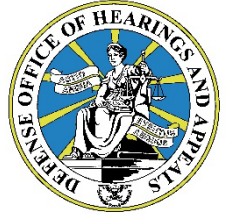




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 25-00953

Applicant for Security Clearance

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). 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 October 12, 2024. On July 24, 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 August 25, 2025, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 25, 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 March 26, 2026, and he did not respond or object to any of the exhibits. The case was assigned to me on June 2, 2026.

The FORM consists of the pleadings in the case Government Exhibit (GE) 1, Applicant's answer to the SOR (GE 2), and the documents in support of the allegations in the SOR (GE 3-5). GE 2 through 5 are admitted into evidence, without objection.

Findings of Fact

The SOR alleges under Guideline H that from at least July 2014 to May 2025, Applicant used and purchased marijuana on various occasions (SOR ¶ 1.a), that he intends to continue to use marijuana in the future (SOR ¶ 1.b), and that he used hallucinogenic drugs, including LSD and mushrooms,¹ on various occasions between at least July 2015 and July 2024 (SOR ¶ 1.c). (GE 1) He admits all the allegations under Guideline H. (GE 2)

Applicant is 29 years old and earned a bachelor's degree in 2019. He has lived with a cohabitant since 2022, but has never been married, has no children, and has no history of prior military service. He has been employed by a government contractor since July 2019. (GE 3 at 11-18) His employer has a drug-use policy. (GE 4 at 8)

Marijuana Use

Applicant disclosed his marijuana use in his SCA and volunteered additional details during his personal subject interview and in response to Government interrogatories (GE 3-5). He used marijuana weekly between July 2014 to May 2025, his most recent use being about a week before he signed his interrogatory response. (GE 3 at 28, GE 4 at 5) He expressed a clear intent to illegally use marijuana in the future "[b]ecause of how much it helps [him] sleep, and to enjoy good times and celebrations with friends.". (GE 3 at 28, GE 4 at 4, 9, GE 5 at 1)

Applicant resides in a state where recreational marijuana use is legal and, per his description, "abundant." He has never believed that he was "doing something wrong or illegal." (GE 4 at 10) He purchases marijuana from dispensaries and uses it recreationally in social settings and as a sleep aid. (GE 4 at 6, 10) He insists that marijuana use has never negatively impacted him, and that if obtaining and maintaining a security clearance requires him to stop his use, he is willing to cease use and be subject to frequent drug tests. (GE 4 at 10) He understands that recreational marijuana use remains illegal under

¹ Although the SOR lists the hallucinogenic as "mushrooms" and does not specify psilocybin, based on the evidence in the FORM, any references to "mushrooms" is referencing hallucinogenic psilocybin mushrooms, a Schedule I controlled substance. *Controlled Substances Act*, 21 U.S.C. § 801 et seq. (1970).

federal law and that use of marijuana may affect his security clearance eligibility. (GE 4 at 9)

Hallucinogenic Drug Use

Applicant disclosed his hallucinogenic drug use from July 2015 to July 2024 in his SCA and volunteered additional details during his personal subject interview. (GE 3 at 28, GE 5 at 2) He used LSD once at a music festival on an undisclosed date while in college and does not plan to use it ever again, as the effects were miserable.

He used hallucinogenic psilocybin mushrooms provided to him by his friends “once or twice a year since 2015” at music shows or on weekend vacations. He has “enjoyed” using psilocybin mushrooms and “would probably take mushrooms again if offered in the scenarios mentioned previously.” (GE 3 at 28) In his subsequent personal subject interview, he stated that he would be willing to stop using drugs if his employer tells him it is an issue. (GE 5 at 2) In response to Government interrogatories, he did not list any hallucinogenic drug use. (GE 4)

Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence (DNI) issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use,” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.” See ISCR Case No. 14-03734 at 2 (App. Bd. Feb. 18, 2016) (state laws legalizing marijuana use do not alter or preempt the existing Guidelines).

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act.² Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the DNI signed the memorandum, “Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications

² On December 18, 2025, an executive order (“Increasing Medical Marijuana and Cannabidiol Research”) was signed, ordering additional research on marijuana and directing the Attorney General to “take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act].” As of this writing, recreational marijuana use has yet to be rescheduled.

of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position.” It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

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.

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.

None of the mitigating conditions are applicable to the allegations in SOR ¶¶ 1.a. – 1.c. Applicant's marijuana purchase and use is regular, frequent, and recent, and he intends to continue using marijuana, unless required to stop to obtain a security clearance. He has yet to recognize the wrongfulness of his choice to continue using a federally illegal substance while employed by a federal government contractor with a strict drug use policy, even after being sponsored for a federal security clearance. This casual indifference to abiding by federal laws casts doubt on his reliability and good judgment. His admissions that he never felt like he was doing anything illegal, further highlights his lack of awareness and sound judgment, and raises concerns about his willingness to comply with rules and regulations.

Based on Applicant's previous statements, he enjoys using marijuana and hallucinogenic psilocybin mushrooms recreationally with friends. Given the length and frequency of his use, mere assertions that he will cease his drug use to be able to obtain and maintain a security clearance fail to clearly and convincingly demonstrate a commitment to discontinue use and are therefore insufficient to mitigate the concerns. He

was aware of the illegality of his marijuana use and the security concerns it raised and had ample opportunity to demonstrate a commitment to voluntary cessation after completing his SCA, instead, he continued to use. He provided no evidence to support his claim that he would or has ceased his regular marijuana use or his occasional hallucinogenic psilocybin mushroom use. There is no evidence of changes in his associates, behavior, or environment. He has not signed a 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.

Whether or not an applicant is able to mitigate past marijuana use in a state where recreational use is legal, is heavily fact dependent. The Appeal Board has stated, “a commonsense understanding of the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs. This is especially, but not exclusively, true when the use occurs permissibly under state law.” ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025). Here, I recognize that Applicant was forthcoming and truthful when he disclosed his drug use. However, his frequent and recent marijuana use without a clear and convincing commitment to discontinue such misuse absent security clearance requirements, coupled with his decision to continue to use marijuana *after* – 1) beginning employment with a government contractor with a strict drug use policy, 2) completing a security clearance application, and 3) being placed on notice that marijuana use is federally illegal and not in line with security worthiness – signals an alarming lack of good judgment and foresight.

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). 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

I make the following 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:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	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