



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



In the matter of:)
)
) ISCR Case No. 24-02147
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2025

Decision

BLAZEWICK, Robert B., Chief 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 March 27, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The action was taken 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on May 7, 2025, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on June 27, 2025. A complete copy of the file of relevant material (FORM) was provided to

Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 14, 2025, and he did not respond. The case was assigned on December 9, 2025. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from about August 2017 to about December 2024 (SOR ¶ 1.a); that he purchased marijuana with varying frequency from about September 2021 to about December 2024 (SOR ¶ 1.b); and that he used marijuana between January 2023 and December 2024 “while holding a sensitive position with a Federal Government Contractor employer” (SOR ¶ 1.c). In his answer, Applicant admitted all allegations.

Applicant is 25 years old. He has never been married and does not have any children. He has not served in the military. He earned a bachelor’s degree in January 2023. He has been employed with a defense contractor since January 2023. He has never held a security clearance. (Item 4)

Applicant completed a security clearance application (SCA) in May 2024. He reported using marijuana from December 2017 to March 2024, stating that he used marijuana more frequently in college but was using once or twice a week at the time of the SCA. He expressed an intent to continue using marijuana, explaining that he only uses it recreationally and was not dependent on it. He stated the drug is legal in his state of residence and that it has not impacted his work. He also reported purchasing marijuana from December 2018 to March 2024 about once a week. He stated that he always bought the drug from a store rather than an individual seller. He expressed an intent to continue purchasing marijuana in the future, again citing its legality in his state of residence. (Item 4)

Applicant had a background subject interview (SI) with a government investigator in June 2024. He reported April 2024 as his last date of marijuana usage and explained that his usage varied, with “rare usage” between 2017 and 2021, then more regular, weekly usage since 2021 after the drug was legalized in his state. He reported that he used the drug with a friend but that he no longer associates with the friend or anyone else who uses drugs. During the SI, Applicant stated that he did not intend to use or purchase marijuana in the future. He explained that he changed his mind about his future intent after he completed his SCA. (Item 5)

In his January 2025 response to interrogatories, Applicant reported a first use date of August 2017 and last use date of December 2024, estimating a frequency of about once a week, with no intent for future use. He reported a first purchase date of September 2021 and a last purchase date of December 2024, estimating a frequency of about once a month. He reported that he visits his girlfriend on the weekend and that she is a marijuana user. He stated that he always knew it was illegal under federal law, but that fact was reiterated when his state legalized marijuana in 2021. When asked why he

continued to use marijuana in spite of knowing that his company was a “drug-free workplace,” he stated, “Simply put, I did not internalize the gravity of enforcing the policy. . . . The caveat for my case is that I am under review for obtaining a security clearance which inherently demands a higher level of scrutiny.” He further stated that as long as it is federally illegal and he is in possession of a clearance, he will not use marijuana. (Item 5)

In his answer to the SOR, he stated that his use of marijuana mostly took place during college and that it never affected his schoolwork, nor did he experience any physical or psychological impairments from it. Regarding his use after being hired at his current employer, he stated, “. . . the intent behind [the marijuana use], it was not to show defiance against the rule, but was rather more of clean-cut disregard of it.” He expressed his devotion to his work and the hope that he could have a long career in his field. (Item 3)

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*, 484 U.S. at 531. “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. See 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*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

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.

The following disqualifying conditions are relevant:

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

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

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

AG ¶25(g): expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

AG ¶¶ 25(a), 25(c), and 25(g) are established by Applicant's admissions and evidence in the FORM for SOR ¶¶ 1.a and 1.b.

AG ¶ 25(f) is not established for SOR ¶ 1.c. It is well-established that "the term 'sensitive position' does not encompass any and all employment with a defense contractor, and that 'an individual cannot hold an initial sensitive position prior to commencing a background investigation.'" ISCR Case No. 24-00256 at 3 (App. Bd. Jan. 16, 2025) (citing ISCR Case No. 22-02623 at 4 and n.3 (App. Bd. Jan. 24, 2024)). SOR ¶ 1.c alleges marijuana use beginning in January 2023—the same month Applicant's employment with a government contractor began. Applicant did not complete an SCA until May 2024. It is clear he did not hold a sensitive position prior to that date. Although he could have been granted temporary eligibility while the investigative and adjudicative processes were ongoing, the record is silent as to that matter and there is no basis to conclude that he held a sensitive position at the time of his May through December 2024 marijuana use. See *id.* SOR ¶ 1.c is found for Applicant.

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.

AG ¶ 26(a) is not established. Applicant's involvement was recent, frequent, and did not occur under circumstances making recurrence unlikely. His last use of marijuana was only one year ago, continuing well into the security clearance investigative process. He is a regular user of marijuana and has used it consistently for years. He is aware of the illegality of marijuana use but has continued its use despite that knowledge, which directly casts doubt on his ability or willingness to comply with laws, rules, and regulations. He has not met his burden to establish that his marijuana use does not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant acknowledged his drug involvement and substance misuse, but has provided little evidence showing efforts made to overcome the problem. Most significantly, there is insufficient evidence of an established pattern of abstinence in this case. He initially expressed an intent to continue using marijuana in his May 2024 SCA, then he changed his mind a month later in his SI, stating he no longer intended to use marijuana. However, in his January 2025 response to interrogatories, he indicated that he had continued to use marijuana after the SI declaration that he would no longer use it. I am considering his marijuana use after initiating the security clearance process only for the limited purpose of noting a failure to maintain abstinence after stating an intention to abstain.

Although Applicant continued using marijuana after completing the SCA and being interviewed, there is insufficient evidence to establish that he understood the security significance of further marijuana use after initiating the security clearance process and therefore I did not consider that as an independent security concern. ISCR Case No. 23-00476 at 5 (App. Bd. May 1, 2024); ISCR Case No. 22-02132 at 4 (App. Bd. Oct. 27, 2023); ISCR Case No. 23-00093 at 3 (App. Bd. Nov. 21, 2023). Although he made statements in his response to interrogatories and his Answer that indicated he understood his continued use was a concern, the timing of this understanding is unclear and may well have only come upon receipt of the interrogatories and SOR, both of which were after his last use date. Furthermore, the evidence of Applicant's understanding of the concern regarding use while employed in a "drug-free workplace" and his understanding of the concern regarding use while undergoing the security clearance process is muddled and conflated in this case, specifically in the interrogatory questions addressing his employer's drug use policy and in SOR ¶ 1.c., to the point that I cannot definitively determine whether Applicant specifically understood the *security significance* of further marijuana use.

While Applicant's candor is notable, given the timing of this recent, one-year period of abstinence from marijuana, his usage of marijuana after stating he would abstain, and his prior statements regarding future use, there is insufficient evidence that he has an established pattern of abstinence from marijuana. Furthermore, he maintains contact with at least one drug-using associate, and he did not submit a statement of intent.

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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"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*, 4999 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 his drug involvement and substance misuse.

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
Subparagraph 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For 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.

Robert B. Blazewick
Chief Administrative Judge