



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



Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) security concerns arising from his past illegal drug use. National security eligibility for access to classified information is granted.

Statement of the Case

On July 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

Applicant provided an undated response to the SOR (Answer). He admitted all the SOR allegations (¶¶ 1.a, 1.b, 1.c, and 2.a.) He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case

on April 30, 2025. DOHA issued a notice on July 8, 2025, scheduling the hearing for August 14, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1, 2, and 3; Applicant testified and offered ten documents, which I labeled as Applicant Exhibits (AE) A through J; and all the exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 21, 2025. This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Evidentiary Issue

During the hearing, Department Counsel made a motion to amend the SOR to conform to the evidence in the record; namely Applicant's confirmed last use of marijuana in December 2022. Applicant did not object, and I granted the motion. The date of "January 2022" was amended to reflect "December 2022" in SOR ¶¶ 1.a and 1.c, as listed below. (Tr. 14-16)

Findings of Fact

Applicant is 25 years old. He is unmarried and has no children. He earned a bachelor's degree in November 2022. He was offered a summer internship with a DOD contractor during his third year of college. He interned with the contractor from approximately June 2021 through August 2021. Since August 2022, he has been employed full-time for the same DOD contractor. His job title is communication systems engineer. He resides in a state that legalized the recreational use of marijuana in 2021. On July 13, 2021, Applicant was granted a secret security clearance for his summer internship. (GE 1, 2, 3; Tr. 22-24, 46-47)

Drug Involvement and Substance Misuse and Personal Conduct

SOR ¶ 1.c alleges Applicant used marijuana with varying frequency from about October 2017 until at least December 2022.

Applicant admitted this information in his response to the SOR. He testified during the hearing that he started to use marijuana at the age of 17 while enrolled in high school. He used it with friends on three or four occasions in total during high school. He left for college in 2018, and his use of marijuana occurred on a monthly basis. His monthly use of marijuana remained consistent until December 2020, when he stopped all use because he knew he was going to apply for an internship with a DOD contractor. He was aware that using marijuana would not be compatible with this potential employer. (Tr. 24-30)

Applicant filled out a security clearance application (SCA) in May 2021, and he deliberately did not list any use of marijuana, as required. (SOR ¶ 2.a) He stated that he

did not disclose his use of marijuana because he wanted to get the internship. He also participated in a drug test during spring of 2021, which was negative. After his summer 2021 internship, Applicant may have used marijuana once or twice during his senior year of college. He was not aware that he still held a security clearance after his internship was over, and the DOD contractor had never promised him a future employment position once he completed college. (Tr. 24-30, 47-48; GE 1)

Applicant testified during the hearing that his mindset was that while he held a security clearance during his internship, it was not acceptable to use marijuana. After his internship ended and thinking that he no longer held a security clearance, he believed it was acceptable to resume his infrequent use of recreational marijuana, which was then legal in his state. He stopped his use of marijuana in January 2022, and he received a job offer from the DOD contractor during the spring of 2022. (Tr. 30-32, 34, 36-37, 46-47)

SOR ¶ 1.b alleges Applicant used psilocybin mushrooms in July 2022 while holding a sensitive position, i.e., one in which he held a security clearance.

In July 2022, Applicant visited a high school friend and was offered psilocybin mushrooms. He was curious and tried the mushrooms this first and only time. Even though he had previously accepted the offer of employment, he had not yet started working for the DOD contractor until August 2022. (Tr. 35-37)

SOR ¶ 1.a alleges Applicant used marijuana from July 2021 to December 2022 while holding a sensitive position, i.e., one in which he held a security clearance.

As noted above, Applicant had used marijuana infrequently after his 2021 internship ended, and his last use in college occurred in January 2022. He was not aware he still held a security clearance after completing the internship with the DOD contractor. He explained the circumstances about his use of marijuana on one occasion after he had started working for his current employer. In December 2022, he went to a football game after he had consumed edible marijuana. He suffered a severe negative reaction during the game. He could not get his heart rate to slow down, and he was transported to the emergency room (ER). After a few hours, he was released from ER and sent home. He regretted his poor decision to ingest the edible marijuana. He provided a copy of the ER admission. (Tr. 34,37-42; GE 2; AE C, D, F)

December 2022 was Applicant's last use of marijuana. Nine months later, in September 2023, his employer requested he complete another SCA for a top-secret security clearance. He listed all his illegal drug use on this SCA, as required. He also provided a July 2025 notarized statement of intent to abstain from all drug involvement and substance abuse in the future. Finally, he submitted negative drug urinalysis results from tests he voluntarily took in May and July 2025. (Tr. 34,37-42; GE 2; AE C, D, F)

Applicant said he wanted to start off his new career by being honest and completely transparent on the September 2023 SCA. He also attributed maturity as another reason he wanted to be candid with the government about his past illegal drug use. He admitted during the hearing that he was aware he would undergo a polygraph test for his top-secret security clearance and the importance of being truthful. He disclosed his use of marijuana and psilocybin mushrooms, and he had mistakenly listed that his last use of marijuana occurred in January 2022. In May 2025, Applicant sent an e-mail communication to DOHA Department Counsel letting her know that he had incorrectly listed on his 2023 SCA the last use of marijuana as "1/2022." He informed her that his last use of marijuana occurred in December 2022. He stated during the hearing that once he saw the incorrect date on the SCA, he did not want to wait until the hearing to correct it. He wanted to correct the mistake immediately by sending the e-mail message. (Tr. 42-46; GE 2; AE D, J)

Character Evidence

Applicant submitted two recent positive employee performance reviews, and seven character reference statements. The overall sense I obtained from these sources was that Applicant is committed, trustworthy, professional, and sincere. The character references were aware of his failure to list his illegal drug use on the 2021 SCA for an internship, and his use of illegal drugs in 2022 while he possessed a security clearance. They stated Applicant deeply regretted his past decisions, but that he had also learned a valuable lesson. All seven character references supported Applicant being granted a top-secret security clearance. (AE G, I)

Policies

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 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, these guidelines are applied 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 access to classified information will be resolved in favor of 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 Executive Order 10865 provides that 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

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 under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

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

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

Applicant admitted he used marijuana from about July 2017 to about December 2022 and used psilocybin mushrooms in July 2022. He was issued a secret security clearance in July 2021, when he interned for a DOD contractor in a sensitive position. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

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 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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant had a security clearance issued in July 2021 while he interned with a DOD contractor over the summer. He did not use any illegal drugs during his internship. After the internship ended, he returned to college and was not aware that he continued to hold a security clearance. It is important to note that when he completed his internship, he was not promised a future position with the DOD contractor upon his college graduation. His recreational use of marijuana was legal in his state of residence. To hold Applicant accountable for any illegal drug use while his security clearance remained in an inactive pending status in the government security system is unnecessary.

During the spring of 2022, Applicant was offered permanent employment with the DOD contractor. He was aware that using illegal drugs was incompatible for security clearance holders. He used psilocybin mushrooms a month before he started working for

his new employer. He used marijuana one time in December 2022 after he had been employed by the DOD contractor for about four months. Applicant's use of illegal drugs in 2022 is more troubling in this context.

The DOHA Appeal Board cited the importance of consideration of "the changing landscape of marijuana law and . . . of the Director of National Intelligence's *Clarifying Guidance Concerning Marijuana*." ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the "evolving landscape of marijuana law and policy," "the resulting increasing prevalence of marijuana use," and in some instances "recreational marijuana use deserves less, or even no negative inference on judgment.").

Several factors are important in a non-exclusive list concerning the assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; the employee's company's policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; and broken promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-1005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use was not illegal under state law; no marijuana use after notice that marijuana use was federally illegal); ISCR Case No. 22-02601 at 3 (App. Bd. Feb. 22, 2024) (reversing denial of security clearance; factors: marijuana abstinence 3.5 years before hearing; marijuana use while holding a security clearance; marijuana use legal under state law).

Beginning in 2021, state law permitted the recreational use of marijuana. Applicant was aware that he was not permitted to possess and use marijuana while working for the DOD contractor. There is no evidence of any broken promises not to use marijuana in the future. He illegally used mushrooms in July 2022, and he occupied a sensitive position when he used marijuana in December 2022. However, Applicant was young, immature, and just starting his new career following college graduation. In September 2023, he informed the government about his use of illegal drugs on his second SCA. As a sign of his maturity, he took the initiative to inform the Government prior to the hearing of the correct window for his marijuana use. He has not used marijuana after submitting his 2023 SCA, and he testified at the hearing of his clear intent not to use any illegal drugs in the future.

Applicant established a pattern of abstinence from illegal drug use. Three years have passed since his involvement with illegal drugs, and I find this time is sufficient to show his commitment to remaining drug-free. Applicant has matured and is now dedicated to his new career. His infrequent illegal drug use does not cast doubt on his

current reliability, trustworthiness, and judgment. AG ¶¶ 26(a) and 26(b) apply. Guideline H security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 provides one personal conduct condition that could raise a security concern and may be disqualifying in relation to Applicant's provision of inaccurate information on his SCA:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) applies. Applicant admitted that he failed to disclose information on his May 2021 SCA about his history of marijuana possession and use from 2017 to 2021. The SCA has clear, easy to understand questions about illegal drug possession and use, and he deliberately denied marijuana possession and use from 2017 through 2021. Applicant stated that he wanted this college internship with the DOD contractor, and he was worried that disclosure of this information would prevent him from consideration.

AG ¶ 17 provides the following potential conditions that could mitigate security concerns in this case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant made a poor decision to hide his past use of marijuana on the 2021 SCA because he was aware marijuana use was undesirable by the DOD contractor, and he was worried that if listed, he would not be considered for the internship. He received the summer internship and returned to college to finish his final year. After college graduation, he started working for the DOD contractor in August 2022. In September 2023, he filled out another SCA for a top-secret security clearance. He was completely candid and transparent about his use of marijuana and one-time psilocybin use in July 2022. He has not used any illegal drug since submitting this 2023 SCA.

Applicant stated that he wanted to be truthful with the government about his illegal drug use because he was more mature, and he has a promising career with the DOD contractor. Three months before the hearing, he also e-mailed Department Counsel to notify her of the incorrect date on the 2023 SCA, in which he discussed being hospitalized for ingesting edible marijuana. He provided a copy of the ER admission to support the correct date of December 2022. Applicant stated during the hearing that once he saw the incorrect date on the SCA, he did not want to wait until the hearing to correct it. He wanted to correct the mistake immediately.

I found Applicant to be a very credible witness during the hearing. He regrets his past immature decisions and has taken the right steps to set the record straight about his illegal drug use. Future falsification is unlikely to recur and no longer cast doubt on Applicant's current reliability, trustworthiness, and good judgment. Guideline E security concerns are mitigated.

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 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 Guidelines H and E and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made positive changes in his life and is considered a trustworthy and reliable individual. These traits were fully supported by his numerous character references, and his employee performance reviews in the record. He is committed to remaining drug-free, and I find any future use of illegal drugs is unlikely to recur. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the drug involvement and substance misuse and personal conduct 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:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge