



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Sean D. Rogers, Esq.

06/09/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 16, 2023. (Government Exhibit (GE) 1) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on November 9, 2023, detailing security concerns under Guideline H. DCSA acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR and elected a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The DOHA Hearing Office received the case on May 16, 2024, and it was assigned to me on December 9, 2024. On December 19, 2024, a Notice of Hearing was issued scheduling the hearing for February 18, 2025. The hearing was held on that date. Department Counsel offered four exhibits which were marked and admitted as GE 1 - 4 without objection. Applicant through his counsel offered 19 exhibits which were marked and admitted as Applicant Exhibits (AE) A - S without objection. Applicant testified and called five witnesses during the hearing. The transcript (Tr.) was received on February 28, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. Applicant's admissions are accepted as findings of fact.

Applicant is 38 years old. He has been employed by a DOD contractor (Employer #3) since August 2023. He was first granted a security clearance in 2015. He earned his undergraduate degree in 2011. From 2011 to 2013, he worked for a corporation and did not require a security clearance. In August 2013 to May 2015, he pursued his master's degree. Upon graduation, he worked for a government agency (Employer #2). This is the first time he applied for a security clearance. He left in 2017 to study for a doctorate (PhD). During this time, he began to work remotely for Employer #2 in 2019 and applied for a security clearance a second time in September 2019. He is not sure whether the security clearance was granted. He did not handle classified information because he worked remotely. In 2021, he earned his PhD. His impressive scholarship resulted in an offer to work on post-doctorate studies for a renowned professor at a prestigious university. He accepted the offer and worked there until August 2023, when he started work with his current employer, Employer #3. He married in September 2024 and has no children. (Tr. 20-35, 53; GE 1 – GE 3)

The SOR alleges under Guideline H that Applicant used psilocybin-laced chocolates with varying frequency from about November 2021 to about January 2023 (SOR ¶ 1.a: GE 1 at 45; GE 4 at 5); used marijuana (Delta-9 THC) with varying frequency from about October 2005 to about April 2022 (SOR ¶ 1.b: GE 2 at 42-43; GE 3 at 39-40; GE 4 at 5, 11, 17); and used Delta-8 THC with varying frequency from about September 2021 to about January 2021 (SOR ¶ 1.c: GE 1 at 44; GE 4 at 5).

Additional Guideline H allegations include: Applicant used the prescription medication Adderall without a prescription from about August 2009 to about May 2011

(SOR ¶ 1.d: GE 3 at 40; GE 4 at 17); from about October 2021 until about November 2022, he provided Adderall, a drug prescribed to him, to another person (SOR ¶ 1.e: GE 4 at 6); and mailed Delta-8 THC products overseas to his girlfriend, who was living in her home country from about October 2021 to about November 2022. (SOR ¶ 1.f: GE 1 at 46; GE 4 at 5-6).

Under the Personal Conduct concern, SOR subparagraphs 1.e and 1.f were cross-alleged.

GUIDELINE H – Drug Involvement

Applicant began using marijuana around October 2005 when he was an undergraduate college student. His marijuana use varied between one to three times a month. His college roommates smoked marijuana. He would use marijuana to calm his anxiety and to help him sleep. When he graduated from college in 2011, he was hired by Employer #1. He worked there for two years. This job did not require a security clearance. He never used marijuana while working for Employer #1 because he was aware of the safety issues on his job. (Tr. 15-20; GE 2 at 42-43; GE 3 at 39-40; GE 4 at 5, 11, 17)

From approximately August 2009 to approximately May 2011, Applicant used Adderall, a drug not prescribed to him, on approximately 15-20 occasions during his last two years of undergraduate coursework to help him study for final examinations. A friend provided him Adderall on several occasions. Applicant's mother also provided him with Adderall. She had a legal prescription and wanted him to succeed in his studies. Applicant later consulted with a psychiatrist and was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and has been legally prescribed Adderall or a close substitute, Vyvanse since 2011. (Tr. 17-19; GE 3 at 40; GE 4 at 17)

Applicant resigned his position with Employer #1 to attend graduate school. He occasionally used marijuana while in graduate school. He lived with other students and marijuana use was prevalent. From August 2013 to May 2015, he estimated that he used marijuana less than ten times while in graduate school. He stopped using marijuana around February 2014, because his graduate program was very demanding and he needed to focus on his studies. (Tr. 22; GE 3 at 39-10; GE 4 at 5, 11, 17)

After completing his master's program, Applicant was hired to work at Employer #2, a federal government agency. His job required him to have a security clearance, he submitted his first SCA on May 13, 2015. In response to Section 23 - Illegal Use of Drugs or Drug Activity, he fully disclosed his past marijuana use. He also fully disclosed his use of Adderall without a prescription in response to Section 23 – Misuse of Prescription Drugs. (GE 3 at 39-40) He worked for Employer #2 from June 2015 to August 2017. He never used illegal drugs to include marijuana during the period he worked for Employer

#2. He was eventually granted a security clearance and worked on classified projects during the last seven months of his employment with Employer # 2. (Tr. 23-28; GE 1 at 14)

In August 2017, Applicant stopped working full time for Employer # 2 to study for his Doctorate of Philosophy (PhD). He earned his PhD in December 2020. He did not use marijuana while he worked in his PhD program. He worked for Employer # 2 from May 2019 to August 2019, during his summer break. He also applied for a security clearance a second time on September 18, 2019. (GE 2) He is not sure whether he was granted a security clearance. From January 2021 to August 2021, he worked remotely for Employer #2 on a part-time basis. He never handled classified information because he was working remotely. (Tr. 28-32; GE 1 at 14)

Upon completion of his PhD, Applicant was offered a position to perform post-doctoral research with a renowned professor at a prestigious university. He believed it to be once in a lifetime opportunity and accepted the position and started in September 2021. He rented a house with three other PhD students. Several of his roommates used marijuana. From November 2021 to around April 2022, he used marijuana with them around three times. A joint would be passed around and shared. Applicant's girlfriend, now wife, resided in another country. She would visit Applicant several times a year. He estimates that he used marijuana with her about ten times between November 2021 to April 2022. He would purchase marijuana from a state dispensary. Marijuana was legal in the state where Applicant resided. (Tr. 33-35, 41-42; GE 1 at 45; GE 4 at 5)

In September 2021 to about January 2023, Applicant used Delta-8 THC edibles. He purchased these at the state dispensary where he resided. He was not sure if the Delta-8 THC edibles were federally legal. He asked a salesman at the state dispensary where he purchased the edibles about this. The salesman told him that the Delta-8 edibles were legal under federal law because they contained less than the legal amount of Delta-9 THC. Applicant was confused about whether the Delta-8 THC edibles were illegal. From September 2021 to May 2022, he would ingest a half edible on average of 2-3 times a month. He said they helped him calm down before he went to sleep. After May 2022, he did not use them as much because he did not enjoy them anymore. He stopped using them for a few months in the fall 2022. His last use occurred between December 2022 and January 2023. He ingested one Delta-8 gummy when his girlfriend was visiting. (Tr. 37-38; GE 1 at 44; GE 4 at 5)

From about February 2022 to about February 2023, Applicant mailed Delta-8 THC products overseas to his girlfriend. She suffered post-traumatic stress disorder from being the victim of two prior sexual assaults and depression. She told him that taking Delta-8 THC helped her. He admits that this was a stupid thing to do. He believes that they were illegal in the country where his girlfriend resided. (Tr. 38-39; GE 1 at 46; GE 4 at 5)

From about November 2021 to about January 2023, Applicant used and purchased psilocybin-laced chocolate with varying frequency. He became interested in psilocybin because of published clinical research studies that treatment with psilocybin can be beneficial for people with depression. He thought it would help with his girlfriend's depression. He also used it. He purchased it from the state dispensary and used it about four times. He used it once in November 2021 with a friend; once in January 2022 with his roommate and his girlfriend; once in June 2022 with his roommate, and once in January 2023 with his girlfriend. He does not intend to use it in the future. (Tr. 44-47: GE 1 at 45; GE 4 at 5)

Applicant testified that when he purchased the Delta-8 THC gummies, the Delta-9 THC, and the psilocybin-laced chocolate, they were listed as controlled substances and were illegal under Federal law. Delta-8 and Delta-9 THC products were legal in the state where he resided. The record is not clear as to whether psilocybin was legal in the state where he resided. It is noted that he purchased it at the same state dispensary where he purchased the Delta-8 and Delta-9 THC. (Tr. 43)

In addition to his testimony, Applicant submitted a written statement during the hearing. He expressed regret for his past involvement in illegal drugs. He acknowledged his mistakes and is deeply remorseful. He is now at a very different stage in his life. He is working on building a career and fostering a stable environment for his family. He is now married and lives with his wife. He admits that he stated in 2015 that he would no longer use illegal drugs but later did use illegal drugs. He states: "There are no such circumstances under which I would consider any involvement with illegal drugs again, with or without an active security clearance." (AE S)

Applicant states that he never knowingly engaged in any illegal activities while holding a security clearance in the past. His past actions when he possessed a security clearance have always been in strict accordance with the law and responsibilities entrusted to him. He fully disclosed his history of past illegal drug use and has never tried to conceal information about his past. He is willing to undergo drug testing at any desired frequency at his own expense. He is open to any other measures that might help address any concerns and prove his reliability and integrity. His holds the security of the U.S. in the highest regard and would never consciously engage in behavior that jeopardizes the well-being and safety of the country. (AE S)

On December 28, 2023, Applicant signed a pledge to abstain from all illegal drugs, to include marijuana. He acknowledged that any future use of illegal drugs will be grounds for revocation of his security clearance and any national security eligibility. (Tr. 47; AE E) He provided samples of his hair for hair follicle tests for illegal drug use on December 23, 2023, and February 6, 2025. Both tests were negative for illegal drugs. (AE F; AE Q) His

wife has stopped using illegal drugs and is working with a therapist to deal with her PTSD and depression. (Tr. 54)

Guideline E – Personal Conduct

The allegations in SOR ¶¶ 1.e and 1.f were cross-alleged under this Guideline. The facts are the same as mentioned under Guideline H and are more relevant to the concerns raised under Guideline H. Guideline E is found for Applicant.

Whole-Person Evidence

Several of Applicant's superiors and colleagues either testified or wrote letters on his behalf. Mr. A.B. met Applicant when he began working at Employer #3 about one and a half years ago. He describes Applicant as one of the more effective staff members he has worked with. They have worked together often on large projects. Applicant has a fairly unique expertise which is very useful. He is aware of Applicant's past drug use. He describes Applicant as a very trustworthy person and an extremely valuable asset to the workplace. Mr. A.B. has the highest possible confidence that he would keep confidential information secure. (Tr. 65-70)

Mr. T.A. was a fellow doctoral student with Applicant around 2017 and they continue to be friends. He describes the doctoral program as very stressful. Applicant did brilliantly. Mr. T.A.'s advisor told him that Applicant was the most brilliant mind to come through the department in years. He has a very strong work ethic. He trusts Applicant because he keeps his word. After he left to attend his post-doctoral work, he continued to help doctoral students on their projects even though it was not required. (Tr. 71-76.)

Mr. M. was Applicant's roommate from August 2021 to August 2023 when Applicant was doing his post-doctoral work. They remain friends and talk every few weeks. He describes Applicant as an incredibly reliable person and very trustworthy. (Tr. 78-83)

Ms E.A. is a PhD student at the university where Applicant worked on his post-doctoral work. They are in the same field and worked together in the same laboratory for two years from 2021 to 2023. She described Applicant as the most hard-working member in the lab. He was very selfless and willing to help people. When she arrived at the university, he helped her from day one. He took the time to mentor her even though he had a very busy schedule. Applicant still helps her remotely on her final project in his spare hours. He is a very principled and honorable person. (Tr. 84-90)

Dr. P. met Applicant when he was a doctoral student and Applicant was a post-doctoral research associate. They were roommates. He describes Applicant as a selfless

and caring individual who goes out of his way to help others. He was always willing to help anyone work through challenging and work-related tasks. He is passionate about his work and remarkably diligent. He would be at the office at 7 am and would not return home until 7 pm at the earliest. His dedication and his natural talent for mathematics and physics makes him an excellent researcher. He has had several internationally-renowned contributions to scientific literature. He is one of very few people he knows who is truly genuine with good character, integrity and a moral compass. (AE L)

Dr. D.S. was Applicant's psychiatrist during the time he was pursuing his doctorate. He was initially treated for ADHD. Over time, Applicant became open to talking about himself. He has worked to make himself a more confident person. His integrity towards himself and others was beyond reproach. He spoke with Dr. D.S. about his episode of drug use and has expressed his regret about his actions. Dr. D.S. states that Applicant's exceptional mind and work ethic will make him an asset to any company lucky enough to have him. (AE N)

Several other supervisors of Applicant wrote highly favorable reference letters on his behalf. To sum them up, he is an excellent scholar, employee and co-worker. (AE O) Applicant's transcripts reveal he was an outstanding student. (AE I). In July 2017, he received an exceptional service award for his superior performance during his time working for the government. (AE J)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *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 emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law

pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The record evidence shows Applicant used marijuana at various times from about October 2005 until approximately April 2022. His use was more frequent as a college undergraduate. His later use of marijuana occurred sporadically and appeared to be more social. He used Delta 8-THC edibles with varying frequency from September 2021 to January 2023. He also mailed Delta 8 – THC edibles to his girlfriend while she was living overseas. His most recent use of marijuana occurred when he was working on his post-doctoral studies. He was residing in a state where the use of marijuana is legal but he was aware that the use and possession of marijuana remained illegal under federal law. He also purchased and used psilocybin-laced chocolate from November 2021 to January 2023. He purchased the Delta-8 THC edibles and the psilocybin-laced chocolate from a state dispensary. He admits they remained illegal under federal law. He used Adderall without a proper prescription while in college between 2009 to 2011, and later provided his prescription drug Adderall to another person. AG ¶ 25(a) and AG ¶ 25(f) apply to Applicant’s case.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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) applies. Applicant's last use of an illegal drug occurred over two years ago. He was not a habitual user of marijuana, Delta 8 THC edibles, or the psilocybin-laced chocolate. While the shipment of the Delta 8 THC edibles overseas to his girlfriend was concerning, he stopped sending them to her over two years ago. His more recent purchases of marijuana and Delta 8 THC edibles were from a legal state dispensary where he resided. He was unsure whether the Delta 8 THC edibles were legal under federal law. He asked an employee at the dispensary about it and was told they were legal because the concentration of Delta 9 THC was below the legal limit. His use of Adderall in college happened so long ago and he was legally prescribed Adderall shortly thereafter. He used it to concentrate on his studies. He admits providing his prescribed Adderall to his roommate from October 2021 to November 2022. It was for the purpose of helping him study. Applicant was truthful about his past illegal drug use and was very remorseful. He intends to refrain from all illegal drug use and substance abuse in the future. His recent illegal drug use occurred when he was in academia and was on a sporadic and social basis. The references provided by his friends and colleague support the premise that his past behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG 26(b) applies. Applicant has not used illegal drugs in over two years. He no longer associates with his drug-using associates and contacts. His wife stopped using illegal drugs and is now in counseling to deal with her issues with PTSD and depression. He provided a statement of intent to abstain from illegal drug involvement and substance misuse. He is aware that any future illegal drug use may result in the revocation of his security clearance.

Overall, I found Applicant's testimony to be sincere. He has mitigated the security concerns raised under Guideline H, Drug Involvement and Substance Misuse. I found the cross-allegations under Personal Conduct for Applicant. They were more appropriately addressed under Guideline H.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

I considered that Applicant's outstanding employment record and academic credentials. I considered he provided full disclosure about his illegal drug use on his security clearance applications in March 2023, September 2019, and May 2015, during his background investigation interview, and in response to interrogatories. I considered he stopped using illegal substances more than two years ago. His indicates that he fully understands the responsibilities of working for the government in a position that requires a security clearance. He is now married and is now focused on his career and his family.

After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns raised by his conduct under Guideline H.

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.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline B:	Withdrawn

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge