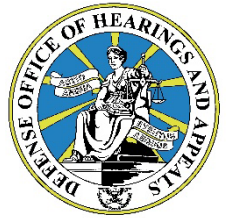




**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 25-01393

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2026

Decision

ROSS, Wilford H., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 2, 2025. On January 29, 2026, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. Applicant answered the SOR on February 17, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 7, 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 April 9, 2026, and he did not respond. 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 October 2015 to November 2025, Applicant purchased and used THC¹ with varying frequency (SOR ¶ 1.a), and that from about March 2022 to March 2023 he used hallucinogenic mushrooms² with varying frequency (SOR ¶ 1.b). Both allegations are cross alleged under Guideline E. (SOR ¶ 2.a). (GE 1) He admits the allegations under Guideline H and denies the allegation under Guideline E. (GE 2)

Applicant is 26 years old and earned a bachelor's degree in 2023. He has lived with a cohabitant since 2024, has never been married, has no children, and has no history of prior military service. He has been employed by a government contractor since December 2023. (GE 3) His employer has a drug and alcohol-free workplace policy, he was required to take a preemployment drug test, and he is subject to random drug testing for his position. (GE 4)

Marijuana Use

Applicant disclosed his marijuana purchase and 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 recreationally between October 2015 and November 2025. His use was daily while in college from August 2019 to May 2023, and a few times a month since graduating. He purchased marijuana from either a fellow classmate or dispensaries and gas stations in states that had legalized recreational marijuana use. He resides and attended college in a state that legalized recreational marijuana use in July 2021. He feels "calming effects and other benefits" from using marijuana and therefore "cannot rule out using this substance at any time in the distant future." (GE 3) Although he does not disavow the possibility of future marijuana use, he does assert that he has no intent to use marijuana "while holding an active security clearance." He has not indicated a willingness to leave or avoid environments where drugs are used or disassociate with friends who use drugs. He believes "no drastic steps [are] required." If he finds himself in a situation where drugs are being used, he "simply would not use them." (GE 4)

¹ The SOR lists "THC" as the controlled substance. Based on the evidence in the FORM, any reference to "THC" is found to be a reference to either tetrahydrocannabinols or marijuana, both of which are a Schedule I controlled substance. *Controlled Substances Act, 21 U.S.C. § 801 et seq. (1970)*.

² The SOR lists "hallucinogenic mushrooms" as the controlled substance. Based on the evidence in the FORM, any references to "mushrooms" is found to be a reference to psilocybin, a Schedule I controlled substance. *Controlled Substances Act, 21 U.S.C. § 801 et seq. (1970)*.

Hallucinogenic Drug Use

Applicant disclosed his hallucinogenic drug use in his SCA and in response to Government interrogatories. He purchased and used psilocybin twice, in March 2022 and March 2023, respectively. (GE 3-4) He has no future intent to use psilocybin. (GE 3-4)

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.³ 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 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.

³ 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.

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); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

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.

AG ¶ 26(a) applies to Applicant's two-time psilocybin use in March of 2022 and 2023 (SOR ¶ 1.b). His use was infrequent and happened over three years ago. Based on his history of abstinence, recurrence is unlikely, and therefore his previous use no longer casts doubt on his current judgment.

None of the mitigating conditions apply to Applicant's marijuana use and purchase (SOR ¶ 1.a). His purchase and use was regular, frequent, and he only recently ceased use in order to obtain a security clearance. Although it appears that he has finally recognized the wrongfulness of his choice to continue using a federally illegal substance while employed by a federal government contractor in a drug-tested position, insufficient time has passed to establish a history of abstinence. He also continues to associate with friends who use marijuana with no clear plan or indication on how he will avoid environments where drugs are used. He has not demonstrated an intent to disassociate from drug-using friends, nor has he provided 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.

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 when he disclosed his drug use. However, his frequent marijuana use in college was also illegal under his state law until July 2021. This, coupled with his decision to continue to use marijuana *after* – 1) completing a drug screening to begin employment in a drug-tested position with a government contractor with a drug and alcohol free workplace 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.

An established history of discontinued use of illegal drugs and continued compliance with all laws and regulations, motivated by integrity and an intrinsic 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.

Guideline E, Personal Conduct

The 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying conditions are potentially applicable under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's drug involvement and substance misuse is explicitly covered under Guideline H and is sufficient by itself for an adverse determination under Guideline H. Therefore, neither AG ¶¶ 16(c) nor 16(d) is established.

Applicant used marijuana while employed with a government contractor with a strict drug-free workplace policy and thereby engaged in conduct that, if known, could affect his professional standing. His illegal drug use creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. AG ¶ 16(e) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Mitigation under AG ¶ 17 is not fully established. As addressed above, Applicant's poor conduct is tied to his marijuana use. From October 2015 to November 2025, he used marijuana, after taking a required pre-employment drug-screen, while employed with a government contractor with a strict drug-free workplace policy, and after completing an SCA. While his present abstinence is a positive step and AG ¶ 17(e) arguably applies, the risk presented is not sufficiently diminished by his recent positive steps, nor does it establish that similar poor judgment is unlikely in the future. Especially when he has not taken meaningful steps to disassociate from his friends who use drugs or avowed to leave environments where drugs are used. As a result, he remains vulnerable to manipulation.

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 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 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 Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct).

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

Wilford H. Ross
Administrative Judge