



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



In the matter of:)
)
) ISCR Case No. 25-01455
)
Applicant for Security Clearance)

Appearances

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

08/18/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 15, 2024. On February 20, 2026, 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 April 15, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 10, 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 June 16, 2026, and did not respond. The case was assigned to me on August 11, 2026.

Evidentiary Issues

Government Exhibits (GX) 1 and 2 are the pleadings in the case. GX 3 through 6 are the evidence in support of the allegations in the SOR. GX 6 is a summary of a security investigator's interview of Applicant in December 2024. The summary is not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the interview summary; make any corrections, additions, deletions or updates; or object to consideration of the interview summary on the ground that it was not authenticated. I conclude that he waived any objections to GX 1 through 6 by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). GX 3 through 6 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶ 1.a, alleging that he used marijuana from February 2016 to at least July 2025, and SOR ¶ 1.b, alleging that he purchased marijuana from February 2016 to at least May 2024. He admitted SOR ¶ 1.c, alleging that he failed a pre-employment drug test in September 2024 by testing positive for marijuana. He denied SOR ¶ 1.d, alleging that he used marijuana from about November 2024 to at least July 2025, while holding a sensitive position, *i.e.*, one in which he held a security clearance, and asserted that he did not hold a security clearance during this period. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old mechanical engineer employed by a federal contractor since September 2024. He received an associate degree in May 2016 and a bachelor's degree in May 2019. He has never married and has no children. He received an interim secret clearance on November 25, 2024. (GX 5)

In Applicant's SCA, he disclosed that he used marijuana daily from February 2016 to May 2024 to relax. He stated that he obtained the marijuana from friends. (GX 1 at 33-34) He stated that he did not intend to use marijuana in the future because he wanted to obtain a security clearance for his job. (GX 3 at 34) When he was interviewed by a security investigator in December 2024, he disclosed that he had purchased marijuana. He also disclosed that he tested positive for marijuana during a pre-employment drug test in November 2024. He stated that he underwent urinalysis later in November 2024, which was negative for marijuana. The interview summary does not reflect that Applicant made any statements or promises about future marijuana use. (GX 6)

When Applicant responded to DCSA interrogatories in August 2025, he disclosed that he used marijuana in July 2025 by taking three puffs from a vape for relaxation. He acknowledged that marijuana use is illegal under federal law and that future use of marijuana could affect his security clearance eligibility, and he stated that he did not intend to illegally use drugs or controlled substances in the future. He stated that his current employer has a drug use policy and that he is required to undergo periodic or random drug tests. He answered “No” to a question whether he possessed a security clearance or position of trust at any time when he used illegal drugs or controlled substances. (GX 4 at 5 and 8)

When Applicant responded to the SOR, he admitted all the allegations about purchase and use of marijuana and failing a drug test, but he made no comments about his intentions for future use. He did not respond to the FORM.

The record reflects that Applicant received an interim secret clearance on November 11, 2025. (GX 5) However, there is no evidence in the record showing that he signed a nondisclosure agreement or was otherwise notified that he had been given an interim clearance.

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. . . .

The following disqualifying conditions are potentially applicable:

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.

All four disqualifying conditions are established. However, the evidence does not establish that Applicant knew he had been given access to classified information or held a sensitive position at the time of his marijuana use. The policy considerations underlying AG ¶ 26(f) are based on an applicant's breach of trust by using illegal drugs after being entrusted with a security clearance. While Applicant's use of illegal drugs after receiving a security clearance is sufficient to establish AG ¶ 26(f), I have given it minimal weight in the absence of proof that Applicant knew he had been granted a clearance at the time he used marijuana.

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;

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) is not established. Applicant's marijuana use was recent, frequent, and did not occur under circumstances making recurrence unlikely.

AG ¶ 26(b) is partially established. Applicant has acknowledged his drug involvement. However, AG ¶¶ 26(b)(1) and 26(b)(2) are not established, because he has submitted no evidence that he has disassociated from drug-using friends or changed his environment. When he responded to DCSA interrogatories, he stated in writing that he

intended to abstain from all drug involvement, but he did not specifically acknowledge that future involvement is grounds for revocation of national security eligibility. However, he stated in his SCA that he would not use illegal drugs because he wanted to have a security clearance for his job. His statements, taken together, are sufficient to establish the statement of intent contemplated by AG ¶ 26(b)(3). However, based on the limited evidence in the record, I am not convinced that he will refrain from future illegal drug involvement when the pressure of qualifying for a security clearance is removed. Applicant has the burden of proof, and the limited evidence he has submitted falls short of carrying that burden. My obligation in close cases is to err on the side of national security. Accordingly, I have concluded that Applicant has not mitigated the security concerns raised by his use of illegal drugs.

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 Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have resolved SOR ¶ 1.d for Applicant, because I am not satisfied that Applicant knew he had received an interim security clearance before he began working for his current employer, and the element of disregarding the responsibility imposed by a security clearance is not established. However, his continued use of drugs after he submitted an SCA is not mitigated. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him or 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 concern raised by his drug involvement.

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.c:

Against Applicant

Subparagraph 1.d:

For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge