



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2026

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate drug involvement and substance misuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On April 25, 2025, the Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse guideline the DCSA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on June 20, 2025, and elected to have his case decided on the written record in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on August 5, 2025, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not respond to the Government's FORM and did not object to the Government's materials included in the FORM. The Government's exhibits were admitted as Government's exhibits 1-4. (GEs 1-4) This case was assigned to me on November 19, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana or other products containing THC with varying frequency from about July 2016 until about September 2024; (b) used marijuana or other products containing THC from about July 2024 until about September 2024, after completing an electronic questionnaires for investigations processing (e-QIP) on July 19, 2024, to obtain a security clearance with the Department of Defense (DoD); and (c) used hallucinogenic mushrooms with varying frequency from about June 2022 until about May 2024.

In Applicant's SOR response, he admitted each of the allegations covered by Guideline H with explanations and clarifications. He claimed that when using marijuana and mushrooms in 2024, he was still serving in an intern capacity and was not yet aware of any requirement for a security clearance. He claimed that the internship position did not require a clearance, and he was not offered a security clearance at that time. He further claimed that prior to any formal security interviews, he voluntarily "ceased all use of THC products." (GE 2)

Addressing the allegations covered by SOR ¶ 1.c, Applicant claimed that he discontinued his use of hallucinogenic mushrooms before applying for any government-related employment. He provided no attachments.

In closing, Applicant claimed that he has changed his mindset since entering the professional world and now fully understands the expectations "that come with working in a trusted position, especially one that may involve access to classified information." (GE 2) He further claimed to have worked hard to transition from being a student to a young professional who takes responsibilities seriously.

Findings of Fact

Applicant is a 23-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow herein.

Background

Applicant never married and has no children. (GE 3) Since May 2024, he has cohabited with another person. He earned a bachelor's degree in May 2024. (GE 3) Applicant did not report any military service.

Since June 2024, Applicant has been employed by his current employer as a computer science intern. (GE 3) Previously, he was enrolled in college. He is sponsored by his current employer for a security clearance. (GE 3)

Illegal drug involvement

During his freshman year in high school and throughout his college years (i.e., between July 2016 and September 2024), Applicant used marijuana edibles in varying frequency, generally once or twice a month. (GE 3) The edibles were provided by friends until Applicant turned 21 in January 2023 and was able to purchase his own supply at a state-legalized dispensary in his college town. (GE 4)

Following his college graduation in June 2024, Applicant continued using marijuana edibles (weekly to bi-weekly) for several months before ceasing his use altogether in September 2024 after completing his electronic questionnaires for investigations processing (e-QIP) in July 2024. In his e-QIP, he confirmed his enjoyment of recreational marijuana use at home (comparing it to having a few drinks of alcohol and watching a movie)

In his personal subject interview (PSI) of September 2024, Applicant told the Government investigator that his resident state's legalization of marijuana in January 2020 "played a part in my edible use, starting established use, starting in 2022." (GE 4) Once he became aware of the federal ban (covered by the Federal Controlled Substances Act. (21 U.S.C. § 802, et seq. (1970)) (CSA) on marijuana use in September 2024, he ceased using the drug. (GE 4) His discontinuance claims are not challenged.

By the time Applicant completed his interrogatory responses in January 2025, he had reversed course and assured he would no longer be using illegal drugs (inclusive of marijuana). (GE 4) He reaffirmed his abstinence intentions in his SOR response. He based his changed position on illegal drug use on his stated premise that since entering the professional world he now fully understands the expectations "that come with working in a trusted position, especially one that may involve access to classified information." (GE 2)

While in college, Applicant also used hallucinogenic mushrooms on several occasions. Between June 2022 and May 2024. (GEs 3-4) They were given to him by a college friend who came home from college during the Summer of 2022 and offered him some of the mushroom edibles that the college friend grew at his fraternity house. Applicant even tried to cultivate them on his own but was unsuccessful. (GE 3) Applicant tried them six to seven times before discontinuing them following his college graduation. (GE 4)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are considered together with the following AG ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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 ¶ 24.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 AGs 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s use of marijuana, over a considerable number of years (mostly in high school and college). More recently, he used marijuana while holding a sensitive position and interim security clearance. Security concerns are also raised over Applicant’s use of hallucinogenic mushrooms on several occasions in college.

Drug and Substance Abuse Concerns

Applicant’s admissions to using marijuana edibles in varying frequency in high school and college, and more recently while holding an interim security clearance and sensitive position with his current employer raise security concerns over his judgment and risks of recurrence. The Director of National Intelligence (DNI) has made very clear that neither state laws legalizing the use of marijuana and any other drugs considered illegal under federal law permit individuals to preempt or otherwise violate federal laws banning or restricting the possession of drugs covered by Schedules 1 and 2 of the CSA.

Applicant’s contemporaneous use of hallucinogenic mushrooms in college raises additional security concerns that cannot be addressed separately from his marijuana use without utilizing a piecemeal analysis. Like marijuana, they are covered by the CSA, which is controlling for applications for security clearances.

On the strength of the evidence presented, four disqualifying conditions (DCs) of the AGs for drug involvement and substance misuse are applicable. DC ¶¶ 25(a), “any substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position”; and 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse,” apply to Applicant’s situation.

Uncontroverted is Applicant’s discontinuance of using marijuana since September 2024. Applicant has fully acknowledged his frequent use of marijuana in high school and college long before he ever applied for a job requiring a security clearance. He has committed to sustained abstinence from his use of marijuana for so long as marijuana is banned by the CSA, irrespective of the drug’s legalization by his state of residence.

Considering all of the circumstances surrounding Applicant's past involvement with marijuana, his recent conditional commitments to abstain from marijuana activity for so long as it is federally banned, and his lack of corroborating evidence to support his abstinence claims, he is entitled to limited application of potentially available mitigating conditions (MCs) of the drug involvement and substance misuse guideline. Neither potentially applicable MC ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," nor any of the other listed mitigating conditions are available to Applicant.

Summarized, most of Applicant's acknowledged use of marijuana edibles occurred after the drug was legalized in his state of residence. Once he became aware of the drug's ban under the CSA, he ceased using the drug altogether. None of his accounts have been controverted, and his limited use of marijuana in a state that legitimized the drug in 2020 before he familiarized himself with the CSA ban is encouraging. Overall, however, his conditional commitments to abstain from marijuana use are insufficient to warrant favorable mitigation of his past use of illegal drugs. At this time,

And, while Applicant's limited use of hallucinogenic mushrooms in college might be mitigated if assessed alone, it cannot be separated from his contemporaneous use of marijuana without engaging in long-disfavored piecemeal analysis. See ISCR Case No. 06-08708 at 3 (App. Bd. Dec. 2007). It is still too soon to make safe predictions that Applicant will be able to fulfill his personal commitment to avoid illegal drugs in the future.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his established pattern of illegal drug use (mostly in high school and college) can be reconciled with minimum standards for holding a security clearance. Applicant's (a) considerable amount of marijuana use (mostly during his high school and college years) and briefly thereafter and (b) and infrequent use of hallucinogenic mushrooms in college are still too recent to facilitate safe predictions of sustained abstinence in the future.

While Applicant is to be credited for his contributions to the defense industry, his considerable illegal drug activity during his high school and college that briefly continued post-college while holding a sensitive position preclude him from benefitting from any of the potentially available mitigating conditions. See ISCR Case No. 02-07555 at 2-3 (App. Bd. July 19, 2004); ISCR Case No. 01-07735 at 2 (App. Bd. June 25, 2002)

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that illegal drug involvement

and substance misuse concerns are not mitigated. 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:

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs 1.a-1.c Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Roger C. Wesley
Administrative Judge