



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



In the matter of:)	
)	
)	ISCR Case No. 25-00676
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and J (Criminal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 23, 2024. On June 4, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and J. 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 August 12, 2025, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 25, 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. He received the FORM on December 15, 2025, and did not respond. The FORM consists of four exhibits. Government Exhibits (GX) 1 and 2 are the pleadings in the case. GX 3 and 4 are the evidence in support of the allegations in the SOR.

Evidentiary Issues

GX 4 is a summary of Applicant's interview with a security investigator in October 2024. It is subject to the authentication requirement in the Directive ¶ E3.1.20. In the FORM, Department Counsel advised Applicant that the summary was unauthenticated, and that if he did not object to it, he might be deemed to have waived any objection to it. He did not object. I conclude that he waived any objection to GX 4. GX 3 and 4 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 24-year-old employee of a defense contractor. He is not married, has no children, and has no military service. He received a bachelor's degree from a foreign university in 2024. He has never held a security clearance.

The SCA alleges that Applicant used marijuana with varying frequency from about July 2020 to July 2024 (SOR ¶ 1.a); used hallucinogenic mushrooms with varying frequency from about September 2019 to about June 2024 (SOR ¶ 1.b); used Lysergic Acid Diethylamide (LSD) with varying frequency from about September 2019 to about 2022 (SOR ¶ 1.c); used Dimethyltryptamine (DMT) in about 2022 on two occasions (SOR ¶ 1.d); used 4-Bromo-2,5 Dimethoxy-phenethylamine from about 2021 to about 2023 on three occasions (SOR ¶ 1e); used Metocin (4-HO-MET) from about 2021 to 2022 on two occasions (SOR ¶ 1.f); used Ketamine on two occasions from about November 2021 to about March 2022 (SOR ¶ 1.g); and used MDMA ("Ecstasy") in about November 2021 (SOR ¶ 1.h). His drug involvement is cross-alleged as criminal conduct (SOR ¶ 2.a).

Applicant disclosed in his SCA that his drug involvement began in September 2019 and ended in June 2024. (GX 3 at 91-92) He stated:

I have continued to uphold the mitigating factors outlined in Directive DoDD 5220.6 Guideline H 26.a/b, having acknowledged my past substance misuse, established a pattern of abstinence (sic), disassociated from drug-using associates and contacts, and avoid the environment where drugs were used. While these mitigating factors were brought up in

the SF86 and interview, and I would like to reiterate them as they have remained true 11 months later.

Applicant's answer to the SOR included a signed statement of intent to "abstain from illegal involvement and substance misuse, acknowledging that any future involvement (sic) or misuse is grounds for revocation of national security eligibility."

During Applicant's interview with a security investigator in October 2024, he stated that he used hallucinogenic drugs for experimentation and recreation while in college, that his last use was in July 2024, and that he does not intend to use them again. (GX 3 at 89-93; GX 4 at 5) He told the security investigator that he knew his drug use violated the law in the country where he lived at the time.

Applicant has not submitted any other evidence regarding the allegations. He submitted no evidence of employment, community service, or other responsible conduct since his graduation from college.

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 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* 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 in his SCA and security interview establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

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;

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; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

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. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows 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 admitted drug involvement was in July 2024. He submitted his SCA in September 2024 and was interviewed by a security investigator in October 2024. Only about two months elapsed before he applied for a security clearance, and he has been under pressure to qualify for a clearance since September 2024. Under these circumstances, I

conclude that his period of claimed abstinence is not sufficient to warrant a finding of reform or rehabilitation. His drug involvement occurred mostly in college, and he has provided no evidence that his current environment makes further drug involvement unlikely. I conclude that AG ¶ 26(a) is not established.

AG ¶ 26(b) is partially established. He has provided no information about his friends and current work and living environment. He submitted no evidence of the quality of his work or his reputation for reliability and trustworthiness. He has, however, submitted a signed statement of intent. Based on the limited evidence in the record, there is insufficient evidence to establish that Applicant has reformed his behavior and will adhere to his statement of intent when the pressure of qualifying for a clearance is removed.

AG ¶ 26(d) is not established. Applicant submitted no evidence that he satisfactorily completed a prescribed drug treatment program.

Guideline J, Criminal Conduct

The FORM submitted by Department Counsel did not address this guideline. The concern under this guideline is set out in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

The recreational use of the drugs used by Applicant in this case violates the *Federal Controlled Substances Act* (Title II of the Comprehensive Drug Abuse Prevention and Control Act), 21 U.S.C. §§ 801-971. 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 requires 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.

The relevant disqualifying condition is AG ¶ 31(b): (“evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted”) This disqualifying condition is established by Applicant’s admissions.

The following mitigating conditions are relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Neither mitigating condition is established for the reasons set out in the above discussion of AG ¶¶ 26(a) and 26(d) under Guideline H.

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 Guidelines H and J 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 question him or to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines H and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement and Substance Misuse):	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against 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.

LeRoy F. Foreman
Administrative Judge