



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 25-00590

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2025

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 27, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. On June 10, 2025, Applicant responded to the SOR (Answer) and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on July 2, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 24, 2025, but she did not respond to it. The case was assigned to me on November 26, 2025. The Government exhibits included in the FORM (Items 1-5) are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old individual who is being sponsored by a government contractor for security clearance eligibility. It is her first time applying for a security clearance. She graduated from high school in about 2005. She earned a bachelor's degree in October 2022. She has never married but has lived with a cohabitant since 2005. She has a 14-year-old child. (Items 3, 4)

Applicant has a significant history of substance misuse. She used marijuana from July 2005 to May 2024, with varying frequency. She used and purchased hydrocodone/Percocet from 2018 to May 2020, without a valid prescription. She purchased Suboxone without a prescription from May 2020 until July 2024, and she used Suboxone without a valid prescription from May 2020 until August 2024. Her aforementioned drug involvement was gleaned from the security clearance application she completed in September 2024 (SCA), the security interview she had with a DOD investigator in January 2025 (SI), and from her responses to DOHA Interrogatories that she answered in May 2025. The Government alleged the aforementioned illegal substance involvement in the SOR. She admitted the SOR allegations with additional comments. Her admissions are incorporated in my findings of fact. Marijuana possession is illegal pursuant to federal law and has been throughout the relevant time period herein. Percocet/hydrocodone and Suboxone (a drug prescribed by physicians to treat opioid addiction), both require valid prescriptions for their legal possession and use and are both subject to widespread drug abuse. (Items 2-5)

Applicant expounded upon her drug involvement and substance misuse in the above-referenced record evidence. She used marijuana monthly from July 2005 until May 2024, with a break for about nine months from 2010 until January 2011, while she was pregnant with her son. She knew that marijuana use was illegal pursuant to federal law throughout this time. (Items 2-4)

Applicant had a valid prescription for Percocet/hydrocodone from January 2011 until January 2012, to alleviate pain associated with a cesarean delivery after the birth of her son. Some of the information she provided in the record evidence about her use of Percocet/hydrocodone is inconsistent. During her SI, which she authenticated, she told the DOD investigator that she stopped using Percocet/hydrocodone from January 2012 until 2018, when she started using it again. In her answers to DOHA interrogatories, she wrote that she used Percocet "daily/weekly" from January 2011 to May 2020. (Items 2-4)

To wean herself off Percocet, Applicant ingested Suboxone strips daily from May 2020 until August 2024. She obtained these Suboxone strips illegally from friends or associates who either gave the strips to her or sold them to her. She claimed that the Suboxone reduced her cravings for Percocet but did not affect her behavior. When she realized that her withdrawal symptoms for Suboxone were worse than her withdrawal symptoms for Percocet, she decided to stop taking Suboxone in August 2024 and was able to simply stop taking it. (Items 2-5)

Applicant acknowledged that she has friends with whom she associates who use marijuana. She claimed that she does not associate with them as often as she used to because she has changed her lifestyle. She has told her friends that she no longer uses marijuana or takes pills to let them know that she will not be around if others are using those substances. She claimed that if someone was using illegal substances around her, she would leave. She claimed that she has no intention to use these or any other illegal substances in the future, as she has made a decision to stop using these substances to benefit her health. She noted that she never used marijuana before or during work, and that her use of these illegal substances did not affect her professional life, as evidenced by her earning her undergraduate degree and her recognized positive work performance. She has not undergone any drug treatment from a qualified professional, and she has never been diagnosed with a substance use disorder. (Items 2-4)

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.

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 (*Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*). 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 require 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. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used (and therefore possessed) marijuana with varying frequency from July 2005 until May 2024. She used and purchased hydrocodone/Percocet from 2018 until May 2020, without a valid prescription. She used Suboxone from May 2020 until August 2024, without a valid prescription, and she purchased Suboxone from May 2020 until July 2024, without a valid prescription. AG ¶¶ 25(a) and 25(c) are established.

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;

(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; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

At most, it has been about 16 months since Applicant last used an illegal drug. This relatively short period of time pales in comparison to the length of time and frequency that she used marijuana, Percocet/hydrocodone, and Suboxone. She has known since 2005 that her marijuana involvement is prohibited by federal law and does not claim that her misuse of prescription drugs was legal. As she acknowledged that she still associates with individuals who use illegal drugs, she has not provided sufficient evidence that she disassociated from drug-using associates and contacts. She has not provided the signed statement of intent to abstain from all drugs and substance misuse required in AG ¶ 26(b)(3). While I commend her for efforts to stay drug-free thus far, for these reasons, I do not find that her illegal drug use is unlikely to recur, or that she has established a sufficient pattern of abstinence that removes doubts about her current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) do not apply.

Applicant's original Percocet/hydrocodone use was pursuant to a prescription, and that abuse has since ended. AG ¶ 26(c) is applicable to her misuse of Percocet/hydrocodone. However, I note that her illegal and prolonged involvement with Suboxone, for which she never had a valid prescription, helped her end her misuse of Percocet/hydrocodone. This consideration and the attendant lack of good judgment involved with her chosen "remedy" somewhat diminish the mitigative effect of her conduct under this subparagraph. As she never had a prescription for marijuana or Suboxone, this subparagraph is not applicable to her marijuana or Suboxone involvement.

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 clearance 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 Guideline H in my whole-person analysis.

I have considered the applicability of AG ¶ 26(c). However, given the prolonged period of time (about 20 years) she was involved with illegal substances, and that section's inapplicability to all of the illegal substances with which she was involved, I find that proof of a more significant period of abstinence from illegal drug involvement is required to remove my questions and doubts about Applicant's trustworthiness and reliability. I conclude she did not mitigate the drug involvement and substance misuse 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: **AGAINST APPLICANT**

Subparagraphs 1.a-1.e: **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.

Benjamin R. Dorsey
Administrative Judge