



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



In the matter of:)
)
) ISCR Case No. 24-01421
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley Esq., Department Counsel
For Applicant: *Pro se*

09/29/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant provided insufficient evidence to mitigate security concerns raised 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 April 13, 2024. On December 31, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H. Applicant answered the SOR on January 12, 2025 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on August 1, 2025.

On August 22, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for September 16, 2025. The hearing was held as scheduled. At the hearing, the Government offered two exhibits, Government Exhibits (GE) 1 and GE 2, which were admitted in evidence without objection. Applicant testified and did not offer any documentary evidence. DOHA received the hearing transcript (Tr.) on September 25, 2025.

Findings of Fact

In her Answer, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. Her admissions are incorporated in my findings of fact. After thorough review of the evidence, I make the following additional finding of facts.

Applicant is 61 years old. She earned her high school diploma in 1982 and started working shortly thereafter. She earned her computer programming certification in 1984, and began her career as a software developer. She worked as a software developer for a department store for three years while attending community college part time. In 1988, she accepted a software developer position with a major private university, which offered attractive education benefits. From 1988 through 1993, she worked full time for the university and attended classes there as a part-time student. In December 1993, she completed a bachelor's degree in accounting and worked as an accountant for about a year before returning to work as a software developer. She married in 1989, divorced in 2024, and has two children, ages 28 and 26. (GE 1, 2; Tr. at 15-18)

Applicant worked as a software developer for a private company from 1995 to 2000, and for another company beginning in 2000. After working there for 20 years, she accepted a voluntary separation compensation package and left the company in 2020. She was unemployed for about eight months before returning to the workforce in 2021. (GE 1, 2; Tr. at 15-18)

In March 2021, Applicant was hired as a software developer for a defense contractor. On April 13, 2024, she completed her first SCA, and in Section 23 – Illegal use of drugs or drug activity, she disclosed that she used marijuana from about October 1979 through April 2024, and commented as follows:

I smoke marijuana occasionally when I get together with friends. I've smoked it since I was a teenager. I probably smoke 2 or 3 times every couple of months. (GE 1 at 28)

Applicant also expressed her intent to use marijuana in the future. She explained her future intent as follows: "It's legal in [my resident state] now and I feel it is fairly harmless since I don't smoke it very often." (GE 1 at 29)

Applicant provided additional details about her marijuana use during her May 2024 interview with a DOD investigator. After confirming she first used marijuana as a teenager in October 1979, she disclosed she used marijuana with three friends on April 24, 2024, about 11 days after completing her SCA. She said she had never purchased marijuana, and she believed that her friends purchased marijuana from dispensaries. (GE 2)

Applicant said she uses marijuana because she enjoys it, it makes her feel relaxed, and she has never been forced to use it. She still socializes with friends who use marijuana, and she intends to continue using marijuana in the future. (GE 2 at 2)

In her September 2024 response to interrogatories, Applicant revised the date of her last use of marijuana to August 31, 2024. She also admitted she purchased marijuana from about January 2020 to about January 2024, and that she spent a total of about \$400 for her purchases. She again stated her intent to continue using marijuana in the future, commenting as follows: “I enjoy [marijuana] in a social setting with friends. It relaxes me. It is only marijuana which is legal in a lot of states.” (GE 2 at 6-8)

Applicant again confirmed her association with friends who use marijuana, stating she uses marijuana “only in friends’ homes and only occasionally” and that she “probably smokes marijuana a couple of times every couple of months.” She denied any involvement with other drugs, stating she has “only smoked marijuana,” that she “only smokes [marijuana] when [she] wants to,” and that she “considers [marijuana] to be legal.” Applicant denied being subject to random drug tests through her current employer. (*Id.*)

Under Guideline H, the SOR alleges Applicant used marijuana from 1979 to at least August 2024 (SOR ¶ 1.a), and that she intends to use marijuana in the future (SOR ¶ 1.b). In her Answer, she commented as follows:

Although I have admitted to using marijuana, I was also clear that I don’t use it very often. I use it occasionally and in a social setting. I never use it by myself. I consider it to be like having a glass of wine. I thought since it was legal in a lot of states and since there has been discussion of making it legal at the federal level that it wouldn’t be an issue with my security clearance. I certainly don’t need to use marijuana and if it is going to prevent me from being able to get my security clearance, then I can unequivocally state that I won’t use it in the future. (Answer)

During the hearing, Applicant admitted she used marijuana in February 2025, March 2025, and in June 2025. She purchased about 10 gummies from a dispensary while visiting State 1 in February 2025. She consumed one gummy, did not like it, but said she kept the remaining gummies, which are at her home. In March 2025, she admitted smoking marijuana while visiting a good friend in State 2. Her friend regularly uses marijuana, they visit each other a few times each year, and they smoke marijuana together during their visits and have done so since they were teenagers. She last used marijuana in June 2025 during a visit with the same friend. She acknowledged her awareness that marijuana is illegal under federal law. (Tr. at 12, 19, 31-33)

Applicant said that, as a teenager, she used marijuana a lot, but reduced her use at about age 19, and that she has used marijuana infrequently since about the age of 20. When she uses marijuana, she only takes “a few hits.” She compares smoking marijuana to having a glass of wine. She repeatedly stated she could easily stop using marijuana because she uses it so infrequently. She denied she ever received counseling or treatment for her marijuana use. Though she understands that using marijuana is federally illegal, she did not believe she would be denied a security clearance for her minimal, infrequent use. She said she would not use marijuana again if doing so would prevent her from being eligible for a security clearance. (Tr. at 19-37)

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 described 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable are:

- (a) any substance misuse (see above definition); and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted using marijuana from 1979 to June 2025, and expressed her intent to continue using marijuana in the future in her SCA, background interview, and at the hearing. AG ¶¶ 25(a) and 25(g) apply.

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.

Neither of the above mitigating conditions apply to the facts of this case, despite the Appeal Board's recent decision noting "the evolving landscape of marijuana law and policy in the United States," and particularly as it relates to the recreational use of marijuana when permitted under state laws. See ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025). None of the listed factors highlighted in the decision would help to mitigate Applicant's 45-plus-year history of using marijuana. Though she repeatedly states she does not need to use marijuana, and she would stop using marijuana if she risked being denied a security clearance, she has not stopped using marijuana since she started the security clearance process. Applicant most recently used marijuana in February, March, and June 2025, long after she submitted an Answer to the SOR. Applicant's marijuana use is recent and not isolated. She has not demonstrated a pattern of abstinence from marijuana use sufficient to establish mitigation.

Applicant's continuous use of marijuana over a period of 45 years, including after submitting an SCA, being interviewed by a government investigator and answering the SOR, reflects poor judgment and raises questions about her reliability, trustworthiness, and her overall willingness to comply with laws, rules, and regulations. She is unable to mitigate drug involvement and substance misuse security concerns through her evidence.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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). After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all evidence in the whole-person context, I conclude Applicant failed to mitigate the security concerns raised in this case.

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.b: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge