



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



**In the matter of:**

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## Applicant for Security Clearance

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ISCR Case No. 25-00137

## **Appearances**

For Government: Brian Farrell, Esq., Department Counsel

For Applicant: *Pro se*

07/28/2025

# Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

## **Statement of the Case**

On February 28, 2025, the Defense Counterintelligence and Security Agency (DSCA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance abuse guideline the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on March 11, 2025, and elected to have his case decided on the written record in lieu of a hearing. He received the File of Relevant Material (FORM), inclusive of the Government's exhibits (GEs 1-5), on March 25, 2025, and interposed no objections to the materials in the FORM, inclusive of his Personal Subject Interview (PSI) that was included as a Government exhibit without an authenticating witness. (Item 5) Applicant did not respond to the FORM. The case was assigned to me on July 8, 2025.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly purchased and used marijuana with varying frequency, since about September 2013 to about November 2024. Allegedly, he used Mushrooms in about July 2017.

In Applicant's response to the SOR, he admitted the allegations with explanations. He acknowledged his awareness of the illegality of his actions while he was a young college student. He claimed to better understand the importance of compliance with laws and regulations. Without disclaiming any future marijuana use, he claimed that while federal law never significantly impacted his daily activities, he has strived to adhere to stricter federal laws and ensure that these standards are consistently upheld. (Item 2)

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant never married and has no children. ((Item 3) He earned a bachelor's degree in May 1995. He reported no military service. (Item 3)

Since June 2016, Applicant has worked for his current employer as a human resource supervisor. (item 3) Previously, he worked for other employers in various jobs. He reported unemployment between October 2012 and February 2015 while he was in college. He has no prior or current security clearances but is presently sponsored by his current employer. (GEs 3 and 4)

### **Use of Illegal Substances**

Over the course of 11 years (September 2013 through November 2024), Applicant purchased and used marijuana, a drug federally banned by the Controlled Substance Act (21 U.S.C. § 802, *et seq.*) (CSA), but legalized in his state of residence. (Items 3-6) Marijuana was his major drug of choice, and the only drug cited in the electronic questionnaires for investigations processing (e-QIP) he completed in November 2023. He confirmed his purchases and use of marijuana in his personal subject interview (PSI) of July 2024. (Item 5) His marijuana purchases were made from

a legal dispensary in his state of residence where marijuana has been legalized for many years. (Item 5)

In his PSI, he told the investigator that after experimenting with the drug in 2013 out of curiosity, he used marijuana recreationally on a weekly basis in social situations to alleviate stress and relax. (Item 5). While he never experienced any adverse effects from his marijuana use, he told the investigator he had no future intentions of using the drug in the future. (item 5)

Despite these future abstinence assurances provided to the PSI investigator, Applicant continued his marijuana use to at least November 2024 and continues to associate with friends in his state of residence who use marijuana. (Item 5) Applicant has never felt dependent on marijuana and has never failed a drug test. He has never pursued any form of drug treatment or counseling. (Item 5)

Besides marijuana, Applicant used hallucinogenic mushrooms on a single occasion in 2017. (Items 2 and 5) He expressed no intentions of using mushrooms in the future and does not believe that any of his friends are aware of his past mushroom usage. (Item 5)

## Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a right to a security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Application approvals 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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although,

the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Drug Involvement**

*The Concern:* The illegal use of controlled substances, to include the misuse of 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.

### **Burdens of Proof**

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 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 "in terms of the national interest and shall in no sense be

a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

Security concerns are raised over Applicant’s lengthy history of marijuana usage. While he has never been granted a security clearance, he continues to be sponsored by his current employer. Additional security concerns are raised over Applicant’s isolated use of hallucinogenic mushrooms in 2017.

### Drug Involvement concerns

Applicant’s recurrent purchase and use of marijuana over a 10-year period between 2013 and August 2023. His marijuana activity is detailed in his January 2025 PSI. Beginning in 2013, he purchased and used marijuana on weekly between 2013 and September 2024. On the strength of the evidence presented, three DCs of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia”; and 25(g) “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Whether Applicant is unconditionally committed to abstinence from the use of illegal drugs is unclear. For his pledge of abstinence made in his July 2024 PSI was never unqualified, and he returned to marijuana use in November 2024 following his PSI. Further, he has reserved the possibility of resuming his marijuana use should he

no longer hold a job that requires a security clearance and adherence to the federal ban on marijuana possession. Under these circumstances, none of the potentially mitigating conditions covered in the Directive are available to Applicant. See ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018); ISCR Case No. 07-10804 (App. Bd. June 19, 2008). Mitigation is available to Applicant only for his isolated experimental use of mushrooms in 2017.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of marijuana use (inclusive of his resumption of marijuana use in November 2024 after pledging abstinence in his 2023 PSI) and isolated use of hallucinogenic mushrooms in 2017 reflects collective judgment lapses incompatible with his holding a security clearance.

From a whole-person perspective, Applicant has not established enough independent probative evidence of his overall, trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. While he is deserving of considerable credit for the contributions he has made to the defense industry, it is too soon to absolve Applicant of risks of recurrent marijuana use. I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that Applicant's past use of federally banned marijuana is not mitigated. Eligibility for access to classified information is denied.

### **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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Roger C. Wesley  
Administrative Judge