



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



In the matter of:)

)
)
) ISCR Case No. 25-01292
)
)

Applicant for Security Clearance)
_____)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

05/21/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). His 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 November 27, 2024. On December 9, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline H. 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 January 21, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's

written case on February 11, 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. He received the FORM on February 20, 2026, and he did not respond or object to any of the exhibits. The case was assigned to me on April 30, 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 4). GE 2 through 4 are admitted into evidence, without objection.

Findings of Fact

The SOR alleges that from September 2022 to at least April 2025, Applicant used marijuana with varying frequency (SOR ¶ 1.a.) and purchased marijuana on various occasions from March 2022 to April 2025 (SOR ¶ 1.b.). It further alleges that Applicant intends to use marijuana in the future (SOR ¶ 1.c.), and that he used hallucinogenic mushrooms in September 2023 (SOR ¶ 1.d.). He admitted all the allegations, except for his intention to use marijuana in the future, which he denied, adding "I no longer intend to use in order to obtain an active security clearance." (GE 2)

Applicant is 22 years old, unmarried, with no children, and no prior military history. He has been attending a university full time since August 2022 and interned with a defense contractor employer during the summers of 2023 and 2024. He submitted an SCA in November 2024 in anticipation of a summer 2025 internship with the same employer. (GE 3) He was required to take a preemployment drug test for his current government contractor sponsor and is subject to random drug tests while employed. (GE 4)

Applicant disclosed his illegal drug activity in his 2024 SCA. He is a member of a fraternity and he and his friends, like most college students, visit local bars and attend parties. He has been in environments where illegal drug use is occurring around him and has been offered illegal drugs. (GE 4 at 3-4) He began using marijuana in March 2022 at the encouragement of his fraternity brothers, and from September 2022 forward, he used marijuana frequently during the week, at times daily, usually with his fraternity brothers at their fraternity house. (SOR ¶ 1.a.) (GE 3 at 35; GE 4 at 8) He notes his date of first use as September 2022 in response to Government interrogatories. (GE 4 at 2) He resides in a state where recreational marijuana use is legal. He purchased marijuana from friends who were not licensed cultivators as of September 2023, because it was cheaper than it would have been to purchase it from a dispensary. (SOR ¶ 1.b.) (GE 3 at 36) In response to Government interrogatories, he notes his date of first purchase as November 2022. (GE 4 at 3) Marijuana helps him calm down and enjoy his free time. He uses marijuana socially with friends instead of drinking alcohol. (GE 4 at 8) At the time he completed his SCA, he marked "No" to the question asking about his future intent to use, then added that he had no plans to quit smoking marijuana, but was willing to only acquire it from "legal sources." (SOR ¶ 1.c.) (GE 3 at 36)

Applicant disclosed a one-time use of hallucinogenic mushrooms in September 2023. (SOR ¶ 1.d.) (GE 3 at 35-36) He described the choice to use this illegal drug as poor judgment. He was offered the drug at his fraternity house, by individuals he respects and by whom he was influenced. He regrets the experience and has no intent to use it in the future. (GE 3 at 36; GE 4 at 8)

During his subject interview in April 2025, Applicant confirmed his understanding that marijuana remains federally illegal and that he continues to use it. Although he was highly influenced by his fraternity brothers to initially use marijuana, he is not under any direct peer pressure and chooses to use it of his own free will. He continues to associate with those involved in illegal drugs, mostly marijuana, and the likelihood of his continued use is high since it is legal in the state where he lives and attends university. He has not made any changes to avoid marijuana use. The likelihood he will ever use any other drugs, however, is “very, very low” as he fears “man-made drugs” and believes they may have higher negative effects on his life. (GE 4 at 8)

In response to Government interrogatories, Applicant stated he is “willing to stop” using marijuana. (GE 4) He distinguishes marijuana from other illegal drugs, explaining “[o]ther than marijuana, no other federally illegal substances” are used frequently or in his presence by people he regularly associates with. (GE 4 at 3-4) If he is offered other drugs, he declines and distances himself. Reflecting on the answers he provided during his subject interview, he emphasized his willingness to cease marijuana use to obtain and maintain a security clearance. (GE 4 at 10) He reiterates this position in his answer to the SOR as well, denying intent of future use and adding he will cease use “in order to obtain an active security clearance.” (GE 2)

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

Applicant has regularly and frequently used marijuana since at least September 2022 and, until the threat of denial of security clearance eligibility, had every intention to continue using marijuana, despite knowing that the drug is federally illegal. As of the date of this writing, marijuana that is used recreationally remains a Schedule I substance under the Controlled Substances Act.

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.

Mitigating condition AG ¶ 26(a) is applicable to Applicant's one-time hallucinogenic mushroom use in September 2023 (SOR ¶ 1.d.). His solitary use happened almost three years ago and based on his negative experience and assertions, is unlikely to recur, and therefore does not cast doubt on his judgment.

None of the mitigating conditions are applicable to the allegations in SOR ¶¶ 1.a. – 1.c. In contrast to Applicant's hallucinogenic mushroom use, his marijuana purchase and use was regular, frequent, and recent, and he had full intention to continue using it. His failure to recognize the wrongness of his choice to continue to knowingly use a federally illegal substance while seeking a security clearance casts doubt on his reliability and good judgment. Given the regularity of his marijuana use, his later change of mind and "willingness" to cease his use to obtain a security clearance fails to clearly and convincingly demonstrate a commitment to discontinue use. His changed position was prompted by his realization that marijuana use does not align with security worthiness and in direct response to his security clearance eligibility being in jeopardy. Furthermore, he still associates with his friends with whom he used marijuana and continues to frequent environments where drugs are used.

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 Guideline H 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 his

credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

Whether or not an applicant is able to mitigate past marijuana use while in college, in a state where recreational use is legal, is heavily fact dependent. Here, I recognize that Applicant was forthcoming and truthful when he disclosed his drug use. However, his frequent and recent marijuana use coupled with his decision to continue to use marijuana *after* – 1) undergoing a pre-employment drug screening for a drug tested position with a federal government contractor, 2) completing a security clearance application, and 3) being placed on notice that marijuana use is federally illegal – signals an alarming lack of maturity and foresight, which goes to the core of a whole person analysis. At a minimum, he must recognize the poor judgment he exercised continuing to regularly use a federally controlled substance while seeking a security clearance and his failure to convincingly commit to discontinuing use. That, along with continued compliance with all laws and abstention from all illegal drug use, motivated by a desire to comply with laws and not simply to be able to obtain and maintain security clearance eligibility, may prove sufficient to establish his security worthiness at a future date.

After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised under Guideline H (Drug Involvement and Substance Misuse).

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.c.:	Against Applicant
Subparagraph 1.d.:	For 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