



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



In the matter of:)
)
) ISCR Case No. 25-00458
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq, Department Counsel
For Applicant: Daniel P. Meyer, Esq.

02/26/2026

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated drug involvement and substance misuse concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On May 8, 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 28, 2025, and requested a hearing. The case was assigned to me on September 19, 2025, and was initially scheduled for hearing on October 15, 2025. Rescheduled for December 12, 2025, the case was heard on the rescheduled date. At the hearing, the Government's case consisted of five exhibits (GEs 1-5) that were admitted without objection. Applicant relied on two witnesses (including himself) and five exhibits that were admitted without objection. (AEs A-E) The transcript (Tr.) was received on December 19, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly used THC/marijuana from about August 2020 until about November 2024 with varying frequency; (b) from about April 2022 until about October 2022, used hallucinogenic mushrooms with varying frequency; (c) from about October 2024 until about November 2024, used THC/marijuana while in a sensitive position, i.e., one requiring a security clearance; and (d) from about August 2022 to November 2024, purchased THC/marijuana on various occasions. Applicant's use of illegal drugs while holding a security clearance presents continuing security concerns.

In his response to the SOR, Applicant admitted the allegations with explanations and clarifications. He claimed he used hallucinogenic mushrooms twice in college. He further claimed that he used marijuana edibles after working hours in his place of residence and stopped using them the last week of December 2024 after he started working with material that require a security clearance to view in January 2025.

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, has no children, and resides with his mother and sister. (GEs 1-2; Tr. 17, 51) He earned a bachelor's degree in May 2024. He reported no military service. (GE 1)

Since September 2024, Applicant has been employed by his current employer as a junior operations research analyst. (GE 1; Tr. 16, 35, 41) Between August 2020 and May 2024, he held part-time jobs while attending college classes as a full-time student. Although he has never held a fully approved security clearance, he has worked in a sensitive position held an interim clearance since September 2024 and is currently sponsored by his present employer. (GE 1; Tr. 35)

Applicant's drug history

Between August 2020 and April November 2024 (mostly while in college), Applicant possessed and used marijuana edibles with varying frequency at parties and in social gatherings. (GEs 1-3; Tr. 20-2) He characterized his use of marijuana as relatively infrequent (no more than four to five times a week between 2020 and 2024) to relieve stress and relax. After completing an electronic questionnaire for investigations processing (e-QIP) in August 2024, he continued to use marijuana twice weekly until November 2024. (Tr. 39-40)

On several occasions between August 2022 and November 2024 he purchased marijuana edibles for his personal use. Mostly, he relied on his college friends to provide him the marijuana he needed. The marijuana he used never affected him in his judgment and had no known impact on his personality, judgment, reliability or ability to hold a confidence. (GEs 2-3) After college he disassociated himself from all of his college friends. (Tr. 23, 61, and 64)

Applicant cited depression and emotional sadness over his father's struggles with dementia and estrangement from his mother and sister as the reasons for his continued use of marijuana after completing his e-QIP. (GE 3 and AEs C-D; Tr. 47) Applicant's mother, who testified, corroborated Applicant's claims that he used marijuana one last time in November 2024 to relieve his depression and sadness associated with his father's struggles with dementia (ultimately expiring in June 2025). (AE C; Tr. 22) Post-e-QIP non-randomized drug tests returned negative results for marijuana and other illegal substances. (AE E; Tr. 45-46, 62-63)

Before completing his e-QIP in August 2024, Applicant was unaware of the federal ban on marijuana possession. (Tr.18-19, 44, 47) Prior to August 2024, he relied in part on his state's legalization of recreational marijuana use in 2021. (Tr. 38, 46) See §4.11101 *et. seq.* Once he became aware that his continuing use of marijuana edibles violated not only federal law, but his employer's anti-drug policy as well, he ceased using marijuana altogether in November 2024. (GE 5 and AE C)

Applicant now fully understands the federal ban on marijuana use that is covered by the Federal Controlled Substances Act (21 U.S. ¶¶ 802, *et seq.* (1970) (CSA) And with the closure he has achieved on his father's death, he is able to confidently assure that he will not resume any use of illegal drugs (marijuana included) in the future. (AE C; Tr. 44-45) Asked by the Government investigator in his personal subject interview (PSI) how he can be trusted to avert recurrent marijuana use in the future, he cited his life's learning lessons and his desire to avoid disappointing his family. (GE 3; Tr. 37)

Besides his marijuana use, Applicant tried hallucinogenic mushrooms on several occasions (estimated to be four to five times) in college between April 2022 and October 2022. (GEs 1-2) He has not used hallucinogenic mushrooms since his last reported use in October 2022 while in college. (GEs 2-3)

Endorsements and awards

Applicant is well-regarded by family members, college instructors, friends and former high school and college classmates who are familiar with his past use of illegal drugs. (GE D; Tr. 49, 55-59) Each of Applicant's character references found him to be highly reliable and trustworthy.

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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are 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.

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

Security concerns are raised over Applicant’s use of federally banned illegal drugs (marijuana edibles and psychedelic mushrooms) over a number of years (mostly while in college) between August 2020 and November 2024, with some of his marijuana use occurring while he held a sensitive position requiring a security clearance.

Drug Involvement and Substance Misuse

Applicant’s admissions to his involvement with multiple illegal drugs 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(f), “any illegal drug use while granted access to classified information or holding a sensitive position.”

To his credit, Applicant has committed to abandoning all use and involvement with illegal drugs (only marijuana since 2022) and has sustained his abstinence from illegal drugs for over 12 months. Currently, he exhibits no visible signs or indications of succumbing to any risks or stresses he might encounter to return to illegal drug use and involvement in the foreseeable future. His use of illegal drugs in college never reached more than infrequent levels with friends in social situations, and he has been tested regularly for any resumption possibilities. None of his non-randomized tests have yielded any positive results to date.

Applicable mitigating conditions (MCs) for raised Guideline H concerns 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;
- (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 is notable. While his past use of marijuana while holding a sensitive position is concerning, he has learned important lessons from his mistakes and can be expected to abstain from illegal drugs in the foreseeable future.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his history of use of state-legalized but federally-banned possession of marijuana (in part while holding a sensitive position), and to a lesser extent his experimental use of hallucinogenic mushrooms in college, 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 his father’s struggles with dementia (leading to his ultimate death in June 2025) and to Applicant’s positive commitments to abstinence, there is sufficient 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 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 mitigated. Eligibility for access to classified information is granted.

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): FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge