



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



In the matter of:)
)
) ISCR Case No. 25-00686
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: Marques O. Peterson, Esq.

03/24/2026

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from her illegal drug use. Eligibility for access to classified information is denied.

Statement of the Case

On June 27, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA acted 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 on June 8, 2017.

In Applicant's July 8, 2025 response to the SOR (Answer), she admitted, with explanations, all three allegations. She did not attach any documentary evidence. She requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On August 7, 2025, the Government was ready to proceed to a hearing. I was assigned this case on December 17, 2025. On January 15, 2026, a notice was issued scheduling the hearing for February 11, 2026, by video teleconference. The hearing proceeded as scheduled. The Government proffered three evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 through 3, without objection. Applicant and two witnesses testified. Applicant submitted seven exhibits, which I admitted as Applicant Exhibits (AE) A through G, without objection. At Applicant's request, I left the record open until March 11, 2026, to provide her an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on February 24, 2026. On March 11, 2026, Applicant confirmed that she had no further submissions, and the evidentiary record closed.

Findings of Fact

Applicant is 36 years old. She graduated from high school in June 2008 and earned a bachelor's degree in May 2012. Since September 2021, she has been employed with a federal contractor, currently as an account director and a vice president. She is not married and does not have any children. This is her first application for a security clearance. (GE 1; Tr. 20-22, 29, 38, 40, 62)

The SOR alleges that Applicant purchased and used marijuana from approximately March 2019 through at least April 2025 (SOR ¶¶ 1.a. and 1.b.) and that she expressed her intent to use marijuana in the future (SOR ¶ 1.c.).

On February 5, 2024, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, she reported that she had acquired a state-issued medical marijuana card in 2019, and she used marijuana from March 2019 to January 2024. She expressed her intent to use marijuana in the future, contingent on state laws. (GE 1; Tr. 24-25, 29)

On October 22, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, she confirmed her prior disclosures about her marijuana use. She had most recently used marijuana the night before the OPM interview. She explained that she would consider abstaining from marijuana use if it was a condition for obtaining access to classified information. In her May 21, 2025 response to DOHA interrogatories, she confirmed the accuracy of the summary of the October 22, 2024 interview. (GE 3)

In Applicant's April 3, 2025 response to DCSA interrogatories, she acknowledged her awareness that marijuana was classified as a Schedule I drug by the Drug Enforcement Administration, that it remained illegal under federal drug laws, and that continued use may affect her clearance eligibility. She affirmed her intent to use marijuana in the future. She admitted that she used marijuana "multiple times per week" and that her most recent use was the same day as her interrogatory response. She explained that, after her state-issued medical marijuana card expired in March 2024, she continued to

purchase and use marijuana because recreational marijuana use was permitted under state law. (GE 2; Tr. 30)

At the hearing, Applicant admitted that she used marijuana approximately four or five times a week, from about March 2019 until mid-May 2025 (SOR ¶ 1.a.). She typically purchased marijuana about once every few months during this period (SOR ¶ 1.b.). She explained that she had sought a prescription for medical marijuana and had acquired and renewed state-issued medical marijuana cards to manage her insomnia and anxiety. She typically used marijuana right before going to sleep, and she never used at the workplace. She claimed that, prior to completing her February 2024 e-QIP, she had not understood that federal laws prohibited marijuana use. When completing the e-QIP, she acknowledged the realization that marijuana was illegal under federal law when Section 23 “explicitly listed [tetrahydrocannabinol] as an illegal drug.” She admitted that Section 23 put her on notice that, in the eyes of the federal government, marijuana use was illegal. However, she chose to continue using marijuana. (GE 1; Tr. 25-28, 30-33, 35-36, 43-45, 51)

After Applicant responded to the April 2025 DCSA interrogatories notifying her that marijuana was listed as a Schedule I drug and was federally illegal, she did not inquire further with her supervisor, facility security officer (FSO), or government client about whether marijuana use would negatively impact her clearance eligibility. Rather, she continued using marijuana, believing that her marijuana use was permitted because she was in compliance with state drug laws. The April 2025 DCSA interrogatories specifically noted that illegal drug use may have a negative impact upon an individual’s clearance eligibility, yet Applicant continued to use marijuana several times a week until mid-May 2025. At the time she completed her May 2025 DOHA interrogatories, she remained “on the fence” about her intent to use marijuana in the future. Upon receipt of the June 2025 SOR, she decided to cease her marijuana use. (GE 2-3; Tr. 25-28, 30-36, 43-47, 51)

Applicant has never used any other illegal drugs nor misused prescription drugs. She has never participated in drug screening or testing. She now relies on “other forms of therapy as well as exercise” to manage her anxiety and insomnia. Her current state of residence permits medical marijuana use under state law; however, she has not applied for a medical marijuana card. As of her October 2024 security interview, she continued to socialize with college friends who used and had offered her marijuana. At the hearing, she testified that she currently socialized with those college friends about once a year. (Tr. 31, 37, 39, 48-49, 52-53)

Applicant provided copies of her initial prescription and her state-issued medical marijuana cards, spanning March 2019 through March 2022. Her employer’s background investigations policy does not require a pre-employment drug screening. The employer’s code of conduct prohibits illegal drug use on its premises, but the code does not address off-site use or drug screening. (AE B-D, G; Tr. 25-28, 40)

Whole Person

Applicant's supervisor and a co-worker testified in support of her clearance eligibility. Her supervisor hired her in September 2021. He described her as a "tireless worker" with excellent performance, and she has been twice promoted. She has had no disciplinary issues during her employment. He first learned of her marijuana use after she had received the SOR. (Tr. 60-71)

Applicant's co-worker is responsible for overseeing all financial and contractual matters related to Applicant's project with the government client. He has had daily interaction with her for over four years. He described her work performance as "impeccable," and he has never observed her under the influence of illegal drugs. He first learned of her marijuana use after she had received the SOR. (Tr. 76-82)

In her mid-2022 review, Applicant's supervisors described her as "organized, detail-oriented, and able to juggle a hefty workload." They also noted her exemplary work performance. In her 2023 performance review, Applicant's raters found her to have exceeded expectations and supported her promotion to account director. They praised her confidence, leadership, work ethic, and reliability. In August 2025, she received a \$3,000 performance bonus. (AE A, AE E, AE F, Tr. 63-64)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concern for drug involvement 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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, 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.

In 2021, the Security Executive Agent (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. 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.¹

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (a) any substance misuse;

- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

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

Applicant admitted that she used marijuana four or five times a week between about March 2019 and mid-May 2025. She also purchased marijuana once every few months during this period. AG ¶¶ 25(a) and 25(c) apply.

¹ *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*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

On her February 2024 e-QIP, during her October 2024 OPM interview, and in her April 2025 response to DCSA interrogatories, Applicant expressed her intent to use marijuana in the future. AG ¶ 25(g) applies.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. The following are potentially applicable:

(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

(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.

The DOHA Appeal Board has “long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.” ISCR Case No. 20-01772 at 3 (App. Bd. Sept. 14, 2021). Applicant admitted that she was “on notice” of the illegality of marijuana use under federal laws upon completion of the February 2024 e-QIP. The April 2025 interrogatories emphasized the illegality of marijuana use under federal laws and explicitly noted that marijuana use may negative impact an individual's clearance eligibility. Notwithstanding these notices, Applicant expressed her intent to continue using marijuana, and she regularly used marijuana until mid-May 2025. Even if she was initially uncertain as to the interplay between federal and state drug laws when she completed her e-QIP, the April 2025 interrogatories unequivocally established the potential negative impact of marijuana use on her clearance eligibility. At no time did she inquire with her supervisor, FSO, or government client as to whether marijuana use was permitted by clearance holders. Between mid-May 2025 and the mid-February 2026 hearing, she abstained from marijuana use for approximately nine months.

Applicant testified that she intended to abstain from all drug involvement and substance misuse in the future. I have construed her testimony as equivalent to a “signed statement of intent.” AG ¶ 26(b)(3) applies. This testimony also mitigates her expressed intent to use marijuana in the future (SOR ¶ 1.c.). I found her testimony credible and

candid throughout. Notwithstanding her statement of intent and credible testimony, she has not mitigated the drug involvement security concerns given the recency of her use and her use after having been placed on notice of the security significance of such conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The 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.

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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the factors in AG ¶ 2(d) in this whole-person analysis.

In her four years with her employer, Applicant has been promoted twice. Her supervisor, co-worker, and raters describe her work performance as "impeccable." They praised her confidence, leadership, work ethic, and reliability. Her exemplary performance does not diminish the significant security concerns from her illegal drug use. As of February 2024, she was aware that federal laws prohibited marijuana use, and, by April 2025, she was on notice that marijuana use would likely negatively impact her clearance eligibility. She has recently committed to abstaining from all drug involvement; however, she has not established a pattern of abstinence. She did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With a longer passage of time and further evidence of a pattern of sustained abstinence, she may overcome the aforementioned concerns.

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

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge