



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



In the matter of:

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Applicant for Security Clearance)

ISCR Case No. 24-02334

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

07/24/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 22, 2024. (Item 4) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on January 28, 2025, 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.

On January 30, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On February 26, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on March 3, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. On March 7, 2025, he submitted additional matters in Response to the FORM. The Government did not object to the Response to the FORM. The case was forwarded to the Hearing Office on April 8, 2025, and assigned to me on June 5, 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 SOR ¶¶ 1.a – 1.d and denied SOR ¶ 1.e. Applicant's admissions are accepted as findings of fact. (Item 3)

Applicant is 22 years old. He has been employed by a DOD contractor since September 2024. This is his first time applying for security clearance. He received an interim security clearance on March 7, 2024. He signed a nondisclosure agreement on June 5, 2024. He has a high school diploma. He is single and has no children. (Item 2; Item 6)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from about September 2021 through at least January 2025 (SOR ¶ 1.a: Item 4 at 24; Item 5 at 5, 9); from about March 2024 through at least January 2025, he used marijuana while in a sensitive position, i.e., one requiring a security clearance (SOR ¶ 1.b: Item 5 at 9; Item 6); from at least April 2024 through about November 2024, he purchased marijuana with varying frequency (SOR ¶ 1.c: Item 5 at 9); in February 2024, he tested positive for marijuana on a pre-employment urinalysis test (SOR ¶ 1.d: Item 5 at 7, 12); and he intends to use marijuana in the future. (SOR ¶ 1.e: Item 4 at 24; Item 5 at 10)

Applicant listed his illegal marijuana use on his February 22, 2024, SCA in response to Section 23 - Illegal Use of Drugs or Drug Activity. He mentioned that he started to use marijuana in approximately September 2021. His most recent use was in February 2024. He uses marijuana about four to five evenings per week. He has a medical marijuana card from the state that he lives in. He will continue to use it as long as it helps him. (Item 4 at 24)

On September 25, 2024, Applicant was interviewed in conjunction with his security clearance background reinvestigation. He told the investigator that from September 2021

to about September 2024, he purchased marijuana from a state dispensary about once every two weeks. He had a medical marijuana card and used marijuana to help him with body aches and to sleep. He currently uses marijuana. He does not intend to stop using marijuana. He claims it is the only thing that helps him sleep. (Item 5 at 5-6)

Applicant was given the opportunity to review and correct any inaccuracies on the summary of background investigation interview. He clarified that he had a medical marijuana card from State A while he resided in State A. He recently moved to State B. Once his move is complete, he intends to switch his medical marijuana card to State B because he resides there and wants all of his personal information switched to the state he resides in. (Item 5 at 7)

In his response to DOHA Interrogatories, dated January 13, 2025, Applicant stated that his employer is aware of his use of medical marijuana because he tested positive for marijuana on his pre-employment drug screening on February 21, 2024. He provided all the necessary information to his employer. He told the background investigator about his medical marijuana use. He offered to show the investigator his state medical marijuana card, but the investigator said it was unnecessary. (Item 5 at 7)

In the same DOHA Interrogatory response, Applicant indicated that he used marijuana (THC) from September 2021 to January 2025. He used on average of the two to three times a week. In response to a question about whether he intends to use marijuana in the future, he answered, "Unless specified I will continue." From April 2024 to November 2024, he purchased marijuana from a dispensary every two to three weeks. He estimates the total value of the marijuana purchased was less than \$600. He indicated that he first learned marijuana remained illegal under federal law around August 2018 when he was in high school. (Item 5 at 9-10)

Applicant explained why he intended to use marijuana in the future as follows:

I haven't been instructed to change my medical treatment or face repercussions concerning my employment for my medical use of marijuana. As such, I will continue to treat myself until my symptoms improve, I find more effective natural treatments, or I'm faced with the decision to change my route of treatment or lose my opportunity for a clearance from the DOD. I have yet to encounter any of these three circumstances. (Item 5 at 10)

He noted that his cohabitant smokes marijuana recreationally several times a week at home with or without his presence. (Item 5 at 11-12)

In response to the SOR on January 30, 2025, Applicant claims he has no intent to use marijuana in the future. He points out in his response to interrogatories he was waiting for further guidance regarding his use of medical marijuana. He claims he admitted that

he would be willing to lose his medical marijuana card and abstain from the use of marijuana if it was necessary for him to earn his security clearance. Upon further research, he discovered the Guideline H mitigating condition, paragraph 26 (b)(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." Applicant stated that he hoped to be given the chance to provide a Statement of Intent to refrain from illegal drug use to mitigate the security concern and to allow him to continue his employment. (Response to SOR at 2)

Applicant first tried marijuana in 2021. He did not use marijuana again until he obtained a medical marijuana card and purchased medical marijuana at a dispensary in State A. He claims that his reliability, trustworthiness, and judgment should not be questioned because he claims his employer told him that he could have a medical marijuana card and work inside the shipyard. He claims that on the date he tested positive for THC during his pre-employment screening, he was only asked what his patient ID number was and that everything was "all set." When he started work, he was never notified that his use of medical marijuana was prohibited so he continued to use it. (Item 3 at 3)

In Response to the FORM, dated March 7, 2025, Applicant again states that he was never told that his medical marijuana card and his use of "medical" marijuana would be an issue for obtaining a security clearance either before or during his employment with his defense contractor employer. He informed his employer that he possessed a medical marijuana card and was not aware that it would raise an issue with his security clearance. He became fully aware that it was an issue after he received the Statement of Reasons. He attached a signed Statement of Intent expressing his intent to abstain from any drug involvement and substance misuse during his employment with his defense contractor employer. He stopped using marijuana on February 1, 2025, and intends to abstain from future marijuana use to include medical marijuana. He acknowledged that any future illegal drug involvement or substance misuse is grounds for revocation of his national security eligibility. He is willing to be tested for marijuana in the future. He will uphold all federal and state laws regarding this matter. (Response to FORM, dated March 7, 2025)

Company Drug-Free Workplace Policy

Applicant's employer has a drug-free workplace policy that has been in effect since July 25, 2014. The employer is committed to ensuring the safety, health, and wellbeing of all employees. Alcohol abuse and drug use pose a significant threat to their goals and the employer is committed to maintaining an alcohol and drug-free workplace. (Item 5 at 15) A section titled "Prohibited Behavior" reads:

It is a violation of [the Employer's] drug-free workplace policy to use, manufacture, possess, sell, trade, and/or offer for sale alcohol, illegal drugs

or intoxicants. Employees are prohibited from accessing [the Employer's] facility, or any facility where [the Employer] is conducting business, while their ability to perform job duties is impaired due to alcohol or drug use. Compliance with this policy is a condition of employment at [the Employer].

Violations of the above policy will subject the employee to disciplinary action and certain violations will result in immediate discharge for the first offense. (Item 5 at 15) The DOD contractor also has a directive titled "Job Performance – Medical Conditions and Substance Abuse." There is nothing in the directive that condones the use of recreational or medical use of marijuana that is legal under state law. (GE 5 at 15-39)

The workplace policy stated above pertains specifically to Applicant's employer. As a DOD contractor, his employer is required to follow the policies of the Federal Government and the DOD on marijuana use. The policies are summarized below.

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.

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.

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;

AG ¶ 25(b) testing positive for an illegal drug;

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

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position; and

AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such use.

The record evidence shows Applicant used marijuana several times a week from approximately September 2021 to February 2025. He used marijuana in a state where the medical use of marijuana is legal provided an individual obtains a medical marijuana card. He applied for a medical marijuana card and used marijuana on average of two to three times a week from approximately April 2024 to February 2025. He purchased marijuana from a state dispensary every two to three weeks from April 2024 to November 2024. He was aware that the use and possession of marijuana remained illegal under federal law. AG ¶¶ 25(a) and 25(c) apply.

Applicant disclosed that he tested positive for THC, a derivative of marijuana, on a pre-employment urinalysis test in February 2024. The record is unclear as to why his employer hired him despite the positive urinalysis test. AG ¶ 25(b) applies. He also admits that he worked in a sensitive position and possessed an interim security clearance since

March 7, 2024. I note he signed a nondisclosure agreement on June 5, 2024. The record is unclear about whether Applicant handled classified information. He admits to working in a sensitive position. AG ¶ 25(f) applies.

Applicant expressed an intent to continue to use marijuana in the future on his February 2024 SCA, his background investigation interview, and his response to interrogatories, dated January 13, 2025. In his response to interrogatories, he mentioned that he intends to use medical marijuana in the future unless he was told that it would adversely affect his ability to receive a security clearance. There is nothing in the record indicating that Applicant asked his employer whether he could continue to use medical marijuana. AG ¶ 25(g) applies.

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) does not apply. Applicant used and purchased marijuana on a regular basis from September 2021 to February 2025. From March 2024 to present, he is employed by a DOD contractor in a sensitive position. His last use of marijuana occurred less than six months ago. Not enough time has passed to conclude the behavior is unlikely to recur. While Applicant had a medical marijuana card which was authorized in the state where he resides, he was aware that the use and sale of marijuana remained

illegal under federal law. Questions remain about Applicant's judgment, trustworthiness, and reliability.

AG ¶ 26(b) does not apply. Applicant's last use of marijuana occurred in February 2025. While he signed a Letter of Intent to abstain from future illegal drug use on March 7, 2025, his last use of marijuana occurred less than six months ago. Considering his past history of marijuana use occurred several times a week over a significant period, it is too soon to conclude that he will abstain from marijuana use. He cannot prove that he no longer associates with drug-using associates because his cohabitant uses marijuana on a recreational basis at least three times a week. Merely indicating that he has stopped using marijuana is not sufficient to mitigate the security concern. His conduct raises questions about his judgment, trustworthiness, and reliability. Not enough time has passed to conclude Applicant's illegal marijuana use is mitigated.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of illegal drugs to overcome the

extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered that Applicant has been an employee of the same DOD contractor since March 2024. I considered he provided full disclosure about his illegal drug use on his February 2024 SCA, during his background investigation interview, and in response to interrogatories. I considered that he tested positive for marijuana on a pre-employment drug test in February 2024. I considered that he used marijuana in a state where medical marijuana use is legal. I also considered that he was aware that the use of marijuana remained illegal under federal law. I considered that Applicant was employed in a sensitive position during the time he used marijuana as an employee of a DOD contractor. I considered he stopped using marijuana in February 2025. This was less than six months ago. Not enough time has passed to conclude he is serious about his intention to refrain from illegal marijuana use. 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 has not 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge