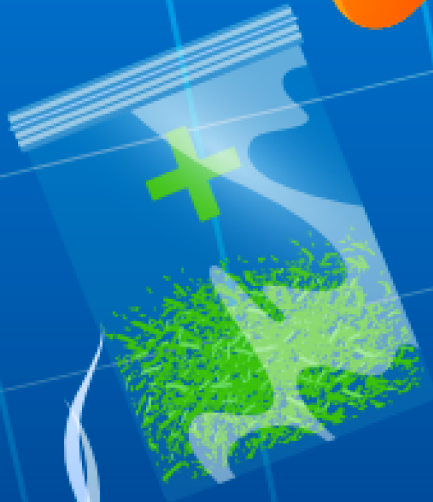




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CANNABIS AND CLEARANCES

WHAT NATIONAL SECURITY WORKERS NEED TO KNOW ABOUT CBD, STATE MARIJUANA LAWS, AND DRUG USE



Marijuana Goes Mainstream: But Not for National Security Workers

For decades drug culture was on the fringe. It wasn't difficult to know whether or not drug use would impact your security clearance. State and federal laws were in alignment, and drugs were a pure no-go for national security workers or anyone interested in pursuing a degree with the federal government.

Over the past decade and the last two years, in particular, however, a flood of laws have changed, making the policy much murkier for security clearance holders and applicants, and creating a green wave of security clearance denials and revocations for a number of national security workers who have found that ignorance truly isn't bliss.

Some national security careers aren't going up in (marijuana) smoke, either—they're taking a hit through the growing trend of CBD products in everything from coffee to arthritis cremes and bath bombs (did you know Kristen Bell has a line of CBD products called 'Happy Dance' which is designed to make you forget how many times you've heard her sing 'Do You Want to Build a Snowman'?!).

Marijuana is mainstream—but it's still a no go for security clearance holders and applicants. Here are the things you need to know about cannabis and national security careers.



Drug Use is Still Illegal at the Federal Level

This is when a little constitutional law lesson is helpful. Despite the ongoing move to make drugs legal at the state level (including major national security hubs like Washington, D.C. and Colorado), laws concerning marijuana use remain unchanged at the federal level. This includes medicinal marijuana provided with a prescription. Because marijuana is illegal at the federal level (still), individuals who have done drugs in a state where it was legal are violating federal law.

Article VI, paragraph 2 is commonly called the Supremacy Clause of the Constitution,

and it dictates that federal laws generally take precedence over state laws. The Justice Department has largely chosen to not take federal action in states where marijuana has been legalized—but that's not to say it couldn't. And what is notable for security clearance holders is that even though marijuana use may be legal at the state level, as long as those federal prohibitions are on the books, drug use remains both a drug involvement and criminal conduct issue in the security clearance eligibility process.

Drug Involvement is an Adjudicative Criteria

Even if drugs were made legal at the federal level, drug involvement remains an adjudicative guideline and the Office of the Director of National Intelligence (ODNI) would need to change the existing policy before security clearance holders should feel free to partake in drugs. Granted, it is highly likely that if the federal law changed, the adjudicative criteria would soon follow, or executive



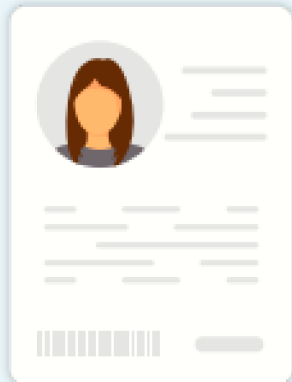
orders or correspondence would clarify the change. But it's worth noting that while congress has the purview to change federal laws, it is the White House who has the purview to change security clearance policy. If federal drug laws change, national security workers should not flee to their nearest dispensary to take advantage of their new-found legal authority.

Past Drug Use is Not a Cleared Career Killer

Contrary to popular belief as evidenced by the angst of many security clearance applicants, past drug use does not prevent obtaining a security clearance. Honesty is the best policy when it comes to drug use—even recent drug use. While policy guidelines used to caveat that one to two years of abstinence was advisable prior to applying for a security clearance, this is one area where changes in state laws are somewhat favorable to today's security clearance applicants. Security

clearance adjudicators today appear much more interested in how applicants have separated themselves from drug culture or other users. Even if an individual has used drugs in the (somewhat) recent past—that's not a clearance killer.

Two recent cases from the Defense Office of Hearings and Appeals (DOHA) show instances where individuals were able to mitigate prior drug use.

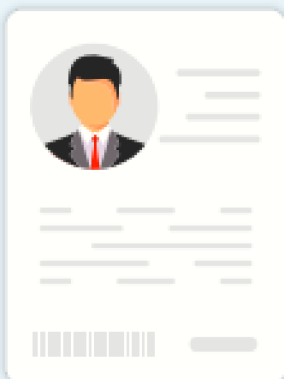


**CASE ONE:
COLLEGE GRADUATE APPLICANT**

The applicant was a recent college graduate who had taken an internship with the federal government. She had extensive drug use throughout college, including selling and trading Adderall and using a variety of substances (including marijuana), over the course of several years. The drug use had occurred as little as a year ago, but by demonstrating that the behavior was linked to college, that the applicant had separated from drug-using associates (including dumping a boyfriend), and by displaying that her skills were in demand in the federal government, she was able to mitigate the drug use and obtain a security clearance.



CASE TWO: EXPERIENCED IT PROFESSIONAL



The applicant was a 40-year old IT professional living in Colorado who had partaken in marijuana use regularly for the better part of a decade. The applicant still had relatives and friends who were recreational marijuana users. The applicant abstained from use for a year after expressing a desire to take on a role with the federal government. He informed relatives he could no longer be around drugs, and displayed a willingness to change his lifestyle to ensure marijuana was no longer in the picture. He was able to mitigate the drug use and obtain a security clearance.

Gone are the days when you needed a certain amount of time in order to mitigate drug use. While it used to be advised that at least one year of abstinence would be required to get a favorable determination, that's no longer the case. In addition, being a habitual drug user—particularly

if you were living in a state where it was legal—doesn't mean you should toss out your thoughts of a cleared career. Passage of time helps, but the government will consider all factors in making its determination.



AGENCY MATTERS WHEN IT COMES TO PAST DRUG USE AND APPLYING FOR A SECURITY CLEARANCE

The State Department is obviously much less concerned about your prior drug use than the DEA. The FBI also tends to tow the line and prefer more passage of time between drug use and application than the DoD. Speak with a recruiter or talk to someone before you bother applying for security clearance with specific agencies. If you move forward with the FBI and are denied a security clearance, you'll have to wait a full year before you reapply. If you went ahead and applied for a position with the DoD however, that same clearance could be approved.

FIVE STEPS:

Mitigate Prior Marijuana Use

1. Leave the Drugs Behind



White House personnel recently made headlines after leaving their new political positions thanks to drug use. Individuals who express a willingness to abstain from marijuana should not face those issues. But if you have any thoughts, plans, or inclinations to continue with drug use, it's time to pursue another career. Current or ongoing drug use is one of the few red lines created by security clearance policy, and the government has shown no desires to change it—even for those working in the White House.

2. Create a New Lifestyle



The 'lifestyle' defense is one of the clearest mitigating factors being used in successful security clearance appeals involving drug use. Applicants who used drugs previously need to demonstrate how they have changed their behavior—including separating themselves from current drug users.

3. Age and Experience



The increased prevalence of legal drug use and the 'mainstreaming' of drug culture has made the age issue slightly less significant, but the reality remains that a college student who did drugs will have a lower burden to overcome than a 40-year old drug user. Successfully mitigating drugs requires tying it to the past, and demonstrating how drugs won't be a part of your future.

4. Think in Nanograms



If your drug use was infrequent, largely consisted of edibles, or was sporadic—say so. There is a difference between experimental or occasional use and a daily habit.


5. Be Honest on Your Application



Many security clearance denials related to drug use are less about the drug use itself than the applicant's failure to disclose it, or attempts to mitigate it. Defenses attempted upon security clearance appeal including 'I didn't realize it was illegal,' 'I did it to impress a girl,' and 'I forgot about it' are all frequently seen in upheld security clearance denials.

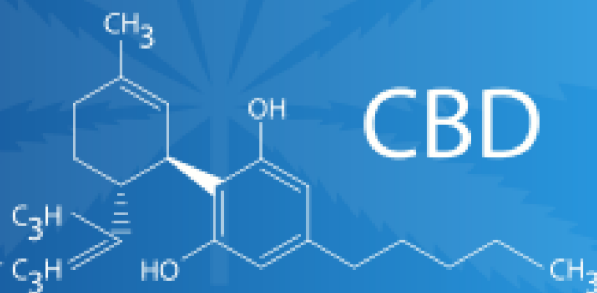
Spotlight on CBD

Today, it isn't just drug use that's the issue, it's the growing industry of marijuana products that have hit the market. CBD oil, unlike marijuana, has been legalized in very limited instances through the 2018 Farm Bill, which legalized CBD products containing less than 0.3% THC concentration by dry weight. The Office of the Director of National Intelligence (ODNI) has not released any guidance about CBD products for security clearance holders, but the lack of directive has led to the assumption that CBD products aren't an issue—unless your specific agency has different rules, or you consume so much you test positive on a drug test.



Failing a drug test due to CBD products shouldn't be an issue if you can document what CBD products you were consuming, why, and why your consumption should have been below the limit legislated in the Farm Bill.

The bottom line when it comes to security clearances and drug use is this: current ongoing drug use is not going to fly if you want to pursue a national security career. But if drug use is in your past—even your immediate past—you shouldn't exclude yourself from a security career.



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