



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01681

Appearances

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

07/27/2026

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 17, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The action was taken 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) implemented by DoD on June 8, 2017.

Applicant submitted a response to the SOR on October 29, 2024 (Answer), and she requested a hearing before an administrative judge. The case was assigned to me on July 9, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice on August 5, 2025, scheduling the matter for a video teleconference hearing on September 19, 2025. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1-3. Applicant testified, she did not call any witnesses, and she submitted documentation that I marked and admitted in evidence as Applicant Exhibits (AE) A and B. I kept the record open until October 3, 2025, to provide the parties with an opportunity to submit additional documentation. By that date, Department Counsel submitted documentation that I marked and admitted in evidence without objection as GE 4. Applicant did not provide additional documentation, and the record closed. DOHA received the hearing transcript (Tr.) on September 29, 2025.

This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Findings of Fact

Applicant admitted both SOR allegations in her Answer. She is 37 years old. She married in February 2012 and divorced in February 2022. She has one child, a minor, who has resided with her as of the date of her Answer. She has lived in State A since approximately 2010. She has owned the home in which she lives since December 2012. (GE 1, 4; AE A; Tr. 7, 29)

Applicant graduated from high school in 2007. With a major in electronics engineering and a minor in mathematics, she earned a bachelor's degree in May 2011. She subsequently earned a master's degree in electrical and computer engineering in December 2017. She worked as an electrical engineer for Company A, a defense contractor, from December 2011 to November 2023, during which time she was granted a security clearance in February 2012. (GE 1, 4; AE A, B; Tr. 5, 7-8, 30-32, 74) She had access to classified information when she worked for Company A, as "Some of the compartments on the ship required a secret clearance to go into." (Tr. 32)

Since November 2023, Applicant has worked as a systems hardware design engineer for Company B, another defense contractor. After she was granted a security clearance in 2012, she completed security clearance applications (SCA) in February 2022 and April 2024. Upon the issuance of the SOR in October 2024, the clearance she had held continuously since 2012 was revoked. (GE 1, 4; AE A, B; Tr. 5-9, 30-32, 57, 74)

Applicant used marijuana with varying frequency from June 2021 to July 2023, and her use of marijuana during this period occurred while she occupied a sensitive position, *i.e.*, one that requires access to classified information. (SOR ¶¶ 1.a- 1.b) In addition to her admissions in her Answer, Applicant disclosed this information on her February 2022 and April 2024 SCAs, during her May 2024 background interview, and in her September 2024 response to interrogatories. She was also candid about her marijuana use at the hearing. (GE 1-2, 4; AE A, B; Tr. 15-16, 32-37, 47, 57, 59)

When Applicant first used marijuana in June 2021, she had been on antidepressants since approximately 2014; her cognitive behavioral therapist (Therapist

A), whom she had been consistently seeing at that point once every two weeks, had recently diagnosed her with anxiety and depression; and she had also started taking anxiety medication prescribed to her by her primary care physician (PCP). She attributed her daily levels of anxiety and stress to a toxic work environment that began upon her move to a different department within Company A in September 2018, and which was exacerbated by the COVID-19 pandemic. To no avail, she reported her hostile work environment to Human Resources and described her last years in that department as “unbearable, anxiety-filled, stressful, and overwhelming.” (AE A) She also cited her efforts at rebuilding a relationship with her ex-husband, single parenting, and the COVID-19 pandemic as “intolerable” stressors. (AE A) When marijuana became legal in State A in 2021, she wanted to try it after learning about its medicinal benefits, because she thought it might positively impact her. Prior to 2021, she had consumed alcohol frequently to deal with her anxiety, at times while also using her prescribed medication. (GE 1, 2, 4; AE A; Tr. 15-16, 32-34, 38-40, 43-44, 61-62)

When Applicant completed an SCA in February 2022, she disclosed her marijuana use. She stated she used marijuana recreationally, less than ten times, between June 2021 and January 2022. (GE 4) She used marijuana primarily in a gummy form. She also affirmatively answered the questions on her 2022 SCA that asked whether she used marijuana while possessing a security clearance, and whether she intended to continue to use marijuana in the future. She stated marijuana was legal under state law in State A, and she preferred its “calming, non-depressive effects and overall[,] less harmful effects” over alcohol use. (GE 4) She has never been prescribed marijuana, and she has never held a medical marijuana card. She testified she told Therapist A a handful of times about her use of marijuana, but she did not recall making such disclosures to her PCP. (Tr. 16-17, 32-34, 36-37, 44-45, 70-71)

By 2023, Applicant used marijuana as frequently as several times per week to daily. She estimated having used it approximately 100 times. She acknowledged she was using it frequently just before her hospitalization in July 2023, as further discussed below. She testified, “I had used marijuana habitually in private to help relieve stress during an unusually challenging time in my life.” (Tr. 16) She either ingested marijuana gummies or smoked marijuana through a pipe. She used marijuana in her ex-husband’s home, or with her then-boyfriend, at either her or his home. Her then-boyfriend obtained the marijuana from a source unknown to her, or she obtained it by purchasing it from pop-up marijuana shops in State A or by purchasing digital artwork from a store in District A that then gifted it to her. She last purchased marijuana on an unspecified date in 2023, and she last used marijuana in July 2023. (GE 1, 2; AE A; Tr. 15-16, 18, 33-37, 59; *See also* GE 3¹)

When Applicant completed another SCA in 2024, she disclosed her use of marijuana from June 2021 through July 2023. She further discussed it during her May

¹ An April 2024 printout from the State A Cannabis Control Authority reflects, in relevant part, that the following is legal: possession of cannabis in one’s private residence for personal use; possession in public of up to one ounce of cannabis for personal use; and “adult sharing”- the private transfer of one ounce or less of cannabis between people 21 years and older without exchanging anything else of value. It further reflects that “gifting” schemes, or transactions that include a “gift” of cannabis along with the sale of other goods or services, are illegal. (GE 3)

2024 background interview and in her September 2024 response to interrogatories, and she was candid about it at the hearing. (GE 1, 2; Tr. 15-16, 32-37, 47, 57) She stated in her 2024 SCA:

As my anxiety and stress became more challenging to manage with prescribed medications, therapy[,] and coping skills[,] my THC use changed from handful of times to several times per week by 2023. Estimated number of times used is 100. (GE 1; *See also* Tr. 37-38)

Contrary to her affirmative response to the same question on her 2022 SCA, Applicant responded “No” to the question on her 2024 SCA that asked whether she intended to use marijuana in the future. (GE 1) She also indicated, during her May 2024 background interview, she had no future intent of purchasing marijuana, and she maintained, in her 2024 response to interrogatories, she had no future intentions of using marijuana. (GE 2) She stated in her 2024 SCA:

Experiencing a major mental health episode last year was a wakeup call that I was not managing my mental health properly. Since leaving the hospital in July 2023, I’ve committed to completely refraining from THC and alcohol and recommitted to healthy coping practices for long-lasting recovery. (GE 1; *See also* Tr. 37-38)

As she did on her 2022 SCA, Applicant affirmatively answered the question on her 2024 SCA that asked whether she used marijuana while possessing a security clearance. She also acknowledged, during her 2024 background interview, that her use of marijuana occurred while she possessed a security clearance. The report summarizing her 2024 background interview reflects the following relevant discussion:

The reason that [Applicant] smoked marijuana while holding a security clearance was because she didn’t think that using marijuana while holding a security clearance was relevant. [Applicant] just wanted to feel better overall. When [Applicant] first tried marijuana, it was legalized in [State A] and felt that her health could have benefited from it. [Applicant] was aware that federally using marijuana is illegal and had reported this information when she was going through her security clearance in 2022 and did state in a previous form that she would continue to use marijuana in the future. Using marijuana has never led to [Applicant] being reprimanded by her employer. Nobody at work knows that [Applicant] has used marijuana. (GE 2)

Applicant further acknowledged, during her background interview, her awareness that her marijuana use could affect her security clearance eligibility. She indicated:

[Applicant] is aware that her conduct was an issue and that using and purchasing marijuana could affect her security clearance. [Applicant] participated knowingly and voluntarily in using and purchasing marijuana while possessing a security clearance. Using and purchasing marijuana

hasn't affected her security clearance. The likelihood of [Applicant] smoking and purchasing marijuana again while possessing a security clearance is highly unlikely. The changes that [Applicant] has made is that she has a prescription for anxiety to a point where if she can't control it and keep her composure she will take the anxiety medication. [Applicant] meditates daily doing breathing exercises. (GE 2)

In her Answer and at the hearing, Applicant noted her self-disclosed marijuana use on her 2022 and 2024 SCA's and during her 2024 background interview. (AE A; Tr. 16) She again acknowledged she held an active security clearance during the period in which she used marijuana. (Tr. 16, 67-71) She also acknowledged having indicated, during her background interview, her awareness that marijuana was federally illegal when she used it. (Tr. 37, 67-71) She maintained, however, that her marijuana use occurred following the legalization of recreational marijuana use in State A, when she did not fully understand that federal law governs security clearance eligibility regardless of its legality under state law. (AE A; Tr. 16-18, 67-71) She stated, "Although I was aware that marijuana remained illegal at the federal level, I did not understand that the legality of the substance at the state level had no bearing on such use while possessing a clearance." (AE A) She further stated that since she was neither contacted nor received a notice or reprimand from her employer after her disclosures on her 2022 SCA regarding her marijuana use, "[I] believed the legal, recreational use (in [State A]) was permissible while possessing a clearance, and I continued my recreational use for another year and a half." (AE A) She stated she now understood that despite state laws legalizing marijuana use, the fact that it remains illegal at the federal level means that such use is prohibited while possessing a security clearance." (AE A; Tr. 16-18, 67-71)

Applicant also acknowledged, at the hearing, having received annual security training since 2012, in which she was informed of her responsibilities as a security clearance holder with access to classified information, to include the prohibition against using federally illegal drugs. Yet, she asserted she did not understand the full magnitude of her actions. After many conversations with legal counsel, she testified she now fully understood the health risks, the distinction between state and federal law, and the implications of using marijuana while holding a clearance. She further stated that, upon receiving the SOR and having her clearance revoked, she understood that federal law governs security clearance eligibility, regardless of state law. (Tr. 16-19, 67-71)

Applicant's last use of marijuana occurred in July 2023. (Tr. 17-18, 59) She provided a signed Statement of Intent in February 2025, in which she stated, "I will abstain from all illegal drug use and understand that my security clearance will be automatically revoked for any violation of this." (AE B; See *also* Tr. 59, 63, 72) She indicated, during her background interview and at the hearing, that her family, best friend, ex-husband, ex-boyfriend, Therapist A, and Facility Security Officer at Company B were aware of her marijuana involvement, to include her marijuana use while possessing a security clearance, and the information concerning her psychological and emotional health, as further discussed below. She stated she had not associated with her ex-boyfriend since their breakup in approximately August 2023 after her hospitalization. She further stated

she no longer associated with anyone who illegally uses drugs or controlled substances, including those individuals with whom she socialized at the time she used marijuana who were not looking out for her best interests. She maintained that her employer, family, and friends are aware of her marijuana use. (GE 2; AE A; Tr. 17, 34-35, 70)

Applicant completed a four-hour marijuana education class and a four-hour drug and alcohol awareness class in February 2025. Since her hospitalization, she has consumed alcohol a handful of times, and she last consumed alcohol a few weeks prior to the hearing date. She has never sought or participated in drug counseling or treatment, and she has never been diagnosed with a drug-related disorder. (AE B; Tr. 17 16-19, 59-62)

On her April 2024 SCA, Applicant disclosed she had been involuntarily hospitalized in July 2023 for a mental health condition. (GE 1; See *also* AE A-AE B) She stated:

After over a decade of promotions and highly favorable performance evaluations at my former place of employment, during the COVID pandemic I was assigned to a new team where I experienced workplace bullying and disparity on a regular basis[,] worsening my depression and anxiety symptoms. I started a new medication treatment and cognitive behavioral therapy in the Fall of 2021. I was making progress with managing my mental health symptoms and received another promotion at work in 2022. In 2023[,] the workplace disparities and bullying returned and after making a formal report[,] the bullying worsened, triggering much higher levels of stress and anxiety[,] which ultimately led to a manic episode. In that mental state, it was not clear to me hospitalization was needed in order to begin to get better. I received (8) days of inpatient treatment and (10) weeks of short-term disability before I was cleared to return to work. Keeping with my treatment plan, lifestyle changes and gaining new employment in a healthier environment have made a noticeable improvement in my quality of life. (GE 1)

Applicant indicated during her 2024 background interview she tested positive for marijuana on a drug test administered during her July 2023 hospitalization to determine the cause of her manic episode. She indicated neither the hospital nor the psychiatric center to which she was involuntarily taken had determined the cause of her episode. She further indicated, and maintained at the hearing, she believed marijuana was a contributing factor and not the sole cause of her episode, and her judgment was impacted by possibly the mixture of marijuana combined with her antidepressant and anxiety medication as well as her alcohol use. (GE 2; Tr. 35-37, 47-48, 61-62)

Applicant testified about the circumstances surrounding her July 2023 hospitalization. She stated a stranger who observed her walking alone in the woods behind a shopping center thought she might need help and called the police. The police took her to a hospital emergency room because she was experiencing a mental health episode. Upon testing positive for marijuana on a drug test administered by hospital

personnel to determine the cause of her episode, she was transferred to a psychiatric center for eight days and involuntarily hospitalized. At the time, she disagreed with the hospitalization but testified she later felt it was appropriate based on what was happening. She attributed her hospitalization to a culmination of the anxiety and stress she had been experiencing at her then-place of employment because of bullying and workplace disparity, which led to her increased marijuana usage. She believed the combination of marijuana with her antidepressant and anxiety medication caused her episode. As of the date of the hearing, she had not experienced another similar episode since July 2023. (Tr. 41, 45-48, 56-59)

During inpatient treatment, Applicant was prescribed medication, to include an anti-psychotic, that was different than what she had been taking before she was hospitalized. She attended group therapy and saw a therapist and a psychiatrist. After her hospital discharge, she recovered at home on a 10-week short-term disability leave. During this time, she saw Psychiatrist A an unspecified number of times, and then she started seeing Psychiatrist B. She recalled observing, in her unspecified medical records with Psychiatrist B, a diagnosis of suspicion of bipolar II disorder that was later changed to no longer suspicion of bipolar II disorder. Both Psychiatrist B and her employer's health clinic cleared her to return to work at the end of September 2023, and she returned to work in early October 2023. Psychiatrist B changed her medication from the medication she was prescribed during her inpatient treatment, to include ceasing the anti-psychotic. She continued to see Psychiatrist B until September 2024, at which point she had been seeing him monthly telephonically, but decided to stop seeing him after he changed her medication for a second time, she questioned why he was doing so, and he failed to respond and instead walked her out of his office. She no longer felt Psychiatrist B was providing her with adequate care. (Tr. 48-56, 64-66)

Applicant immediately sought a referral from PCP to return to Psychiatrist A for treatment, which she commenced at the beginning of 2025. Both PCP and Psychiatrist A prescribed a new medication, which caused her to develop a movement disorder. Due to this adverse reaction, she discontinued the medication in June 2025 while under the care of PCP and Psychiatrist A. She last saw Psychiatrist A in July 2025, when she decided to cease all medication and "start over." As a result of her decision, Psychiatrist A told her that since the scope of Psychiatrist A's treatment for Applicant was restricted to medication management, "there was nothing for [Psychiatrist A] to really see [Applicant] about." (Tr. 55) As of the date of the hearing, Applicant was not taking any medication and had not taken any medication since June 2025. (Tr. 45- 56, 66-67)

Applicant testified her diagnoses of anxiety and depression remained current, and while she was following Therapist A's recommended treatment plan and still seeing PCP, she reiterated she was not taking any medication. There is no information in the record as to whether Therapist A or PCP's treatment plans require Applicant to take medication. She testified Therapist A is supportive and "thinks that you can live with [these diagnoses] without medication, that [they are] manageable." (Tr. 67) She stated she was working with PCP and Therapist A to ensure she has the necessary tools to manage her anxiety and depression, and to deal with life stressors, including workplace issues. She stated she

has learned to manage and cope with stress differently, and after many conversations with health practitioners, understands the health and safety risks associated with marijuana use. Her coping mechanisms include breathing and grounding exercises, journaling, taking more mental breaks during the day, and staying in tune with all her needs. She stated she sees Therapist A once monthly. As of the date of the hearing, she had last seen Therapist A earlier that month and stated Therapist A was aware of her 2023 hospitalization. (AE A; Tr. 17-18, 37-43, 57-59, 62-64, 66-67, 71-72)

Applicant provided letters of support from individuals vouching for her character and attesting to her reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. Her best friend of over 20 years described her as “one of the most admirable individuals I know.” (AE B) Another individual, a longtime close friend of Applicant’s mother and a witness to Applicant’s growth since a very young age, attested to Applicant’s involvement in a 15-year scholarship fund to support “C” students throughout their undergraduate college careers. She wrote, “[Applicant] owned this scholarship fund as if it’s her own. She continuously supports the scholarship fund through volunteering and financial donations.” (AE B) Applicant also provided documentation reflecting that while she was at Company A, she was favorably rated in at least 2013, 2014, and 2019, and promoted in at least 2022; she received Certificates of Appreciation in 2016, 2019, and 2021, a Spot Award in 2017, a Timely Awards Plan Award in 2019, and merit-based awards in 2022 and 2023. (AE B)

Applicant’s mental health diagnoses, 2023 involuntary hospitalization, related mental health care and treatment, positive hospital drug test, and expression of intent on her February 2022 SCA to continue using marijuana were not alleged in the SOR. Thus, they may not be an independent basis for revoking Applicant’s clearance. However, they may be considered to evaluate Applicant’s credibility; to evaluate her evidence of extenuation, mitigation, or changed circumstances; to decide whether a particular provision of the AG is applicable; or to provide evidence for the whole-person analysis. I have considered these unalleged events for these limited purposes.

Policies

This case is adjudicated under Executive Order (EO) 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.” EO 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." EO 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 "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* at 531.

Analysis

Guideline H: Drug Involvement and Substance Misuse

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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.

The guideline notes the following applicable disqualifying conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana with varying frequency from June 2021 to July 2023. Her use of marijuana during this period occurred while she occupied a sensitive position, *i.e.*, one that requires access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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
- (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.

In addition, in October 2014, noting the recent decriminalization of marijuana use in several states and the District of Columbia, the Director of National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use." It reminded agency heads that such changes to state marijuana laws do not alter the existing National Security Adjudicative Guidelines and asserted that an individual's disregard of federal marijuana law remains adjudicatively relevant in national security determinations.

Subsequently, on December 21, 2021, in response to the increasing number of state and local governments legalizing or decriminalizing marijuana use, the Director of National Intelligence Security Executive Agent issued 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 (Clarifying Guidance). It instructs that "prior recreational marijuana use by an individual may be relevant to adjudications but not determinative," and reiterates the requirement that agencies utilize the Whole-Person Concept "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."

Applicants cannot be expected to be constitutional law experts or versed in the concept of Federal supremacy. The conflict between state and federal drug laws and the ensuing confusion was addressed by the Clarifying Guidance. Relevant to the topic of notice, the Clarifying Guidance encourages employers "to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the [SCA]." Implicit in this guidance is the recognition that the SCA itself no longer puts applicants on notice that marijuana use is prohibited under federal law and that employers should affirmatively be providing notice to prospective employees. The Clarifying Guidance to employers, however, cannot be presumed to have been followed. See ISCR Case No. 23-00476 (App. Bd. May 1, 2024).

Applicant was never prescribed marijuana, and she never held a medical marijuana card. When she chose to use marijuana from 2021 to 2023 to help manage her anxiety and depression, she did so with the knowledge that marijuana is federally illegal despite its legality under state law in the state in which she resides. She also chose to use marijuana while occupying a sensitive position, despite having received training annually since 2012 in which she was informed of her responsibilities as a security clearance holder with access to classified information, to include the prohibition against using federally illegal drugs. She acknowledged her awareness of this prohibition, and

given her education and training, she understood this prohibition and chose to disregard it.

Although Applicant did not face any repercussions for her use of marijuana while occupying a sensitive position, despite her disclosures on her February 2022 SCA, until her clearance was revoked upon the issuance of the SOR, she nonetheless remained aware that clearance holders such as herself were prohibited from using federally illegal drugs, to include marijuana. She was put on notice, on an annual basis through her security training, that she was prohibited as a security clearance holder from using federally illegal drugs, to include marijuana. Even if she did not face any immediate consequences to her security clearance eligibility or truly understand that federal law over state law governs security clearance eligibility, she knowingly used marijuana with full awareness that she was prohibited from doing so. As such I find that she demonstrated unreliability, untrustworthiness, and an inability or unwillingness to comply with laws, rules, and regulations when she chose to use marijuana from 2021 to 2023 while occupying a sensitive position and with full awareness of this prohibition. Her use of marijuana, in combination with her alcohol consumption and the medication she was taking for her anxiety and depression, led to her hospitalization for a mental health episode – the very type of impairment contemplated by the concern for this guideline.

As of the date of the hearing, Applicant was not taking any medication for her anxiety and depression, and she had just ceased all such medication two months prior, in July 2025, to give herself a “start over.” Since she previously used marijuana as a means of managing her anxiety and depression, she needs more time to establish a pattern of abstinence from marijuana while also managing her anxiety and depression. She no longer associates with individuals who are involved with illegal drugs, and she signed a statement of intent in February 2025 to abstain from all illegal drug use, with the acknowledgement that her clearance would be automatically revoked for any violation. However, such factors are not sufficient to overcome her use of marijuana from 2021 to 2023, while in a sensitive position, in knowing violation of the prohibition against the use of federally illegal drugs by security clearance holders. I find that AG ¶¶ 26(a), 26(b)(1), and 26(b)(3) are not established.

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). I considered all of Applicant's whole-person evidence. "Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. Overall, the record evidence leaves me with questions and doubts about her eligibility and suitability for a security clearance. 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 by her 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.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge