



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



In the matter of:)
)
) ISCR Case No. 24-01995
)
Applicant for Security Clearance)

Appearances

For Government: Lauren Ann Shure, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2026

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated drug involvement and substance misuse concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On February 19, 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 March 12, 2025, and elected to have her case decided on the written record in lieu of a hearing. This case was assigned to me on September 15, 2025. Applicant received the File of Relevant Material (FORM) on June 6, 2025, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant responded to the Government's FORM with professional letters from her treating therapist and psychiatrist. The Government's exhibits (GEs 1-7) are admitted into evidence without objection. Applicant's post-FORM letters are admitted without objection as Applicant's exhibit A (AE A).

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used prescription drugs lorazepam and alprazolam (Xanax) without them being prescribed for her, including while holding a sensitive position, (i.e., one in which she held a security clearance) from about 2019 until at least April 2023 and (b) used marijuana with varying frequency from about 2011 until at least May 2020 with varying frequency.

In Applicant's SOR response, she admitted each of the allegations covered by Guideline H with explanations and clarifications. She claimed that she used lorazepam (belonging to her husband) a number of times (no more than five) when getting on a flight, as she has extreme anxiety when flying. She claimed that she took Xanax that was prescribed to her sister one time while traveling together to help her sleep. She further claimed that she now has her own prescribed medications to use as needed for situational anxiety when flying. (GE 2)

Addressing her marijuana use, Applicant claimed she used marijuana a few times with friends while residing in a state that legalized marijuana use. She further claimed that her marijuana use was infrequent (i.e., only once or twice a year), and not since 2020. And, she claimed that her marijuana use never affected her life in a negative way.

In her post-FORM response, Applicant expressed hope that her attachments from her treating therapist and psychiatrist serve to highlight "my intentions to better herself and not repeat wrongful actions." (AE A) She added her expressed regrets for her mistakes that have affected "my opportunity to serve our nation." (AE A)

Findings of Fact

Applicant is a 33-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.

Background

Applicant married in August 2018 and has no children. (GEs 2-4) She earned a bachelor's degree in December 2012 and a master's degree in June 2021. (GEs 3-4) Applicant did not report any military service.

Since September 2021, Applicant has been employed by her current employer (GEs 3-4) Previously, she worked for other employers in various engineering jobs. She is sponsored by her current employer for a security clearance and has held a clearance since September 2022. (GEs 3-4 and 6)

Illegal drug involvement

Between 2011 and 2014, mostly while in college, Applicant used marijuana in varying frequency (estimated to be five to six times in all) with friends in social occasions. (GEs 3-5) During her post-college years (between 2012-2020), she used marijuana twice a year socially at parties with her husband and college friends, with a last reported use in March 2020. (GEs 2-5)

For most of the years Applicant used marijuana, the drug was legalized for recreational use in her state of residence. Once she learned that marijuana use was federally banned under the Federal Controlled Substance Act (21 U.S.C. §§ 802, et seq. (1970)) (CSA), she ceased using the drug altogether. (GE 5) Asked in her personal subject interview (PSI) where she obtained the marijuana, she could not identify the source. (GE 5)

Between December 2019 and April 2023, Applicant used prescription medication lorazepam and alprazolam (Xanax) without their being prescribed to her. (GEs 2-5) The lorazepam was given to her by her husband four times a year to relieve her anxiety when flying and to help her to sleep. (GE 5) When flying with her sister between 2019 and 2023, she used another unprescribed medication drug (Xanax) to relieve her flying anxiety and help her to sleep. (GE 5) Both lorazepam and alprazolam are Schedule IV drugs controlled by the CSA.

Lorazepam and alprazolam are prescription medications designed to treat anxiety and panic by slowing down the nervous system to produce a calming effect (GE 7). Common side effects include drowsiness, sedation, memory impairment, dizziness, slurred speech, and lack of coordination. Depending on the level of dosage consumed, risks include possibilities of abuse and addiction. (GE 7) Because Applicant's dosage level for these medications are not detailed by Applicant, the amount of risk she was exposed when taking these medications cannot be assigned or estimated.

When completing her initial e-QIP in April 2022, Applicant omitted her use of non-prescribed medications. (GE-3) However, in the second e-QIP she completed in April 2023, she fully disclosed her use of her husband's prescription medication "on occasion for panic attacks and anxiety." (GE 4) She estimated her taking the medication about

four times a year since 2020 when she is anxious about flying or can't sleep and acknowledged her using the medications while possessing a security clearance. (GE 4)

Asked in an ensuing personal subject interview (PSI) about her use of non-prescribed medications, she acknowledged her occasional use of non-prescribed medications she obtained from both her husband and sister to relieve her flying anxiety and to help her to sleep. on occasions to help her sleep. Elaborating on her reasons for using the non-prescribed medications, she told the Government investigator that she "did not think it was issue because her husband had a prescription." (GE 5) I

In Applicant's SOR response, she added her sister as a source of non-prescribed medication use on a single occasion when flying to help her sleep. (GE 2) How she is able to reconcile her own non-prescribed use of the medications with the prescribed use of the same medications by her husband and sister she did explain or clarify.

When asked in her PSI by the interviewing investigator whether she had any intent to use non-prescribed medications in the future, Applicant assured the investigator that she did not and would only use medications that were prescribed to her. (GE 5) Now that Applicant has her own prescribed medications to use as needed for situational anxiety when flying, she has no further need for non-prescribed medications. (GE 2)

Post-FORM letters from Applicant's treating therapist and psychiatrist document her past therapy sessions designed to improve her abilities to manage her anxiety coping skills and support her mental health and overall well-being. (AE A) They reinforce her continuing efforts to make up for her regretted past mistakes.

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 state-legalized marijuana and non-prescribed medications used to relieve her anxiety when flying. The non-prescribed medications she used to relieve her flying-related anxiety were subject to CSA control as Schedule IV drugs and were given to her by her identified sources (i.e., her husband and sister), who were issued valid prescriptions for the drugs. Applicant’s use of non-prescribed medications was undertaken while she held a sensitive position and interim security clearance.

Drug and Substance Abuse Concerns

Applicant's admissions to using state-legalized marijuana infrequently while in college and thereafter with her husband and college friends raise initial security concerns over her judgment and risks of recurrence. The Director of National Intelligence (DNI) has made it very clear that neither state laws legalizing the use of marijuana and any other drugs considered illegal under federal law permit individuals to knowingly preempt or otherwise violate federal laws banning or restricting the possession of drugs covered by Schedules 1 and 2 of the CSA. Equally concerning is Applicant's use of non-prescribed drugs (covered by Schedule IV of the CSA) to relieve her anxiety when flying.

On the strength of the evidence presented, three 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," apply to Applicant's situation.

Uncontroverted is Applicant's discontinuance of her infrequent use of marijuana in 2020 and her minimal use (albeit material) of non-prescribed medications between 2019 and April 2023. Applicant has fully committed to sustained abstinence from her use of marijuana banned by the CSA and non-prescribed medications also covered by the CSA irrespective of (a) marijuana's legalization by her state of residence and (b) whether or not her close sources had prescriptions for the medications provided. While her statements about how she considered her sources having valid prescriptions to mitigate her own non-prescribed use of the medications are difficult to reconcile without additional information, she has been otherwise completely open and forthcoming about her use of non-prescribed medications throughout the investigation.

Worthy of considerable merit are Applicant's continuing efforts to seek counseling and therapy to improve her abilities to manage her anxiety, better herself, and take the necessary initiatives to avoid any similar recurrences in the future. Each of the highlighted therapy and counseling post-FORM letters highlight her credited progress.

Considering all of the circumstances surrounding Applicant's past involvement with marijuana and non-prescribed medications while holding a sensitive position, the legalization of marijuana in her state of residence for most of her years of usage, her absence of knowledge of a federal ban on marijuana use until 2022 when she applied for a security clearance, the infrequency of her use of marijuana and non-prescribed medications under exigent circumstances, and her unchallenged abstinence commitments, mitigation is available to her. Applicant may benefit from one major mitigating condition (MC) of the drug involvement and substance misuse guideline. 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," is available to Applicant in mitigation. See ISCR Case No. 02-08032 (App. Bd. May 2004).

To be sure, close cases with still nascent doubts are counseled to be resolved in the favor of the national security. See *Dept. of Navy v. Egan, supra*. Underlying this central tenet of *Egan* is the expectation that any judgment reservations the Government may have for the clearance holder employed by a defense contractor leaves the applicant open to potential breaches of the trust relationship that exists between the Government and the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Summarized, Applicant is able to successfully mitigate the Government's security concerns over her use of state legalized marijuana and non-prescribed medications.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of illegal drug use (i.e., marijuana) and use of non-prescribed medications) can be reconciled with minimum standards for holding a sensitive position requiring a security clearance. Applicant's relatively infrequent use of legalized marijuana in her state of residence before she familiarized herself with the federal ban on marijuana possession can be mitigated.

So, too, Applicant's infrequent use of non-prescribed medications under claimed exigent circumstances (flying) while holding a sensitive position is sufficiently explained to mitigate security concerns about her overall judgment, reliability, and trustworthiness.

Based on the weight of the evidence, overall trust, reliability, and good judgment are fully established. 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 mitigated. Eligibility for access to classified information is granted.

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): FOR APPLICANT

Subparagraph 1.a-1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge