



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



Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

09/08/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 19, 2020, and another SCA on July 17, 2024. On February 19, 2025, the Department of Defense (DoD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline H. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted his Answer to the SOR on March 3, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) on May 5, 2025. Applicant received a complete copy of the FORM on May 12, 2025, and was given an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. He did not provide a response. The case was assigned to me on September 2, 2025.

FORM Items 1 and 2, the SOR and Answer, are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR, he admitted both allegations but identified where the allegations did not conform to the evidence. His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 28 years old. He earned his bachelor's degree in May 2020. He has worked for his sponsor since April 2020. He received his security clearance in June 2020. He is not married and has no children. (Item 3, Item 4, Item 6.)

SOR ¶ 1.a alleged that, from September 2019 to about October 2023, Applicant used and purchased marijuana with varying frequency. He admitted on his 2020 SCA and in a June 2020 interview with a DoD investigator that he used marijuana two or three times between September 2019 and November 2019. He explained he had used it to treat anxiety and sleep apnea, which he obtained from a state-licensed marijuana dispensary. He told the investigator he did not intend to use marijuana in the future. When he was being considered for a higher security clearance, he completed his 2024 SCA, and he admitted to using marijuana between June 2023 and October 2023. In response to Government interrogatories and in an August 2024 interview with a DoD investigator, he reiterated this date range as well as the 2019 date range he provided during the 2020 SCA process. The evidence supports two discreet periods of marijuana use. (Answer; Items 3-5.)

SOR ¶ 1.b alleged that, from about June 2023 to about October 2023, Applicant used and purchased marijuana with varying frequency while holding a sensitive position, i.e., one in which he held a security clearance. Applicant admitted this use was due to anxiety from the death of a grandparent. He previously cited anxiety in his life as one of the reasons why he elected to use marijuana. In his response to Government interrogatories, he listed his roommate of over five years as a person who could verify that he had stopped using marijuana. Applicant told the DoD investigator in 2024 that he smoked the marijuana with this same roommate. Applicant marked "No" to the question in the Government interrogatories that asked if he associated with individuals who use illegal drugs. (Answer; Items 4-6.)

Applicant in his Answer explained what he had done to rehabilitate himself after his 2023 marijuana use, stating:

After the grief subsided, I stopped and turned to healthy outlets like athletics and sports. I've since then started a very healthy and promising relationship with my girlfriend, and we strive to start building our lives together. I've also been daily devoted to my [religious] faith and reading scripture every day to help my spirit grow healthy and to communicate with the relative I lost." I'm happy to supply the ROG Request form and both case files regarding my interviews with investigators, if those are not readily available. I take full responsibility for my actions and plan to never repeat them. I do great work for the teams and contracts that I've been on and feel I've personally grown from overcoming my shortcomings. I hold honesty and loyalty to this country in highest regard and always will, regardless of the decision. (Answer.)

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*, 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 establish the following disqualifying conditions under this guideline, as detailed in 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 admitted purchasing and using marijuana during two periods, between September 2019 and November 2019 and between June 2023 and October 2023. AG ¶¶ 25(a) and 25(c) apply.

Applicant was granted a security clearance in 2020. AG ¶ 25(f) applies. While Applicant may not have had access to classified information there is sufficient evidence that he held a sensitive position. For purposes of national security eligibility determinations, the Directive defines "sensitive position" as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor. SEAD 4, ¶ D.8.

The following mitigating conditions are potentially applicable as detailed in 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

(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 drug use, while infrequent and for two limited periods, did not occur under circumstances unlikely to recur. By his own admission, he was using marijuana to deal with anxiety in his life. He only disclosed his actions after he was asked to seek an upgrade in his security clearance. His 2023 use occurred after he had given assurances in 2020 that he would discontinue future use of marijuana, which casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not fully established. Applicant did voluntarily disclose his actions on his SCA and fully acknowledged his past actions in his interviews and in response to Government interrogatories. He clearly states he will no longer use any marijuana

products in the future, and his Answer reflects his understanding that any future involvement in marijuana is grounds for revocation of a security clearance. However, Applicant, after citing anxiety as a reason for his 2019 marijuana use, again turned to marijuana when faced with adversity in his life. The person whom he admitted using marijuana with in 2023 is his roommate of five years. Insufficient time has passed to mitigate his use of marijuana. The security concern regarding his marijuana use is not mitigated.

Applicant purchased and used marijuana and disclosed his marijuana use upon being informed his clearance was being upgraded. He knew his marijuana use was prohibited by federal law and security clearance policies. Applicant's decision to purchase and use marijuana while holding a sensitive position is an indication he lacks "the qualities expected of those with access to national secrets." See ISCR Case No. 17-03191 at 3 (App. Bd. Mar. 26, 2019) (citing ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019) ("An applicant's misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability").

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 have 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. Insufficient time has passed since his last use of marijuana to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With his stated focus on fitness, friends, and faith to deal with life's adversity, he should be able to establish a track record of persuasive evidence of his security clearance worthiness in the future.

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 his conduct under Guideline H.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H: AGAINST APPLICANT

Subparagraphs 1.a. and 1.b: Against 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.

Charles C. Hale
Administrative Judge