



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 25-00205

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel

For Applicant: Sean Rogers, Esq.

01/30/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 6, 2023. On March 12, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline H. The DCSA acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on May 20, 2025, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 18, 2025. The case was assigned to me on September 9, 2025. On September 15, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 23, 2025. The hearing was cancelled on October 22, 2025, when all administrative judges were furloughed from October 1 to November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On November 21, 2025, DOHA notified Applicant that the hearing was rescheduled for January 9, 2026. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection.

Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through P, which were admitted without objection. She also submitted a written brief, previously submitted to DCSA, which I have admitted as AX Q. DOHA received the transcript on January 21, 2026.

Findings of Fact

In Applicant's answer to the SOR, she admitted the two allegations in the SOR. SOR ¶ 1.a alleges that she used marijuana with varying frequency from about 1998 through at least November 2024. SOR ¶ 1.b alleges that she used marijuana with varying frequency from about May 2023 to about November 2024 after being granted a security clearance. Her admissions are incorporated in my findings of fact.

Applicant is a 41-year-old employee of a defense contractor. She attended a business school from January 2011 to January 2013 but did not receive a degree. She married in July 2015 and has three children. She was employed by non-government employers from June 2012 to October 2022, when she was hired by her current employer. She signed a nondisclosure agreement in May 2023 and held an interim security clearance until her employer received the SOR and withdrew her clearance in early 2025. (GX 4; Tr. 14) She holds a sensitive position and needs a clearance to perform her job.

Applicant testified that she used marijuana once or twice in 1998, when she was 14 years old. She did not use it again until 2021, when she used it two or three times. She used it again two or three times in 2022 and 2023 and twice in 2024. (Tr. 14-17) She has lived her entire life in a jurisdiction where recreational marijuana was legalized in 2021. She did not purchase marijuana, but she accepted it when it was offered to her at social gatherings.

When Applicant was interviewed by a security investigator in June 2023, she disclosed that she used marijuana with a friend a couple times a year for the past two years. (GX 2 at 10-11). At the hearing, she testified that she asked the investigator if her use of marijuana would "do anything" to her security clearance, and the investigator was unable to give her an answer.

Applicant's employer uses a consulting firm to advise its facility security officer (FSO). In November 2024, Applicant asked the company's FSO consulting firm about her

marijuana use and learned that she was not allowed to use marijuana while holding a security clearance. She did not use it again. (Tr. 18-20) On cross-examination, Applicant admitted that she did not notice the provision in the employee manual that states, "While the use of marijuana has been legalized, it remains an illegal drug under federal law." (Tr. 26)

Applicant's is responsible for her employer's billing and invoicing. She manages the certificates of insurance for contractors and ensures federal tax compliance for employees working in other states. She approves timecards, coordinates benefit enrollment and handles all inbound telephone calls. She does not handle classified information, but she needs a security clearance for access to the Defense Information System Security (DISS) so that she can verify the clearance status of employees. (Tr. 22-23)

When Applicant responded to DOHA interrogatories in May 2025, she stated that she first used marijuana in 1998, used it two or three times a year, and last used it in November 2024. She stated that she does not intend to use it again. She has chosen to not attend functions where she expects that marijuana may be offered. (GX 2 at 5)

A long-time friend of Applicant testified that she has known her for 27 years and considers her honest and trustworthy. She believes that Applicant takes her job seriously and that marijuana is not important to her. (Tr. 37-38) The company comptroller who hired Applicant described her as very trustworthy and the "backbone" of the company. (Tr. 41-42) A co-owner of the company, who is also the president and the FSO, testified that Applicant is very trustworthy and exceeds expectations in any task she is given. (Tr. 48-49) The co-owner expects to make Applicant the FSO if she receives a security clearance. (Tr. 48-51) The other co-owner, who recruited Applicant to work for his company, describes her as "fantastic." He testified that Applicant promised him that her marijuana use will never happen again, and he is confident that she will keep her word. (Tr. 58-62)

On April 11, 2025, Applicant obtained hair testing for drugs. The testing was negative for amphetamines, cocaine, marijuana, opiates, and phencyclidine (PCP). (AX D) On the same day, she submitted a written statement of intent to abstain from all drug involvement and acknowledged that a drug involvement will be grounds for disqualification for employment. (AX E)

On April 23, 2025, Applicant underwent a substance abuse evaluation conducted by a licensed drug counselor, using an addiction severity index, which is a structured clinical interview instrument used for evaluating the severity of substance use and associated issues. The interview revealed no symptoms consistent with a past or current substance use disorder. (AX F)

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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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 [her] 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* 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which 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.

On December 21, 2021, the 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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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; and.

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

The December 2021 guidance from the SecEA instructs that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. 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 fully established. Applicant's last use of marijuana was in November 2024, slightly more than a year ago. It was arguably infrequent, only two or three times a year, but it did not occur under circumstances making recurrence unlikely.

AG ¶ 26(b) is established. Applicant stopped using marijuana after being advised in November 2024 that it was inconsistent with holding a security clearance. She no longer uses marijuana or attends social gatherings where marijuana is likely to be used, and she has provided the signed statement intent provided for in AG ¶ 26(b)(3).

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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). Applicant was candid, sincere, and credible at the hearing. She is regarded by her employer and colleagues as very trustworthy and the "backbone" of her employer's company. 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 mitigated the security concerns raised by her drug involvement.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement
and Substance Misuse):

FOR APPLICANT

Subparagraphs 1.a and 2.b:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge