



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



In the matter of:)
)
)
) ISCR Case No. 25-00236
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and F (Financial Considerations). Guideline F concerns are mitigated, but Guideline H concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 15, 2024. On July 17, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and F. 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 in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 8, 2026, and the case was assigned to me on March 6, 2026. On March 23, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 6, 2026. I convened the hearing as scheduled. Government Exhibits 1 through 3 were admitted in evidence without objection.

Applicant testified but did not offer the testimony of any other witnesses or present any documentary evidence. I kept the record open until May 15, 2026, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript on May 21, 2026.

Findings of Fact

Applicant is a 70-year-old electronics technician employed by a defense contractor since October 1981. He received a diploma from a technical school in March 1978. He married in December 1975 and was widowed in September 2021. He has three adult children.

Applicant first received a security clearance in March 1978. He held a clearance until 1992, when he was laid off and accepted a job that did not require a clearance. He was transferred to a job requiring a clearance in March 2024.

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.g. SOR ¶¶ 1.a and 1.b allege that Applicant purchased and used marijuana from about May 1970 to "at least" February 2025. SOR ¶¶ 1.c and 1.d allege that Applicant purchased and used marijuana while in a sensitive position. SOR ¶¶ 1.e and 1.f allege that he purchased and used marijuana from about July 2024 through "at least" February 2025. SOR ¶ 1.g alleges that Applicant was terminated from employment after testing positive for marijuana in the 1990s.

Applicant also admitted SOR ¶ 2.b, alleging failure to timely file state income tax returns for tax years 2021 and 2022. He denied SOR ¶ 1.c, alleging a state tax debt of \$3,347 for tax year 2022. His admissions are incorporated in my findings of fact.

In Applicant's answer to the SOR, he stated that his wife passed away in 2021, that he "had gotten sloppy in keeping [his] mail and paperwork in order," and he could not find his IRS 1099 forms for 2021. In response to DCSA interrogatories in December 2024, Applicant stated that he used Turbo Tax to prepare his federal and state tax returns on his computer for 2021, and he printed copies of the returns but did not mail them. After his wife passed away in September 2021, his attention was directed toward settling her estate, and he misplaced the printed copies of his federal and state tax returns for 2021. When he tried to print new copies of his returns for that year, his computer failed. (GX 2 at 13) In his answer to the SOR, he stated that he had an appointment with the state tax authority regarding his state return for 2021.

In response to DOHA interrogatories in March 2025, Applicant submitted IRS transcripts reflecting that he filed his federal return for tax year 2021 in February 2023, filed the federal return for tax year 2022 in August 2023, and filed the federal return for tax year 2023 in November 2024. (GX 3 at 16-22) He also submitted documentation that he filed his state return for tax year 2022 in April 2024. (GX 3 at 33-35) After the hearing, he submitted documentation from the state tax authority informing him that his tax issues had been resolved, and that no further action was required. (AX A; AX B)

Applicant testified that he started using marijuana three or four times a day around 1970. He suffers from hemophilia, and he used marijuana rather than alcohol because it improved his appetite and relaxed him. (Tr. 21) Before marijuana was legalized in the state where he resides, he purchased marijuana from dealers “on the street,” even though he knew that it was dangerous. (Tr. 21-22) After marijuana was legalized, he purchased it from dispensaries. (Tr. 26)

In response to DCSA interrogatories, Applicant disclosed that, while employed by a defense contractor from 1978 to 1992, he smoked marijuana twice a day. He also disclosed that he was offered employment by a defense contractor in the mid-1990s but was “terminated” when he was tested for drugs and tested positive for marijuana. (GX 2 at 8) When he was interviewed by a security investigator in October 2024, he told the investigator that he stopped using marijuana in July 2024 but resumed it two weeks later when he began losing weight.

Before Applicant’s wife passed away, he intended to retire. However, after her death, he wanted to continue working, and he needed a security clearance to work. When he submitted his SCA in July 2024, he disclosed his marijuana use and stated that he would stop using it in order to obtain a security clearance. At the hearing, he testified that he stopped using marijuana in August 2024. (Tr. 29-30).

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 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.

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. . . .

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 26(b): testing positive for an illegal drug;

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.

The following mitigating conditions under this guideline 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;

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; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) is not established. Applicant's marijuana was recent, frequent, and it did not occur under circumstances making recurrence unlikely.

AG ¶ 26(b) is not fully established. AG ¶ 26(b)(1) is established, because Applicant's marijuana use was alone and not in social settings, and many of his former associates have passed away or moved away. However, AG ¶¶ 26(b)(2) and 26(b)(3) are not established. Applicant's marijuana use was primarily at home, and that circumstance has not changed. Although he has declared multiple times during the course of the adjudication of his security-clearance eligibility that he intends to abstain from further

marijuana use, he has not provided a signed statement of intent to abstain. He appears to understand that marijuana use is inconsistent with holding a clearance, but he has not submitted a written acknowledgment that future use is ground for revocation of national security eligibility. His testimonial statement of intent to abstain is apparently sincere, but his track record undermines the likelihood that he will terminate a lifelong pattern of habitual marijuana use.

AG ¶ 26(d) is not established. Applicant submitted no evidence of drug treatment or a favorable prognosis.

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).

Applicant's admissions and the evidence submitted at the hearing establish two disqualifying conditions under this guideline: 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").

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is established. Applicant's failures to timely file federal and state tax returns and his state tax debt were recent, but they were infrequent and occurred under unusual circumstances, while Applicant was dealing with his wife's death and settling her affairs.

AG ¶¶ 20(b), 20(d), and 20(g) are established. After Applicant dealt with his wife's death and settled her affairs, he filed the past-due federal returns, filed his state return for 2022, contacted the state tax authority, and paid the state taxes that were due. Although a state return for 2021 has not been filed, the state tax authority has informed him that no further action is required.

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 H and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement, but he has mitigated the security concerns raised by his failure to timely file his state tax returns and pay the taxes that were due.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement and Substance Misuse):	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 2.a- 2.c:	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