



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 25-00914
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct). The Guideline F allegations are not established, but Applicant did not refute or mitigate the allegations under Guidelines H and J. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 10, 2023. On August 12, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F, 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 25, 2025, and requested a decision on the written record in lieu of a hearing. On September 11, 2025, she submitted a statement and copies of her federal and state income tax returns for 2021 and 2022. Her statement is marked as Applicant's Exhibit (AX) A and the four tax returns are marked as AX B through E.

Department Counsel submitted the Government's written case on January 22, 2026. 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. The FORM consists of six exhibits. Government Exhibits (GX) 1 and 2 are the pleadings in the case. GX 3 through 6 are the evidence in support of the allegations in the SOR. Applicant did not object to any of the Government exhibits. GX 1 through 6 are admitted in evidence.

Applicant responded to the FORM on February 25, 2026. Her response is included in the record as Applicant's Exhibit (AX F). She also submitted three letters from coworkers attesting to her suitability for a security clearance (AX G, H, and I). Department Counsel did not object to any of Applicant's exhibits. AX A through I are admitted in evidence.

Findings of Fact

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

Applicant is a 41-year-old dispatcher employed by a federal contractor since September 2023. (GX 3 at 2). She has never married. She has never held a security clearance.

SOR ¶ 1.a alleges that Applicant failed to timely file federal income tax returns for tax years 2019 through 2023. SOR ¶ 1.b alleges failure to timely file state income tax returns for the same tax years.

In Applicant's October 2023 SCA, she disclosed that she failed to file federal and state income tax returns for tax years 2018 through 2022 through neglect. (GX 4 at 33-34) She confirmed her failures to file her tax returns during an interview with a security investigator in November 2023. (GX 6 at 2) In response to DOHA interrogatories in July 2025, she disclosed that she had also failed to file federal and state tax returns for tax year 2023. (GX 6 at 13-14) She attributed her failures to file tax returns to negligence and "an irresponsible mind-set." (GX 5 at 3)

An Internal Revenue Service Tax Compliance Report reflects that she timely filed her federal return for tax year 2024. (GX 6 at 24) It also states that for tax years 2021,

2022, and 2023, “filing may not be required based on reported income,” and that she does not owe any federal taxes. (GX 6 at 24-25) Tax transcripts reflect that her income was \$7,546 for tax year 2018; \$8,834 for tax year 2019; \$1,851 for tax year 2020; \$8,477 for tax year 2021; \$6,627 for tax year 2022; and \$5,056 for tax year 2023. (GX 6 at 10-26) Her SCA reflects that she was unemployed when she submitted it. Her SCA reflects that she was unemployed from March 2020 to February 2021, December 2022 to March 2023, and July 2023 until she was hired by her current employer. (GX 6 at 14-17) The IRS Publication 501 for tax years 2018 through 2023, available at www.irs.gov/pub/irs-prior, sets out a minimum gross income for single persons at \$12,200 for tax years 2018 and 2019, \$12,400 for tax year 2020; \$12,550 for tax year 2021; \$12,950 for tax year 2022; and \$15,750 for tax year 2023.

The above evidence shows that Applicant was not required to file federal income tax returns for the tax years alleged in the SOR. I have taken administrative notice of the law of the state in which Applicant resides, without objection from Department Counsel, and it does not require filing a state return unless a federal return is required to be filed. I conclude that the evidence is insufficient to show that Applicant was required to file federal and state income tax returns for the tax years alleged in the SOR.

When Applicant was interviewed by a security investigator in November 2023, she was questioned about her history of marijuana use, and she told the investigator she stopped using marijuana for health reasons, and that the changes in her life were due to “medical issues not related to drug use.” (GX 6 at 3, 6) When she responded to DOHA interrogatories in July 2025, she disclosed her daily use of marijuana from 1999 to 2023 and purchases of marijuana twice a week during the same period. She explained that she attended a Narcotics Anonymous class in 2009 or 2010. She submitted no other evidence of counseling or treatment for her marijuana use. Instead, she declared that she did not need any future support, because she has stopped using marijuana and never intends to be involved with it or any other drug. (GX 6 at 17-18)

Applicant was required to undergo drug preemployment drug testing, and she is subject to random drug tests. (GX 6 at 20) In her response to the DOHA interrogatories in July 2025, she stated that she had not tested positive for any illegal substances as of the date of her response. (GX 6 at 20-21) When asked what changes, if any, she had made in her personal or professional situation that might be indicative of a change of lifestyle away from her past drug usage, she responded:

I made the choice to grow up and take responsibility for my life. This has caused me to take life more seriously. Applying for this job with [her current employer] was definitely indicative of a lifestyle change away from my past drug usage. Before my interview even happened, I made the choice to quit smoking marijuana. I was determined to may better choices. . . . All this

began in 2023. My immediate family (mother, father, and brother) can verify this information. They are proud of me and I am proud of myself.

(GX 6 at 10)

In Applicant's response to the FORM, she stated,

I chose to conclude on this matter without a hearing because I find my scope of work in almost two years is sufficient to speak about my ability to handle this job with the upmost (sic) integrity. I have never been so passionate about a job in my life. I followed the organization behind my father. He served 20 years with [this employer] after completing 23½ years in the Air Force. Everyone knows I am my father's daughter to the T. I was very thorough and confident with the work I presented while actively employed.

I smoked marijuana growing up and right before I quit, it became legalized. Either way, I quit long before I applied to [this employer]. Marijuana had no effect on any decisions I made while working, because I had quit and it was nowhere near my life. My judgment, reliability, and trustworthiness were never a matter of concern for almost 2 years of active employment. It was something of my past that I was happy to give up for the path to a better life.

Applicant's operations manager submitted a letter supporting her application for a clearance. He states that Applicant's dedication, attention to detail, and expertise have consistently set her apart as a top performer in the organization. (AX H) A site project manager who worked with Applicant as an emergency services dispatcher considered her one of their strongest dispatchers because of her good judgment under stress, reliability in execution, and trustworthiness in handling information. (AX G) A former co-worker describes Applicant as very dedicated and one of the best dispatchers the organization has ever had. (AX I)

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 F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The relevant disqualifying conditions in this case are AG ¶ 19(c): a history of not meeting financial obligations; and AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

These disqualifying conditions are not established, because the evidence reflects that Applicant was not required to file federal or state tax returns because of her low income, and she does not owe any federal or state income taxes. No other disqualifying conditions under this guideline are alleged or established by the evidence.

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 and the evidence in the FORM 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.

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, a subsequent 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 following mitigating conditions are potentially applicable in this case:

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.

AG ¶ 26(a) is not established. Applicant's drug involvement continued for most of her adult life, was frequent, and did not occur under circumstances making recurrence unlikely. She suggested during her security interview in November 2023 that medical considerations influenced her decision to stop using marijuana before she applied for her current position, but the evidence is limited and vague on the extent to which medical considerations affected her decision to stop using marijuana.

AG ¶ 26(b) is not fully established. Applicant has acknowledged her drug involvement and apparently has abstained from drug use since she applied for her current position. However, she has provided no evidence of disassociation from drug-using associates or contacts or a change in the environment where drugs were used. She has declared her intent to abstain from all drug involvement. She has not specifically acknowledged in writing that any future drug involvement is grounds for revocation of national security, but her various statements reflect her understanding that drug involvement is inconsistent with holding a security clearance.

Guideline J, Criminal Conduct

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 relevant disqualifying condition in this case 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.” Applicant’s admissions establish that she violated the Controlled Substances Act, 21 U.S.C 801 et seq. for many years, even after marijuana was legalized in the state where she resided.

The following mitigating conditions are potentially 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.

The first prong of AG ¶ 32(a) (so much time has elapsed) focuses on whether the criminal conduct 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 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. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant has asserted that she stopped using marijuana almost three years ago, which is a significant period of time. However, this period of time was preceded by at least 24 years of marijuana use. Her decision to stop using marijuana may have been motivated by medical concerns, but the evidence on that possibility is vague. More likely, the decision to stop using marijuana was largely motivated by the knowledge that any further marijuana use, if detected, would end the best job she has ever held. There is no evidence that Applicant’s marijuana use happened under unusual circumstances. I conclude that AG ¶ 32(a) is not established. AG ¶ 32(b) also is not established for the same reasons, notwithstanding Applicant’s short but impressive employment record.

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 F, 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 evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Applicant submitted significant favorable evidence in her response to the FORM, but it is difficult to fully evaluate that evidence without an opportunity to question her and accurately evaluate her sincerity and credibility in a face-to-face encounter. This is a close case, and I am required to resolve close cases in favor of national security. If Applicant continues her path of responsible conduct, she may be able qualify for a security clearance in the future.

After weighing the disqualifying and mitigating conditions under Guidelines F, H, and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has rebutted the allegations under Guideline F, but she has not mitigated the security concerns raised by her drug involvement and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Paragraph 2, Guideline H (Drug Involvement and Substance Misuse):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 3.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