



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



In the matter of:)
)
) ISCR Case No. 24-02308
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq, Department Counsel
For Applicant: Pro se

03/04/2026

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 May 9, 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); *Defense Industrial Personnel Security Clearance Review Program*, Department of Defense (DoD) Directive 5220.6 (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 May 25, 2025, and requested a hearing. The case was assigned to me on October 2, 2025, and was scheduled for hearing on January 21, 2026. At the hearing, the Government's case consisted of two exhibits (GEs 1-2) that were admitted without objection. Applicant relied on one witness (himself) and four exhibits that were admitted without objection. (AEs A-D) The transcript (Tr.) was received on February 3, 2026.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit the opportunity to supplement the record with documented drug testing results. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana with varying frequency from about October 2022 to at least December 2024 and (b)) purchased marijuana with varying frequency from about January 2023 to about December 2023.

In his response to the SOR, Applicant admitted the allegations with explanations and clarifications. He claimed he ceased all use of illegal drugs and is currently employed as a bus driver in his city of residence and is required to remain drug free as a condition of his employment. Applicant further claimed that his lapse in judgment was attributed to an emotionally difficult time for him following the death of his mother. And, he claimed that he is fully committed to abstaining from any use of controlled substances and maintaining the highest standards of conduct.

Findings of Fact

Applicant is a 23-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GEs 1-2;) He earned a high school diploma in May 2021 and has attended classes in his state of residence since August 2021 without earning a degree or diploma. He reported no military service. (GE 1; Tr. 19)

Since July 2024 Applicant has been employed by his current employer as a bus driver while attending college. (GE 2) Between May 2022 and July 2024, he held a part-time job with a local retail company while attending college. (GE 2) His full-time work with his current employer is contingent upon his obtaining a security clearance. (GE 2 and AEs C-D; Tr. 18) Applicant has never held a security clearance and is presently sponsored by his current employer. (GE 2; Tr. 18))

Applicant's drug history

Between October 2022 and July 2024, Applicant possessed and used marijuana in edible form with varying frequency at parties and in social gatherings with friends. (GEs 1-3; Tr. 20-24) He characterized his use of marijuana as relatively infrequent to relieve stress and relax while coping with his mother's illness. (GE 2) After completing an electronic questionnaire for investigations processing (e-QIP) in July 2024, he continued to ingest marijuana edibles on several occasions before quitting altogether in December 2024. (GE 2; Tr. 24, 30) Despite telling a Government investigator in an August 2024 personal subject interview (PSI) that he was not sure about ceasing his use of marijuana without being forced to do so, he felt certain that he would not resume his use of marijuana following his last use in December 2024 out of concern for his job and security clearance. (Tr. 26, 30)

Despite Applicant's reliance on his state's legalization of marijuana use in 2021 (§4.11101, *et seq.*), he fully acknowledged his awareness of the federal ban on marijuana possession in 2022 and continued to use marijuana edibles notwithstanding the ban. (GE 2; Tr. 26, 30) Applicant now fully understands the reasons and logic behind the federal ban on marijuana possession that is covered by the Federal Controlled Substances Act (21 U.S.C. §§ 802, *et seq.* (1970) (CSA)). With his increased maturity and closure he has achieved from his mother's passing in May 2025 (following many years of health struggles), he is now better positioned to abstain from illegal drugs (marijuana included). (Tr. 27-28, 31-32)

Applicant's drug-free assurances are corroborated by: the returned negative test results from the non-randomized drug test he underwent in April 2025. (AE B) Detracting from his assurances are his lack of documented drug counseling and group support, (b) his failure to fully disassociate from friends who use marijuana products, and (c) his hedging on whether he would or could sustain his abstinence from illegal drug use were he to be denied a security clearance in his case. (Tr. 27)

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 AG 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.

The AG 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, if any. 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 to be considered together with the following ¶ 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.

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 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. 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

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

Drug Involvement and Substance Misuse

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.

Security concerns are raised over Applicant's use of federally banned illegal drugs (marijuana edibles in Applicant's case) over a number of years (mostly while in college) between October 2022 and December 2024 (his last reported use). Additional security concerns are raised over Applicant's January 2023 and December 2023 marijuana edible purchases.

Applicant's proven involvement with legally banned marijuana (both use and purchases) under the CSA raise security concerns over risks of recurrence as well as judgment issues. On the strength of the evidence presented, three disqualifying conditions (DCs) of the AGs for drug involvement and substance misuse apply to Applicant's situation: 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 illegal drugs or drug paraphernalia"; and 25(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse."

To his credit, Applicant has committed to abandoning all use and involvement with illegal drugs while holding a security clearance and has sustained his abstinence from illegal drugs (exclusively marijuana in his case) for over 12 months. Relying mostly on his state's legalization of marijuana possession in 2021, he continued to use and purchase marijuana products (i.e., through December 2024 for use and through December 2023 for purchases) with the knowledge that marijuana is banned by the CSA.

Most important, though, while Applicant exhibits no visible signs or indications of succumbing to any risks or pressures to resume his marijuana involvement in the foreseeable future, he (a) has received no drug counseling, (b) has not fully disassociated from friends who use marijuana products, and (c) has hedged in his PSI on whether he would return to marijuana use should his security clearance be denied preclude any drawn conclusions that his past marijuana involvement is fully behind him and unlikely to recur.

Potentially applicable mitigating conditions (MCs) for raised Guideline H concerns available to him are as follows: MC ¶¶ 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 26(b), “the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
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- (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 progress to date in avoiding all illegal drugs and persons who use these drugs, while encouraging are undermined by his absence of drug counseling, his failure to fully disassociate from friends who use marijuana products, and his displayed ambivalence in his PSI about future resumption of his marijuana use. Without more time to season and validate his commitments to abstinence, risks of recurrent use cannot be foreclosed.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his history of use and purchases of state-legalized marijuana edibles but implicitly controlled as a controlled substance barred from possession under the CSA is fully compatible with minimum standards for holding a security clearance.

Considering the record as a whole and granting due weight to the extenuating circumstances associated with Applicant’s college youth, his mother’s struggles with cancer (leading to her ultimate death in June 2025), his failures to fully disassociate from friends who use marijuana products, and his hedging on his resumption of marijuana use in the future, there is insufficient probative evidence of sustainable extenuation and mitigation in the record to make safe, predictable judgments about his ability to avoid illegal drugs in the foreseeable future. Overall good judgment, reliability, and trustworthiness are not established.

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 drug involvement and

substance misuse security 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.b: 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