



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



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 In the matter of:)
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) ISCR Case No. 25-00635
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 Applicant for Security Clearance)
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Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: *Pro se*

05/14/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Her application for eligibility for access to classified information and assignment to duties designated as national security sensitive is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 5, 2024. On October 7, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. 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 October 22, 2025, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 29, 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. She received the FORM on February 11, 2026, and submitted her written response on February 17, 2026. Department Counsel did not object to Applicant's response. The case was assigned to me on April 20, 2026.

The FORM consists of the pleadings in the case, Government Exhibit (GE) 1, and the documents in support of the allegations in the SOR, GE 2 through 6. GE 2 through 6 and Applicant's response to the Government's FORM are admitted into evidence, without objection.

Findings of Fact

The SOR alleges that from January 2021 to at least January 2025, Applicant used marijuana with varying frequency (SOR ¶ 1.a.) and purchased marijuana on various occasions from January 2021 to December 2024 (SOR ¶ 1.b.), all while holding a sensitive position with access to classified information. It further alleges that Applicant intends to use marijuana in the future (SOR ¶ 1.c.). She admitted the allegations, except for her intentions on future use, which she denied. (GE 2)

The SOR also alleges that Applicant deliberately failed to disclose her marijuana use in her SCA (SOR ¶ 2.a.) and falsified material facts during her subject interview in March 2025 with an authorized investigator with the U.S. Office of Personnel Management (OPM) when she answered "no" to a direct question about any illegal drug use (SOR ¶ 1.b.). She admitted the allegations. (GE 2)

Applicant is a 32-year-old employee of a defense contractor. She earned her high school diploma in 2012 and intermittently attended college but received no degree. She is not married and has no children. (GE 3) She was granted eligibility for access to classified information based on an SCA she submitted on April 21, 2019. (GE 3–5) She signed a nondisclosure agreement on April 15, 2019, received a favorable eligibility determination on August 8, 2019, and was granted access to classified information at the secret level as of June 25, 2024, her indoctrination and briefing date. (GE 5) She acknowledges this information and that she incorrectly noted in Section 25 of her SCA that she was granted eligibility for access to classified information in January 2018. (GE 3 at 45, GE 6 at 9).

Between January 2021 and at least January 2025, Applicant used Tetrahydrocannabinol (THC) vapor pens she had purchased from dispensaries in the state in which she resides (state A). Her marijuana use occurred while she held a sensitive position with eligibility for access to classified information, between 2021 and 2025, and while granted access to classified information from June 2024 to at least January 2025.

(GE 5) At the time of completing her 2024 SCA, Applicant had been employed by a federal government contractor for approximately five years with eligibility for access to classified information. This was her second time completing an SCA, and 20 days after certifying her 2024 SCA, she was granted access to classified information at the secret level. Prior to beginning her marijuana use, she did not inquire with her employer about whether she was prohibited from using marijuana despite it being legal in state A, nor did she disclose her marijuana use to her employer.

Applicant omitted her illegal drug use on her 2024 SCA and answered “no” when asked a direct question about her illegal drug use during her subject interview in March 2025. She disclosed her drug use only after she was confronted by the investigator with information discovered over the course of her investigation. (GE 6 at 11) She explained that she used marijuana as a sleep aid and excused her failure to disclose her use, stating she did so because it is legal in state A. As of the date of this writing, marijuana remains a Schedule I substance under the Controlled Substances Act. When the investigator pointed out the explanation contained in Section 23, “Illegal Use of Drugs or Drug Activity,” in the SCA, requiring disclosure of “the illegal use of drugs or controlled substances or controlled substance activity in accordance with Federal laws, even though permissible under state laws,” Applicant stated she must have overlooked that explanation. Her 2019 SCA contains the same language requiring the disclosure of illegal drug use. (GE 4) She stated she intends to use marijuana as a sleep aid in the future. (GE 3 at 43, GE 6 at 11)

In response to the Government’s FORM, Applicant emphasized that her use of marijuana was “infrequent and limited” and “was not habitual, daily, or part of a lifestyle pattern.” She confirmed her last use was in January 2025 and admitted that during her July 2025 interview she stated that she intended to continue using marijuana as needed, after being placed on notice of its illegality under federal law. She now recognizes that expressing an intention to engage in conduct prohibited under federal law while seeking access to classified information is inconsistent with the responsibilities of a clearance holder. She insists that she has taken deliberate steps to correct her behavior and provided a signed statement of intent to abstain from marijuana and all other federally illegal controlled substances in the future. Although she avers in her response that she “clarified” her answers during her interview and “provided truthful information” regarding her marijuana use, she did so only after she was confronted with already discovered information about her undisclosed marijuana use.

Policies

This case is adjudicated under Executive Order 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) 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.

Applicant's admissions establish the following disqualifying conditions under this guideline:

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(f): any illegal drug use while granted access to classified information or holding a sensitive position; 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 has held a sensitive position with her federal government contractor employer since about April 2019. She signed a nondisclosure agreement on April 15, 2019, received a favorable eligibility determination on August 8, 2019, and was granted access to classified information at the secret level on June 25, 2024. In between January 2021 to at least January 2025, she used THC vapor pens she had purchased from dispensaries in state A. Even a single drug use while holding a security clearance may warrant a denial or revocation of a security clearance. ISCR Case No. 11-03909 at 1-2 (App. Bd. Aug. 30, 2012). During her July 2025 background interview, after being placed on notice that marijuana remains illegal under federal law, she stated that she intended to continue to use marijuana as needed.

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.

Although Applicant has demonstrated some mitigation by ceasing her marijuana use as of January 2025 and providing a signed statement of intent to abstain from marijuana and all other federally illegal controlled substances in the future, her recent actions are insufficient to establish a pattern of abstinence sufficient to warrant granting her access to classified information. She has failed to meet her burden of mitigation and erase all doubts about her security worthiness due to two main reasons. Firstly, her change in behavior was prompted by and in direct response to her security clearance being in jeopardy. Secondly, as a security clearance holder, her actions are held at a higher level of scrutiny and her failure to exercise due diligence to ensure the legality of her actions before she embarked on taking a controlled substance as a sleep aid continues to cast doubt on her good judgment. Ignorance or mistake of the law is generally not an excuse for failing to abide by legal obligations. ISCR Case No. 19-00540 at 3 (App. Bd. Dec. 13, 2019) For a security clearance holder to rely on ignorance of the law as an excuse rings even more incredible, because inherent in said privilege is a duty to abide by all laws. This is because violations of law by individuals who have been granted access to classified information or who hold sensitive positions have the existing potential to adversely impact national security. ISCR Case No. 23-01884 at 3 (App. Bd. Nov. 6, 2024).

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The record evidence, which includes Appellant's admissions, establishes the following disqualifying conditions under this guideline:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant has been on notice since at least 2019 that illegal drug use is a security concern and not compatible with security clearance requirements. As a security clearance holder, who had in fact been granted access to classified information in 2024, she knew or should have known that her marijuana use was federally illegal and raised security concerns. Based on her detailed responses in all sections of her SCAs in 2019 and 2024, I conclude that she knowingly omitted her marijuana use from her 2024 SCA and deliberately concealed it when asked a direct question by the OPM investigator in March 2025.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

None of these mitigating conditions apply. Applicant did not make good-faith efforts to correct her deliberate omission and only discussed it after being confronted by the background investigator. The offense is recent and not minor in nature and continues to cast doubt on her reliability, trustworthiness, and good judgment. As grave as her bad judgment was in using illegal drugs while holding a sensitive position and having access

to classified information, her attempts to conceal the truth in order to maintain her eligibility and access is even more egregious.

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 Guidelines H and E 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). After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Continued compliance with all laws and continued abstention from all illegal drug use, motivated by a desire to comply with laws and not under threat of revocation of her security clearance, may prove sufficient to establish a pattern of abstinence and erase all doubts of Applicant's security worthiness at a future date.

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

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a.-2.b.:

Against Applicant

Conclusion

I conclude 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