



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



In the matter of:)
)
) ISCR Case No. 25-00427
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2026

Decision

DRISKILL, A. M., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

On May 6, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on June 4, 2025, and requested a decision on the written record in lieu of a hearing. The Government’s written case was submitted on August 8, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 9, 2025, and she did not respond. The case was assigned to me on February 19, 2026. The Government exhibits included in the FORM (Items 3-5) are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from about June 2015 to at least January 2025 (SOR ¶ 1.a); that she intends to continue using marijuana in the future (SOR ¶ 1.b); and that she used psilocybin mushrooms with varying frequency in about March or April 2024 (SOR ¶ 1.c). In her answer, Applicant admitted the marijuana use, denied an intent to continue using marijuana, and denied using psilocybin mushrooms “with varying frequency” because she only used them once.

Applicant is 30 years old. She has never married and has no children. She earned a bachelor’s degree in 2019 and did not serve in the military. She has been employed with a defense contractor since June 2024. She has never held a security clearance. (Item 3)

Applicant completed a security clearance application (SCA) in July 2024 and reported using marijuana from June 2015 to July 2024. She stated that her use was for stress and anxiety relief, and that it was both “controlled use along therapy” and recreational use. She described the frequency of use as once or twice a week, although she said she will occasionally go weeks without using it. She expressed an intent to continue using marijuana, explaining she has only used it in states where it is legal and that she and her therapist monitor her consumption. She stated she would be willing to stop using marijuana while holding a security clearance “should that be required of me,” but she would likely resume use if the drug was legalized under Federal law or if she got a new job that did not require a clearance. (Item 3)

Applicant had a background subject interview with a government investigator in August 2024. She reported her last use of marijuana was three days prior to the interview. She confirmed that she uses it one to two times per week and reported purchasing marijuana about once every six months between June 2022 and August 2024. She stated that she would stop using marijuana if she gets a clearance and is told to stop using it. She also stated that, if it became legal under Federal law, she would continue to use it because she likes how it makes her feel, and it helps her anxiety. She also uses it socially and continues to socialize with individuals with whom she has used marijuana, including her sister. She typically uses it at an apartment or house. She reported using hallucinogenic mushrooms once in April 2024 for recreational purposes. She does not intend to use hallucinogenic mushrooms again, although she still associates with the person who she used them with. (Item 5)

In her January 31, 2025 response to a Government interrogatory, Applicant reported that she was no longer using marijuana and her last use was on January 1, 2025. She reported March 2024 as the last date she used psilocybin mushrooms. She stated that she stopped using marijuana due to obtaining a security clearance and “overall just lost interest in it.” She stated that she was taking medication to help her abstain from using illegal drugs, but she did not go into further detail except to say that she intended to start anti-anxiety medication soon to replace the benefits she was receiving from marijuana. She noted that mental health professionals she has seen have found that marijuana has been beneficial for treating her anxiety and attention deficit hyperactivity

disorder, and that her surgeon recommended using it after a procedure in February 2024. She stated she did not intend to use illegal drugs in the future. She confirmed that she was aware that marijuana use remains illegal under Federal law. She provided her employer's drug use policy, which does not prohibit marijuana use for off-duty personnel without a security clearance. (Item 4)

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use" addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. "An individual's disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations."

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, "Federal Laws and Policies Prohibiting Marijuana Use." The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act.¹ Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the "whole-person concept" stated under SEAD 4, to determine whether the applicant's behavior raises a security concern that has not been mitigated.

Policies

¹ On December 18, 2025, an executive order ("Increasing Medical Marijuana and Cannabidiol Research") was signed, ordering additional research on marijuana and directing the Attorney General to "take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act]." As of this writing, marijuana has yet to be rescheduled.

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

“[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.

The following disqualifying conditions under this guideline are potentially applicable:

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(g): expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant’s marijuana use is established by her admissions and the evidence in the FORM. Her one-time psilocybin mushroom use is likewise established by her admissions and the evidence in the FORM. AG ¶¶ 25(a) and 25(c) are established for SOR ¶¶ 1.a and 1.c. Finally, she has repeatedly expressed an intent to continue using

marijuana prior her recent period of abstinence, which is discussed in further detail below. AG ¶ 25(g) is established for SOR ¶ 1.b.

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 established for Applicant's psilocybin mushroom use. The use occurred only once, almost two years ago, and she has been consistent in stating that she has no intention to use this drug in the future. SOR ¶ 1.c is found for Applicant.

AG ¶ 26(a) is not established for Applicant's marijuana use. Her involvement was frequent and did not occur under circumstances making recurrence unlikely. The key issue is whether it is mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright-line rules for determining when conduct is recent. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last drug involvement was in January 2025, just over one year ago, and ceased only after she completed her SCA and interview. While under some circumstances this could be considered a significant period of time, when contrasted with Applicant's nearly ten-year history of drug use, it is not a sufficiently lengthy period of abstinence to fully establish the mitigating condition. It appears the only circumstances that changed are Applicant's desire for a security clearance; likewise, there is no additional evidence of conduct indicating reform or rehabilitation.

AG ¶ 26(b) is not fully established for Applicant's marijuana use. She acknowledged during her interview that she still associates with the individuals with whom she previously used illegal drugs. There is no evidence that she has ceased communication with those individuals, nor that she no longer goes to apartments or houses where drugs are being used. As such, AG ¶¶ 26(b)(1) and 26(b)(2) are not established.

Even if Applicant's response to Government interrogatories could be construed as a statement of intent in accordance with AG ¶ 26(b)(3), her lengthy history of drug use, her multiple statements expressing an intent to continue using marijuana and extolling the benefits she has received from its use, her relatively recent sobriety, and her continued association with drug-using associates lessens the credibility and sincerity of her statement.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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 Guideline H in my whole-person analysis and 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).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption. 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 not mitigated the security concerns raised by her drug involvement and substance misuse.

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:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	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.

A. M. Driskill
Administrative Judge