



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



Appearances

For Government: Daniel P. O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2026

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 12, 2024. On March 25, 2025, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DoD acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted her Answer to the SOR on April 16, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the

Government's written file of relevant material (FORM) on August 28, 2025. On August 29, 2025, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She acknowledged receipt of the FORM on September 4, 2025, and did not provide a response. The case was assigned to me on January 8, 2026.

The SOR and the Answer are the pleadings in the case. Government Exhibits (GE) 3 and 4 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR, she admitted using and purchasing marijuana, SOR ¶¶ 1.a and 1.b. She admitted falsifying her answers on her SCA, SOR ¶¶ 2.a-2.b, with an explanation. Her admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 36 years old. She earned her high school diploma in 2008. She married in 2018 and has no children. She has worked for her sponsor as a draftsman since April 2024. This is her first SCA. (GE 3 at 5, 11, 12, and 20.)

SOR ¶¶ 1.a and 1.b: You used and purchased marijuana with varying frequency from 2019 to May 2024. Applicant admitted in her Answer that she had used and purchased marijuana from 2019 to May 2024. She failed a pre-employment drug test in December 2023, and she told the DoD investigator she stopped using marijuana to pass a second drug test and then resumed using marijuana. (GE 4 at 7, 17.) On her SCA she declared she had tried marijuana once in 2023. (GE 3 at 33.) In her May 2024 interview with a DoD investigator, the investigator summarized her statements on her marijuana use as follows:

The Subject volunteered that she first used marijuana in approximately 2019 (discrepant), but the Subject could not recall the exact date that she first used marijuana. The Subject last used marijuana in 05/2024 (discrepant). The Subject typically uses marijuana once or twice per week (discrepant). The Subject could not recall the exact amount of times that she has used marijuana. The Subject always uses marijuana with her husband and always uses marijuana at her residence. (GE 4 at 17.)

In February 2025, in response to Government interrogatories, she reaffirmed her last use of marijuana as May 2024 and that her last purchase was in April 2024. She further stated she had stopped using marijuana because of "medical and job requirements." (GE 4 at 6.)

SOR ¶ 1.c: You used and purchased marijuana from about March 2024 to about May 2024, after completing an Electronic Questionnaire for Investigations

Processing (e-QIP) on March 12, 2024, to obtain a security clearance with the Department of Defense. Applicant admits the allegation and explains in her Answer she disclosed that she “had used marijuana a few times after being hired” by her sponsor and “mistakenly believed that since [she] had not yet been granted a clearance and marijuana was legal in [her] state, it would not be an issue.” When she learned “how serious and inappropriate that assumption was, [she] ceased all use immediately and have remained abstinent since.” (Answer.) See facts discussed above in SOR ¶ 1.a.

SOR ¶ 2.a: You falsified material facts on an Electronic Questionnaires for Investigations Processing (eQIP), executed by you on March 12, 2024, in response to the following question: “Section 23 - Illegal Use of Drugs or Drug Activity Illegal Use of Drugs or Controlled Substances In the last seven (7) years, have you illegally used any drugs or controlled substances?” You answered “Yes” but deliberately failed to disclose the full extent of your marijuana use, as set forth in subparagraph 1.a, above. Applicant admitted in her Answer that she failed to fully disclose on her SCA the full extent of her marijuana use because she did not want her marijuana use to negatively affect her employment with her sponsor. She emphasized that she volunteered to the investigator when she last used marijuana, the frequency that she used marijuana, and the number of times that she has used marijuana. (GE 3 at 33; GE 4 at 17.) See facts discussed above in SOR ¶ 1.a.

SOR ¶ 2.b: You falsified material facts on an Electronic Questionnaires for Investigations Processing (E-QIP), executed by you on March 12, 2024, in response to the following Questions: “Section 23-Illegal Use of Drugs or Drug Activity Illegal Drug Activity In the last seven (7) years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?” You answered “No” and thereby deliberately failed to disclose that information as set forth in subparagraph 1.b., above. Applicant in her Answer stated: “Yes.” I believed this had been corrected during the investigator’s interview in May. I also confirmed this again in my subsequent verification interview, affirming that I had, in fact, purchased marijuana in the past.” (Answer.) See facts discussed above in SOR ¶ 1.b.

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.

Applicant's admissions and the record establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 25:

- (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 admitted using marijuana from 2019 until May 2024, with her last purchase in April 2024 (SOR ¶¶ 1.a-1.b) and using marijuana after completing her March 2024 SCA. AG ¶¶ 25(a) and 25(c) apply.

The following mitigating conditions are potentially applicable as detailed in 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
- (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 drug misuse was frequent, longstanding, and recent, and it did not occur under circumstances unlikely to recur. She admitted using marijuana from 2019 until May 2024, and stated her last purchase was in April 2024. Her recent and sustained drug misuse casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant admitted her drug use, and she has only recently changed her behavior. She has abstained from illegal drug use since May 2024. She appears to have gotten her life on track and has her priorities straight. However, insufficient time has passed to mitigate her lengthy history of marijuana use, which included use with her husband. The security concern regarding her drug involvement is not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's intentional failure to disclose the full extent of her marijuana involvement in her SCA raises the following disqualifying condition, under AG ¶ 16:

(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The following mitigating conditions, under AG ¶ 17, are potentially relevant:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶¶ 17(a) and 17(c) are established for SOR ¶¶ 2.a and 2.b. Applicant admitted she deliberately failed to fully disclose the full extent of her marijuana use on her SCA in order to obtain her position. The evidence reflects that she made prompt and good-faith effort to correct her omission and falsification before being confronted with the facts by the DoD investigator. This was her first security clearance application, and she corrected the matter at the next available opportunity and volunteered further information about her marijuana use without being confronted. See ISCR 22-02601 at 5-6 (App. Bd. Feb. 22, 2024)

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 Guidelines H and E in my whole-person analysis and have 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 her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered that Applicant is applying for a security clearance for the first time. I considered her honesty when disclosing her history of marijuana use during her background interview. After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the Guideline E concerns but has not mitigated the security concerns raised by her conduct under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards maintaining a drug-free lifestyle, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2: Guideline E:	FOR APPLICANT

Subparagraphs 2.a - 2.b:

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.

Charles C. Hale
Administrative Judge