



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01325

Appearances

For Government: Cassie Ford, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq.

12/05/2025

Decision

HALE, Charles 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

On January 2, 2025, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and J. The Guideline J allegation was withdrawn by Department Counsel prior to the hearing. Applicant responded to the SOR on February 12, 2025, and requested a hearing before an administrative judge. The case was assigned to me on August 5, 2025.

The hearing was convened on September 23, 2025. Government Exhibits (GE) 1-2 and Applicant's Exhibits (AE) A-F were admitted in evidence without objection. The record was held open, and Applicant timely submitted, without objection, additional items under AE C and AE E. DOHA received the transcript (Tr.) on October 2, 2025.

Findings of Fact

Subject to a clarification point, Applicant admitted the allegations in his Answer as follows: SOR ¶ 1.a, that from about September 2010 to about October 2023, he used marijuana with varying frequency, to include use while employed as a Federal contractor; SOR ¶ 1.b, that from about September 2010 to about November 2023, he purchased marijuana with varying frequency, stating he ceased purchasing marijuana in October 2023; and SOR ¶ 1.c, that in or about May 2019, he tested positive for marijuana on a urinalysis test administered by his employer.

Applicant is a 34-year-old information technology (IT) analyst for a Federal agency. He has worked for his current employer since February 2025. He seeks to obtain his first security clearance. He earned his bachelor's degree in May 2016. He married in June 2022, and he and his spouse are expecting their first child in early 2026. (Tr. 19, 24; GE 1 at 5, 12-13, 21-22, and 38.)

Applicant disclosed his history of marijuana use on his November 2, 2023 Questionnaire for National Security Positions (SCA). He reported using marijuana from September 2010 to October 2023. He described the nature of use, frequency, and number of times used as, "a couple of times a week fairly consistently, unless I knew a drug test was in my future and would stop use weeks prior to that." (GE 1 at 35; GE 2 at 14-16.)

Applicant was fired by his former employer from his analyst position in May 2019 after he failed a drug test. He had been with this employer since December 2018. (GE 1 at 13-16; GE 2 at 16; AE C; Tr. 24.) He testified that after being fired, he stopped using marijuana for several months before resuming marijuana use. (GE 1 at 14-15; Tr. 24, 41.) He was aware of his former company's drug policy and the Federal agency's drug policy when he was using marijuana. He stated, "I was, and again, at the time I was more immature and did not think anything of it as my work did not reflect any of the stereotypical negatives that would come with that." (Tr. 41-43; GE 2 at 13-16.)

Regarding the positive drug test, Applicant explained that he had stopped marijuana use because of his new position and the expectation of a drug test. He explained what happened:

Applicant: I took the initial drug test and was told that if I didn't hear anything in two business days, that there was -- no news is good news.

Department Counsel: Okay. After that drug test, you returned to use; is that correct?

Applicant: After ten business days, yes.

Department Counsel: Okay. Why did you return to marijuana use at that time?

Applicant: At the time, again, I thought I knew better, and I was in a different place in my life. (Tr. 40.)

Applicant described his marijuana use prior to 2019 as, “at probably my -- one of my friend's houses and just “smoking a small amount of marijuana, hanging out, watching a movie, or having some food, letting it all wear off, and then going back home.” (Tr. 53.) His marijuana use after 2019, when he entered his relationship with his future wife, had periods of abstinence because he was living with her due to the COVID pandemic. He resumed using marijuana from time to time without “any regular frequency.” (Tr. 55.) He estimated the longest period of abstinence between 2010 and 2023 to be “six months at some point.” (Tr. 55.)

Applicant acknowledged he continued to use marijuana after his June 2022 marriage but stated his wife did not use marijuana. His wife did not approve of him smoking marijuana, so he went outside at night and smoked it in the backyard. He eventually switched to edibles and typically used them after work. He switched to edibles so he could be in the house. His marijuana use increased when he switched to edibles. He cited in response to Government interrogatories he had used marijuana to help deal with anxiety. He cited going “on walks, runs, hanging out with [his] wife” as ways he now deals with anxiety. He also has friends he games with who also used marijuana in the past and now they “keep each other in check and in line.” Based on this interpretation of the SCA question, he states he no longer associates with individuals who use marijuana. (GE 1; GE 2 at 8, 14-16; Tr. 45, 55-57.) He explained the reason he stopped using marijuana in October 2023 was because the contract he was on was going to expire and he would be seeking “some sort of job.” (Tr. 38-39, 43.) He acknowledged he was working on a Federal contract working for a Federal agency during this period after he had married. (Tr. 42; GE 2 at 8.)

In response to why Applicant believed his behavior happened so long ago that he could be trusted with a security clearance, he stated:

I have been diligent in this current and future abstinence. There are a multitude of reasons at this point that I've listed that will cause me to never use again. It's not something in my life; it's not an option that I believe is in my life. I have many other things to look forward to and marijuana would only be a detraction from all of those.

As part of the Government interrogatories Applicant was asked to verify the accuracy of his January 4, 2024 enhanced subject interview (ESI) with a DoD investigator. He made no changes and marked that the information he provided the investigator was accurate. (GE 2 at 6.) In the interview, Applicant addressed his note in his SCA that he would stop smoking a few weeks before a drug test and his statement that THC is being treated like alcohol thanks to it being legalized. He told the investigator he had a naive look on things since marijuana is legalizing in most states but is still federally illegal. He acknowledged he stopped smoking in October 2023 because his employment contract

ended, and a new investigation was going to occur and that a drug test was going to happen. (GE 1 at 35; GE 2 at 8-9; Tr. 37, 40.)

Applicant provided a collection of documents in mitigation of the security concerns to include, but not limited to: his completion of a 12-hour marijuana education class dated September 28, 2025; a substance abuse evaluation report issued on September 15, 2025; and the results of a drug test taken on October 4, 2025. (AE E; Tr. 26.) He offered his signed pledge of continued abstinence from marijuana, which acknowledged any future use would be grounds for revocation of national security eligibility. (AE C.) Character letters submitted on his behalf noted his dependability, hard work, and loyalty, which were also reflected in the customer comments. (AE D)

Applicant cites his marriage, his wanting to become a father, and his general health for wanting to change his behavior. (Tr. 27-28.) He notes, "It has been almost two years since I last used marijuana. And my frequency is down to never, as I've pledged to never use it again." (Tr. 28.)

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.

Applicant’s admissions in his SCA, Answer, and testimony are sufficient to raise the following disqualifying conditions under this guideline: AG ¶ 25:

- (a): any substance misuse (see above definition);
- (c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

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

Applicant's behavior is recent and was not infrequent. Applicant knowingly disregarded his company's drug policies. His use was calculated to beat the drug testing system. He continued to use marijuana until just prior to initiating the security clearance application process. While he offered a negative drug test taken in October 2025, given calculated periods of abstinence and history of marijuana use, I do not find this test credible evidence of cessation of marijuana use. There has not been sufficient track record establishing real abstinence, not just an environment where he is simply manipulating the system and will use marijuana again. Applicant's behavior raises substantial questions about his trustworthiness, judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Applicant's willingness to sign a statement of intent not to use illegal drugs in the future does not mitigate the scope of these security concerns raised by his statements and history during the security clearance application process. Applicant has failed to fully establish AG ¶ 26 conditions that could mitigate the security concerns.

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 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 his character statements, declaration of support of his colleagues, and his miscellaneous awards as well as his Declaration of Intent and Marijuana Education Certificate of Completion. 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.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse).

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraphs 1.a-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.

Charles C. Hale
Administrative Judge