



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



In the matter of:

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ISCR Case No. 24-00200

Applicant for Security Clearance )

**Appearances**

For Government: William H. Miller, Esq., Department Counsel

For Applicant: *Pro se*

08/28/2025

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**Decision**

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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 September 27, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. On December 2, 2024, Applicant responded to the SOR and requested a hearing before an administrative judge. On March 7, 2025, Applicant changed his due process format request to a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on April 3, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 11, 2025, but he did not respond to it.

The case was assigned to me on August 5, 2025. The Government exhibits included in the FORM (Items 1-7) are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 55-year-old who is being sponsored for a security clearance by a government contractor for whom he has worked since April 2004. He previously worked for the same employer from 1994 until a reduction in force in March 2003. He earned a bachelor's degree in 1999. He has also earned multiple professional certifications. He has been married and divorced twice (2003 to 2012 and 2015 to 2018). He has a 17-year-old son. The DOD granted him security clearance eligibility as of April 2016. (Items 3, 4, 6, 7)

From about December 2019 to March 2024, Applicant used marijuana with varying frequency. He provided a February 2019 letter from a medical doctor (MD) that he is a qualified patient in the State A Health Department Medical Marijuana Program. His marijuana use is limited to ingesting prescription marijuana to alleviate the chronic pain he suffers from having contracted multiple mosquito-borne tropical diseases while he traveled for work. These diseases have caused damage to his liver, which is exacerbated by non-marijuana prescription medications. The mosquito-borne diseases have also caused him to suffer from a mild acquired brain injury and encephalitis. The diseases have also caused him to suffer from periods of memory loss, migraine headaches, fatigue, dizziness, and cognitive dysfunction. He also used prescription marijuana to help alleviate post-traumatic stress disorder (PTSD) symptoms that resulted from violent work conditions such as being kidnapped, surviving car bombs, being physically attacked, and being lost in the desert. (Items 3-6)

As prescribed by the MD, Applicant sublingually ingests a tincture of cannabidiol (CBD) and tetrahydrocannabinol (THC) regularly to help him sleep, and as needed to alleviate his aforementioned chronic symptoms. He purchases the CBD and THC from a State A dispensary. The only effects he felt from the marijuana were pain relief and relaxation for about six hours. More recently, he began inhaling marijuana, as he claimed that the effects wore off sooner while still allowing him to relax and fall asleep. As early as December 2019, he acknowledged that marijuana use was illegal pursuant to federal law. In April 2020, he also acknowledged that he used marijuana while possessing a security clearance. Finally, he acknowledged that his prescription marijuana was not hemp derived. (Items 3-6)

Applicant's employer has a drug policy that only restricts illegal drug involvement on its property, at work sites, in company vehicles, and when the employee is engaged in company-related business. He is subjected to random drug screenings, and he provided a document from his employer reflecting that he had passed a drug test in April 2023. He provided a document showing that, in September 2019, his employer gave him permission to use medical marijuana under certain circumstances that he does not appear to have violated. (Items 5, 6)

In December 2023, Applicant responded to interrogatories from the Defense Counterintelligence and Security Agency (DCSA). He wrote that he intended to continue to use his prescribed marijuana. Conversely, he also claimed that he would stop using prescription marijuana if he was directed to do so, if “required to do so,” or if an “alternative treatment is found.” It’s unclear whose direction to stop using prescription marijuana he would deem sufficient to cause him to stop using it. (Item 5)

On March 28, 2024, Applicant answered interrogatories that the Defense Office of Hearings and Appeals (DOHA) sent to him. In his DOHA interrogatory responses, he claimed that he would be willing to provide a signed statement of intent to abstain from any CBD products that are not hemp derived. However, there is no evidence of any such signed statement of intent. He again indicated that he would stop using marijuana if he was “directed to do so.” He provided medical records showing that he undergoes neuropsychological, occupational, physical, and speech therapy. (Item 6)

In his response to the SOR, Applicant admitted using marijuana with varying frequency from December 2019 until March 2024, while holding a sensitive position, i.e., one in which he held a security clearance. He also admitted that he intended to use marijuana in the future. He reiterated that he only used it to treat the symptoms of his illnesses, that he had been open and honest about his marijuana use with his employer and during the security clearance process, and that he is “100% willing and able to discontinue use of this medication, in any form, if directed to do so.” Possession of marijuana (and therefore its use) was and continues to be illegal pursuant to federal law. There is no evidence that he has attended or completed a drug treatment program. He does not associate with anyone involved with illegal substances. (Items 2-6)

## 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 require 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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana with varying frequency from December 2019 until March 2024, while he held a sensitive position with a government contractor. He indicated his intent to continue using marijuana. AG ¶¶ 25(a), 25(c), 25(f), and 25(g) 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;
- (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.
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

I am sympathetic to Applicant that he is suffering from his illnesses, and marijuana use appears to provide him some relief. However, I am bound by the Directive and its attendant guidance. At most, it has been about one and one-half years since Applicant last used marijuana. This relatively short period of time pales in comparison to the length of time and frequency that he used marijuana. Moreover, given the number of times that

he indicated his intent to continue using marijuana, including as recently as December 2024, I question whether his marijuana use ended in March 2024. He has been put on notice on numerous occasions over the years that his marijuana use is a problem in relation to his security clearance eligibility (at the very least, DCSA interrogatories, DOHA interrogatories, the SOR and the FORM submission), yet he has provided no affirmative evidence that he has stopped using marijuana. At best, he has stated that he will stop if some unknown authority requires him to stop. He has known since 2019 that his marijuana involvement is prohibited by federal law, regardless of the laws of State A. For these reasons, I do not find that his illegal drug use is unlikely to recur, and I find that it casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

As he indicated in writing on multiple occasions that he will continue to use marijuana, and he continued to use it after these indications, he has not acknowledged his drug involvement or provided evidence of actions to overcome this problem. Moreover, as he has not provided sufficient evidence that his marijuana use has ceased, he has not established a sufficient pattern of abstinence. AG ¶ 26(b) does not apply.

Assuming, for the sake of argument, that Applicant's marijuana use was pursuant to a prescription, his marijuana use has not ended. Therefore, without conceding the point, if AG ¶ 26(c) was intended to apply to prescription marijuana, he still has not met the full requirement of AG ¶ 26(c).

Applicant has not completed a prescribed drug treatment program and there is insufficient evidence that his marijuana use has ended. AG ¶ 26(d) does not apply.

### **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 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 in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the drug involvement and substance misuse 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-1.c:                           **Against 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.

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Benjamin R. Dorsey  
Administrative Judge