragraph 1 (Guideline E: Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

Given Applicant’s admissions in his Answer, the facts of this case establish the following potentially disqualifying condition set forth condition set forth in AG ¶ 16 to the allegations under Guideline E:

(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.

The burden therefore shifts to Applicant to mitigate security concerns under Guideline E. The guideline includes the following condition in AG ¶ 17 that could potentially mitigate security concerns arising from Applicant’s false statements:

(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.

The Applicant admitted to the inaccuracy of both statements in his 2023 Questionnaire, but in his Response denied any intent to deceive. Indeed, the evidence supports the premise that he only learned in December 2024 that the May 2023 statements were inaccurate. In falsification cases the Government must produce substantial evidence that an omission on a security clearance application was deliberate, not merely that an omission has occurred. ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009). See *also* ISCR Case No. 19-03939 at 3 (App. Bd. Feb. 21, 2023). The Government, therefore, failed to meet its evidentiary burden under AG ¶ 16(a) to show the omission was in fact deliberate. But to the extent any concern on this issue might arise, Applicant's answer clearly happened under such unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. To the extent that AG ¶ 16(a) may have been established, AG ¶ 17(c) applies. SOR ¶ 1 is found for Applicant.

Whole-Person Concept

Applying the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case.

I have given the appropriate weight to Applicant's statements included in his Questionnaires, responses to interrogatories, his Answer, and his Response. An exacting review of the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

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, are:

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

RICHARD A. CEFOLA
Administrative Judge