DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 24-01332
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq. (prehearing brief only)

08/06/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 11, 2023. On September 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline H. The 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on November 12, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 23, 2024. The case was assigned to me on May 7, 2025. On May 13, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 17, 2025. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection.

Applicant submitted a written brief (Hearing Exhibit I), testified, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript on July 1, 2025.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations in the SOR, with explanations. Her admissions are incorporated in my findings of fact.

Applicant is a 30-year-old instructional designer and trainer employed by a defense contractor since August 2021. She graduated from high school in April 2013. She married in May 2021 and has no children. She received a bachelor's degree in health education on a date not reflected in the record. (Tr. 14)

Applicant served in the Air National Guard as a munitions systems technician from December 2016 to April 2022 and attained the rank of senior airman (pay grade E-4). She held a security clearance while on active duty. In June 2019, she received the Air Force Achievement Medal for service as a maintenance crew member at an Air Force Base in Korea. In April 2021, she received a second Air Force Achievement Medal for service in a quick reaction force in response to the January 2021 attack on the U.S. Capitol. She underwent a random urinalysis in May 2021 and tested positive for marijuana. Based on the urinalysis results, she received a general discharge in April 2022.

When Applicant submitted her SCA in May 2023, she stated that she used marijuana only once in April 2021. (GX 1 at 35). When she was interviewed by a security investigator in September 2023, she admitted that she used marijuana once while she was in high school (between August 2009 and May 2013), and that she and her spouse smoked marijuana at the funeral of a family member in April 2021. She also admitted that she smoked marijuana with her husband a "few times" after she was discharged from the Air National Guard, because she was no longer constrained by her military status and the requirements for holding a security clearance. She told the investigator that she stopped using marijuana in "approximately Summer/Fall 2022," when she began working for her current employer. (GX 3 at 3)

In response to DOHA interrogatories in September 2024, Applicant admitted using marijuana in June 2011 and about once a month until May 2022. (GX 3 at 8) She stated that she learned that marijuana use was illegal under federal law in August 2022, when she received an employee handbook, and she stopped using it after reviewing the handbook and learning that it was illegal. (GX 3 at 9) At the hearing, she testified that the date on which stopped using marijuana was in 2021 and not 2022, because she started

working for her current employer in 2021 and stopped using it when she began her employment in August 2021. (Tr. 25-28)

At the hearing, Applicant testified that her use of marijuana that was detected by the urinalysis occurred when she and her husband were attending a funeral that was emotionally difficult. She also was recovering from the stress of her duty during the attack on the U.S. Capitol, during which she was unable to see her family or have access to her "support system." She testified, "I never thought I would be in a position to have to kind of go against my community." (Tr. 34)

At the hearing, Applicant also testified that she was not sure if marijuana use was legal in her state of residence when she used it. (Tr. 31) I have taken administrative notice that recreational use of marijuana was not legalized in her state of residence until July 2023. (Hearing Exhibit 1)

Applicant testified that she no longer associates with the college friends with whom she used marijuana. Her husband is now employed by a federal contractor and no longer uses marijuana. (Tr. 29) In January 2024, she received a Spotlight Achievement Award from her current employer for introducing innovative learning and training courses. On November 11, 2024, she signed a statement of intent to not use any illegal drugs, including marijuana, and agreed that any violation will be grounds for automatic revocation of her security clearance. (AX E)

During the administrative process that led to Applicant's discharge from the Air National Guard, one senior airman and eleven noncommissioned officers ranging in rank from technical sergeant to command master sergeant submitted letters attesting to her outstanding performance of duty, positive attitude, technical skills, and exceptional potential for future service. She submitted the same letters at the hearing. (AX D 1-12) One of the statements submitted refers to a "single lapse of judgement." (AX D at 4) The other eleven letters simply recite, "I am aware of what [Applicant] is accused of doing." (AX D 1-3 and 5-12) The timing of these statements indicates that the declarants believed that Applicant had used marijuana only one time.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense

decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n,* 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531.

Analysis

Guideline H (Drug Involvement and Substance Misuse)

The SOR ¶ 1.a alleges that Applicant used marijuana with varying frequency from about 2011 to at least August 2022 (SOR ¶ 1.a), that she used marijuana at least once in April 2021, while employed in a sensitive position, *i.e.*, one requiring a security clearance (SOR ¶ 1.b), and that she tested positive for marijuana during a routine urinalysis and was subsequently discharged from the National Guard (SOR ¶ 1.c). The concern under this guideline 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. 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 requires 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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 26(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; and

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

The following mitigating conditions 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 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 testified that she was not sure whether recreational use of marijuana was legal in the jurisdiction where she resided when she used it. Her testimony indicates that the legal status of marijuana use in her state of residence was not a factor in her decision to use it.

The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last use of marijuana was at least three years ago, which is a "significant period of time." When she submitted her SCA in May 2023, she answered the question about the nature, frequency, and number of times used by stating that it was "recreational, once, once," (repetition in original document) in April 2021. When she was questioned by a security investigator in September 2023, she stated that she smoked marijuana with her husband a "few times." In her responses to DOHA interrogatories in September 2024, she stated that she used marijuana about once a month until May 2022. When she was questioned at the hearing about her claim in her May 2023 SCA that she used it only once, she testified that she thought she had disclosed her subsequent use. (Tr. 21) At the hearing, she testified that she was confused about the year of her last use and mistakenly said in her interrogatory responses that it was in 2022, until she realized that it was in 2021, when she began working for her current employer. Her inconsistent and contradictory statements about the frequency and recency of her marijuana use cause me to have doubts about the credibility of her testimony and leave me unconvinced that the reform and rehabilitation contemplated by AG ¶ 26(a) is established.

Applicant's falsification of the questions in the SCA about drug use was not alleged in the SOR. Therefore, I have considered her false statement that she used marijuana only once for the limited purposes of evaluating her credibility; evaluating her evidence of extenuation, mitigation, or changed circumstances; to consider whether she has demonstrated successful rehabilitation; and as a part of my whole person analysis. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

AG ¶ 26(b) is partially established. Applicant has submitted the statement of intent provided for in AG ¶ 26(b)(3), but she but has not credibly acknowledged the extent or duration of her drug involvement. She has not disassociated from her husband, although she claims that he also has terminated his drug involvement. Her husband did not testify at the hearing, and there is no documentary evidence in the record reflecting that he has terminated his drug involvement.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Although Applicant has submitted some mitigating evidence, it is not sufficient to overcome the concerns raised by her drug involvement. "Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown,* 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption. 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 her drug involvement.

Formal Findings

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

Paragraph 1 (Drug Involvement and Substance Misuse): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge