



**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. 25-01357

Appearances

For Government: Alison P. O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

08/28/2026

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On November 7, 2024, Applicant submitted and certified a security clearance application (SCA). On February 9, 2026, 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). 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 25, 2026.

The hearing was convened as scheduled on August 18, 2026, over the Microsoft Teams online network. Government Exhibits (GE) 1 through 4 were admitted in evidence, without objection. One witness testified during the Government's case in chief. Applicant testified but did not offer any documents into evidence. DOHA received a transcript of the hearing (Tr.) on August 25, 2026.

Findings of Fact

Applicant is a 51-year-old employee of a government contractor (Company A) for which he worked from August 2023 until about January 2025. Company A is sponsoring him for security clearance eligibility, and he will return to work there if his clearance is granted. He has also been self-employed as the owner of a sole proprietorship and then of a limited liability company (LLC) since 2005. His LLC is currently a subcontractor of Company A. He has been a mechanical engineer in the defense aerospace industry for 30 years. He earned a high school diploma in 1993 and a bachelor's degree in 1998. He has been married since 1994 and has four children, three of whom are adults. He has never held security clearance eligibility. (Tr. 33-34, 41-43, 53-56; GE 1, 3, 4)

From about July 2021 to at least December 2025, Applicant used and purchased marijuana with varying frequency (SOR ¶¶ 1.a and 1.b). In his response to the SOR, Applicant admitted both allegations with additional comments. He denied the SOR allegation that he stated that he intended to use marijuana in the future during his security interview with a DOD authorized investigator dated March 4, 2025 (SI), and in his responses to DOD interrogatories dated December 10, 2025 (SOR ¶ 1.c). (Tr. 35-39, 44, 51-52; Answer; GE 1-3)

In the SCA, Applicant wrote that he has a prescription from State A from a medical doctor for the medical use of tetrahydrocannabinol (THC) and cannabidiol (CBD). He estimated that he began using THC in July 2021 and his most recent use was in November 2024. He wrote the following regarding his use of THC:

I have used small amounts of THC, as required for pain management, outside my working hours using my [State A] provided medical marijuana prescription for mild chronic pain management as prescribed by my medical doctor. I have never purchased or used any illegal drugs outside of those prescribed by my medical doctor and at the approval of [State A]. (GE 1)

In the SCA, Applicant responded, “no” to the question, “[d]o you intend to use this drug or controlled substance in the future.” He further elaborated, “[w]hile I would prefer to continue its use I will seek alternative federally approved pain remedies from my medical doctor, if required, to obtain a security clearance.” He testified that he knew that marijuana was illegal under federal law at the time he completed the SCA. He also had some understanding that his marijuana use could impact his security clearance eligibility when he completed the SCA. (Tr. 44-46; GE 1)

Applicant responded to DCSA interrogatories on October 3, 2025 and DOHA interrogatories from Department Counsel on December 10, 2025. In his DCSA interrogatory responses, he detailed his continued weekly use of marijuana (last use on September 27, 2025) pursuant to his medical marijuana card and prescription from a medical doctor. He wrote that he used it for pain relief from inflammatory arthritis. He wrote that he did not intend to use marijuana in the future, and elaborated on that response, stating, “[w]hile I find the use of medical prescription, outside working hours,

effective for my treatment with zero impact to my ability to perform work I will seek alternative treatment, if required, to obtain and retain a security clearance.” He acknowledged that his employer has a drug policy, but that policy is not in evidence. He claimed that he is not subject to random or periodic drug screenings by his employer. He wrote that he understood that marijuana use is illegal under federal law and that any future use of marijuana could affect his security clearance eligibility. (Tr. 37-38, 43-45, 48-49; GE 2, 3)

In Applicant’s responses to DOHA interrogatories, he updated his last date of marijuana use to December 2025 and wrote that he used marijuana a few times a month only as prescribed, if needed. He reiterated that he had a medical marijuana card from State A and a prescription to use marijuana from a medical doctor. He wrote, “I may use edible THC/CBD as prescribed if needed outside working hours.” (Tr. 37-38, 43-45, 50; GE 3)

In Applicant’s responses to DOHA interrogatories, he swore or affirmed that the information contained in the SI was accurate. He was provided the opportunity to identify any portion of the SI that was inaccurate and make corrections to it. He did not make any corrections. He was also provided the opportunity to provide additional information regarding the matters he discussed with the investigator during the SI. He did not provide any additional information. The SI does not contain any language regarding whether marijuana involvement impacts security clearance eligibility, but it does contain information regarding Applicant’s marijuana involvement up to the date of the SI. In the SI, the investigator wrote, “[t]he subject has not used the legal marijuana products since 11/2024, but may use it in the future if needed for pain management as prescribed by his medical doctor.” (Tr. 37-38, 50; GE 3)

In the Answer, Applicant expounded on his denial of the allegations contained in SOR ¶ 1.c. He incorrectly claimed that Department Counsel from DOHA interviewed him during the SI. Instead, Mr. A, a duly authorized investigator interviewed him. Despite what he said in his SI about his future use, the SI, Applicant provided different information in the Answer. He wrote that when Mr. A asked him if he planned to use THC/CBD in the future, he told Mr. A the following:

. . . while I would prefer to maintain my prescription, and use it as needed for pain management, I had other prescribed medications that were effective and I would not renew my prescription or continue to use THC/CBD if that was a requirement for the security clearance. He [Mr. A] stated that, while technically it was prohibited, changes were underway and it would not be a primary determining factor. On December 10, 2025, I submitted written interrogatories regarding past and future use of THC/CBD. Based on the representations of [Mr. A] during our conversation on March 4, 2025, as well as my own personal expectation of an upcoming federal declassification, I did not believe that maintaining my prescription would be detrimental to my application. I answered that I would continue to use THC/CBD as prescribed and as needed. I clarified, once again, in a subsequent telephone interview

that I would not maintain my prescription if it would impact my ability to obtain a security clearance. I added that I had been successful in managing gout with allopurinol. (Tr. 16-19, 35, 38; Answer)

Applicant claimed that if he had known that his marijuana use would prevent him from holding a security clearance, he would have agreed to terminate any use immediately. He also claimed he never would have sought a medical marijuana prescription if he thought it would tarnish his otherwise impeccable professional reputation. He noted that his medical marijuana prescription was set to expire in July 2026, and, in December 2025, he notified his doctor to cancel any prescription renewals. He stopped using federally prohibited THC/CBD products in December 2025. He noted that he never used any drug or medication outside of a state approved medical prescription under doctor supervision. He also noted that he has not reported to work while under the influence of a drug or intoxicant. (Tr. 34-39; Answer)

Mr. A. testified for the Government. He conducted Applicant's subject interview. Mr. A testified that he did not remember interviewing Applicant or what they discussed during the interview. He has conducted hundreds of security interviews. However, he can say with certainty that he conducted the interview with Applicant because Mr. A verified that his identifying "SID" number appears in the SI. He shared his standard procedure for drafting a security interview summary after conducting an interview. He testified that he normally takes handwritten notes during an interview. His interview style involves him asking questions and the interviewee responding. He then types up a summary of his notes either immediately after the interview or within one or two days after it concluded. He does not make a practice of excluding statements from an interview. After he has typed up a summary, he sends that summary to his "reconciliation office" and then loses access to that summary. (Tr. 16-20, 27-29)

Mr. A testified that he never told any of his interviewees that marijuana use is or is not a primary determining factor of security clearance eligibility, and that he never opined to an interviewee whether using marijuana would affect their security clearance eligibility. He testified that he does not opine on these subjects because he is not familiar with how the adjudication process works and does not know what conduct is disqualifying. So, he does not advise interviewees concerning information with which he is unaware. His practice is to tell an interviewee, "I don't know," if they question him about whether certain conduct is disqualifying. He also testified that to the extent the SI refers to "legal" marijuana involvement, the term "legal" was used by the interviewee. (Tr. 20-27)

Applicant testified that he inaccurately conflated a DOHA department counsel with Mr. A, and acknowledged that Mr. A conducted his security interview. Applicant testified that Mr. A told him that past marijuana use is not a sole determining factor in deciding security clearance eligibility. Applicant testified that Mr. A told him that laws were changing and that marijuana use by itself would not prevent him from obtaining a security clearance. He testified that Mr. A led him to believe that he could continue to use marijuana in the manner he had been using it, and this use would not disqualify him from gaining security clearance eligibility. He did not seek advice from his facility security

officer (FSO) or other security official with Company A to clarify his perceptions about his marijuana involvement. He testified that it did not become clear to him that holding a marijuana prescription and a security clearance were mutually exclusive until he received the SOR. However, he also testified that it became clear to him that his marijuana involvement was a problem when he received the DOHA interrogatories in December 2025. He confirmed that his doctor prescribed him alternative medication that alleviated the symptoms that led him to use marijuana. He also found relief from these symptoms through a change in diet. (Tr. 35-39, 45-51)

Throughout the record evidence, Applicant maintained that his marijuana involvement had no impact on his personal or professional life other than providing him pain relief. He noted that he has been open and honest about his marijuana involvement and the prospects for his future use throughout the clearance process. He has not been involved with marijuana while holding security clearance eligibility, he never tested positive on a drug test, does not associate with others who are involved with marijuana or other illegal substances, and his marijuana involvement is common knowledge among his family. There is no evidence that his employer is aware of his marijuana involvement. He consistently claimed that he would stop using marijuana if it was required for him to obtain security clearance eligibility, and that he ceased using it once that requirement became clear to him in December 2025. He also testified that he has no intent to use marijuana in the future and noted that his expired medical marijuana prescription (as of July 2026) is evidence of this lack of intent. (Tr. 34-39; Answer; GE 1-3)

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 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.

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);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Appellant used and purchased marijuana with varying frequency from about July 2021 until December 2025. By using marijuana, he possessed it. Possession of marijuana is a federal criminal offense. AG ¶¶ 25(a) and 25(c) are established.

The SOR language in SOR ¶ 1.c that reads that Applicant “stated” that he “intend[ed] to use marijuana in the future” in the SI and in his responses to DOHA interrogatories is technically inaccurate. In the SI and in his responses to DOHA interrogatories, he never specifically indicated that he intended to use marijuana in the future. Instead, he indicated that he “may” use it in the future. Indicating that you “may” do something is different than saying that you “intend” to do something. “May” indicates a possibility, while “intend” means a decision has been made.

There is evidence in the form of Applicant’s continued marijuana use that when he told Mr. A and wrote in his DOHA interrogatory responses that he “may” use marijuana in the future, he actually meant that he would use it in the future. However, this consideration does not overcome the lack of record evidence of the specific allegation in the SOR, to wit: that Applicant affirmatively stated that he intended to use it in the future. AG ¶ 25(g) does not apply to the SOR allegation as written, and I find for Applicant with respect to SOR ¶ 1.c.

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.

After a four-year period of regular and consistent marijuana use, it has only been about nine months since Applicant last used or purchased marijuana. It has taken multiple notices in the form of the SCA, the SI, and DCSA and DOHA interrogatories to impart upon him the incompatibility of marijuana use with holding security clearance eligibility. While his use of marijuana was pursuant to a medical marijuana prescription from State A, I note that he was aware that using it was illegal according to federal law as early as November 2024, when he completed the SCA. He also testified that he knew his marijuana use could impact his security clearance eligibility when he completed the SCA. In October 2025, in his responses to DCSA interrogatories, he acknowledged that any future use of marijuana could affect his security clearance eligibility. Given this knowledge, and these multiple notices of the impropriety of his marijuana involvement, he knew or should have known of its impropriety, yet he continued to use marijuana regularly until December 2025. While he ultimately stopped using marijuana at about the time he submitted his DOHA interrogatory responses, he still included language evincing the possibility that he would use it again.

With respect to Applicant's claim that Mr. A told Applicant that marijuana use and involvement did not disqualify him from security clearance eligibility, Mr. A denied that he ever used such language during a security interview. He provided a logical basis for this denial. Given Mr. A's denial, Applicant did not meet his burden to prove that Mr. A used such language during the SI. I also note that, in December 2025, Applicant attested to the accuracy of the SI without any mention of Mr. A's permissive language regarding marijuana involvement. Even if I were to assume for the sake of argument that Mr. A led Applicant to believe that marijuana involvement would not disqualify him from security clearance eligibility; seven months later, in his DCSA interrogatory responses, Applicant acknowledged that future use of marijuana could affect his security clearance eligibility. Despite this acknowledgement, he regularly used marijuana for another two months.

Given the recency and frequency of his marijuana use, as well as his failure to cease his marijuana involvement despite knowing that it was illegal and incompatible with being granted security clearance eligibility, Applicant has not met his burden to prove that his use is unlikely to recur or that it does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) does not apply.

Applicant acknowledged his drug involvement and substance misuse. He took steps to overcome the problem by taking legal prescription medication and altering his diet to replace his motive to use marijuana for pain relief. While I have discussed whether his nine-month period of abstinence is sufficient in the context of the evidence in this matter, *supra*, he has established a "pattern of abstinence." He does not associate with drug users. By notifying his doctor that he does not want his medical marijuana prescription refilled, he has theoretically avoided or changed the environment where he used marijuana. He did not provide the signed statement of intent prescribed in the mitigating conditions, but I will accept his testimony that he will no longer use marijuana or other illegal substances as sufficient evidence of his meeting the spirit of that mitigating factor. AG ¶ 26(b) partially applies, but for the reasons I provided in my analysis of AG ¶

26(a) and will provide in my whole-person analysis, its application is insufficient to fully mitigate the disqualifying conditions.

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 Guideline H in my whole-person analysis. I find it difficult to comprehend why Applicant continued to use and purchase marijuana after completing the SCA. He indicated that he knew marijuana use was illegal under federal law in that document, yet he continued to use it. He testified that he knew his marijuana involvement could pose a risk to his security clearance eligibility when he completed the SCA. He was consistently put on notice that the Government had concerns about marijuana use for those seeking security clearance eligibility, yet he continued to use it.

Even if I were to assume that Applicant relied on Mr. A's statements to justify his continued marijuana use for a period of time after the SI, Applicant acknowledged its impropriety in October 2025; yet he continued to use it regularly for another two months. Instead of clarifying the Government's policy by contacting his FSO or other security official, and despite the clear indications to the contrary, he decided to assume that continuing his marijuana involvement was appropriate. For these reasons and based upon a careful review of the record evidence in this matter, I have doubts regarding Applicant's judgment, reliability, and trustworthiness. He has not provided sufficient evidence in mitigation of the Guideline H security concerns.

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

Subparagraphs 1.a and 1.b:
Subparagraph 1.c:

Against Applicant
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.

Benjamin R. Dorsey
Administrative Judge