



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: REDACTED, Personal Representative

01/14/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from her drug involvement. Eligibility for access to classified information is denied.

Statement of the Case

On June 12, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

In Applicant's July 2, 2025 response to the SOR (Answer), she admitted, with explanations, all three allegations. She did not attach any documentary evidence. She requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On August 1, 2025, the Government was ready to proceed to a hearing. I was assigned this case on September 30, 2025. This case was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

On November 20, 2025, a notice was issued scheduling the hearing for December 8, 2025, by video teleconference. The hearing proceeded as scheduled. The Government proffered two evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 and 2, without objection. Applicant and one witness testified. She submitted four exhibits, which I marked as Applicant Exhibits (AE) A through D. AE A, AE C, and AE D were admitted without objection. I sustained Department Counsel's relevance objection as to AE B, a payment receipt for an unalleged utility bill. At Applicant's request, I left the record open until January 5, 2026, to provide her an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on December 19, 2025. On December 22, 2025, Applicant submitted five documents, which I admitted as AE E through I, without objection. Applicant confirmed that she had no further submissions for the record. The record closed on December 22, 2025.

Findings of Fact

Applicant is 36 years old. She earned an associate degree in June 2019, and she is currently enrolled in college courses. Since December 2017, she has been employed with a DOD contractor, currently as an operations coordinator. She has never been married, and she does not have any children. She currently resides with her fiancé. This is her first application for clearance eligibility. (GE 1; AE C; Tr. 39-41)

On January 30, 2024, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, she admitted that had first used marijuana in April 2010 and had most recently used marijuana in January 2024. She noted that she maintained a state-issued medical marijuana license and that she intended to use marijuana in the future. (GE 1)

On October 24, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). She admitted that she first used marijuana in high school in about 2008 and that she had most recently used marijuana in October 2024. From about 2010 to 2015, she used marijuana approximately four to five times each day. Since 2015, she had used marijuana daily to manage her anxiety, pain, and sleep issues. She also admitted that she had purchased marijuana from about 2008 to 2020 from various individuals. Since 2020, she had resided in State B, which permitted the use of marijuana for recreational and medical purposes, and she purchased marijuana from state-licensed dispensaries. During the interview, she noted that she had considered abstaining from future marijuana use, but she had not expressed her intent to do so. She also admitted that she had used Adderall, without a prescription, on approximately 10 occasions between 2010 and 2017. (GE 2)

In her March 26, 2025 response to DOHA interrogatories, Applicant adopted the summary of the October 24, 2024 interview without any revisions or corrections. She confirmed her use of Adderall as delineated during the OPM interview and expressed her intent not to use Adderall in the future. She also admitted that she continued to regularly purchase and daily use marijuana and that she intended to reduce her use. She neither expressed her intent to abstain from marijuana nor provided further information on her timeline or plan to curtail her marijuana use. (GE 2)

At the hearing, Applicant confirmed her previous disclosures about drug involvement and substance misuse. Between about 2010 and 2015, she was using marijuana daily or nearly daily around bedtime. In about 2016, she abstained from marijuana for a few months in preparation for her employment with the DOD contractor and a pre-employment drug screening. While abstaining from marijuana, she experienced “that shaking, sweating, anxiety feeling,” which she associated with her anxiety symptoms. After abstaining for a few months, she resumed using marijuana regularly because her anxiety symptoms had worsened. (Tr. 41-46, 55-56)

Applicant testified that, between about 2015 and 2020, she purchased marijuana outside her state of residence (State A) through an application or website. She would purchase a sticker or t-shirt and be gifted marijuana. She would then travel outside of her state of residence to procure the “purchased” item and the marijuana. She estimated that she procured marijuana in this manner approximately once or twice a month during this period. When she moved to State B in August 2020, she began purchasing marijuana in state-licensed dispensaries in State B or an adjacent state. In about November 2022, she obtained a medical marijuana card to help manage pain and anxiety. Applicant confirmed that she used Adderall without a prescription and that she has no intent to use it in the future. (AE A; AE D; Tr. 49-51, 62, 73)

Applicant currently uses marijuana every night, and she maintains her state-issued medical marijuana card. She characterized her use as “predominantly medical,” though she, on the rare occasion, takes her daily marijuana earlier in the day on a holiday or special occasion. Applicant, her therapist, and other medical professionals have explored alternative treatments for her pain and anxiety symptoms. They have experimented with different medications for the past year; however, Applicant’s other medical conditions often trigger adverse side effects. Marijuana remains the most effective and consistent means of managing her symptoms, but she continues to explore reducing the quantity and frequency of her marijuana use. In addition to medication, Applicant has been participating in counseling with her current therapist since late 2024, and she is scheduled to meet with a dietitian to further explore alternative treatments. Applicant affirmed her intent to continue to use marijuana until she finds an alternative treatment to consistently manage her symptoms. She has never participated in a drug assessment, counseling, or treatment. (Tr. 48, 52, 63-70, 73)

At the time Applicant completed her e-QIP, she did not understand that she could not use medical marijuana and maintain access to classified information; however, she has learned during the clearance process that all marijuana use is prohibited by clearance

holders. She has not inquired with her supervisor or facility security officer as to whether medical marijuana use is permitted by her employer, and she has not formally informed her employer of her medical marijuana use. She believes she is subject to random drug screening, but she has not been randomly tested since she was hired. She has had no disciplinary actions at work, and she has been promoted multiple times. For the past year, she has volunteered weekly at a dog-training facility. (Tr. 53, 59, 61, 66-68)

Whole Person

Applicant's aunt testified in support of her clearance eligibility. Applicant previously lived with and worked for her aunt. Applicant worked for her aunt's business for a period of 10 years, and she was gradually promoted to position of manager, a position she held for five years. Applicant's aunt never observed Applicant experience any substance abuse issues in the workplace. She has been aware of Applicant's recreational and medical marijuana use for several years, and she attributed Applicant's misuse of Adderall to an abusive relationship. She observed a significant, positive change in Applicant after that relationship ended and her current employment began in about 2017. Applicant has thrived in her current employment, where she has been repeatedly promoted. She is currently in a healthy relationship with her fiancé and is back in college. Applicant's aunt was aware of Applicant's use of marijuana to treat various symptoms after other prescription medications had negative side effects. She noted Applicant's honesty, growth over the last eight years, and her informed decision to continue to use marijuana to treat her symptoms despite the potential adverse consequences to her clearance eligibility. (Tr. 22-37)

Applicant has been awarded 31 times by her employer including 10 awards since October 2023. These awards explicitly note her exemplary work performance and recognize her efforts to take on tasks beyond her job responsibilities. Applicant's 2024 performance review praised Applicant as "awesome" and that "her contributions have made a lasting impact on [the] organization and mission." She has been promoted three times since 2017, most recently in December 2024. (AE E-G)

Two colleagues submitted letters in support of Applicant's clearance eligibility. Both references attested to Applicant's honesty, loyalty, trustworthiness, dependability, work ethic, and volunteerism. They indicated an awareness of Applicant's medical marijuana use and her pursuit of a bachelor's degree. (AE H, AE I)

Policies

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(a), 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, 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.

In 2021, the Security Executive Agent (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 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.¹

¹ *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*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

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

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted that she has frequently used marijuana since 2010, and she intends to continue to use marijuana to treat her pain and anxiety symptoms until an effective and consistent alternative treatment is discovered. Although she has complied with state laws, her purchase and possession of marijuana violates federal drug laws. In addition, she used Adderall without a prescription on about 10 occasions between 2010 and 2017. AG ¶¶ 25(a), 25(c), and 25(g) apply.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. 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.

Applicant's misuse of Adderall was linked to her abusive relationship with a former partner, with whom she discontinued contact in about 2017. Applicant mitigated the drug involvement security concerns arising from her misuse of Adderall. AG ¶¶ 26(a) and 26(b) apply to SOR ¶ 1.c.

Applicant has candidly disclosed and discussed her marijuana use throughout her background security investigation. She acknowledged her understanding of the prohibition of all marijuana use by clearance holders, and she is actively seeking alternative treatments for her varied symptoms. None of the drug involvement and substance misuse mitigating conditions apply to her recent and continued marijuana use and purchases.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

In 2017, Applicant severed an abusive relationship and embarked on her career with a DOD contractor. She has thrived in that career, having been promoted three times and awarded numerous times. Her aunt and colleagues praised her growth, character, and work performance, and she has returned to college in pursuit of her bachelor's degree. I found Appellant's testimony to be credible, sincere, and reflecting a mature insight throughout. This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With an established pattern of abstinence from drug involvement, Applicant may overcome the aforementioned concerns; however, at this time, Applicant has not mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

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
Subparagraph 1.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge