



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



In the matter of:

Appearances

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

12/02/2025

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 23, 2024. The Department of Defense (DoD) sent her a Statement of Reasons (SOR) dated March 27, 2025, 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on April 29, 2025, and requested a decision on the written record without a hearing. Department Counsel issued the Government's file of relevant material (FORM) on May 21, 2025, including documents identified as Items 1

through 4. Applicant submitted a Response dated July 9, 2025. I was assigned the case on November 24, 2025.

The SOR, Applicant's Answer (FORM Items 1 and 2), and her July 9, 2025 Response are the pleadings in the case. FORM Items 3 through 4 are admitted into evidence without objection.

Findings of Fact

Applicant is a 45-year-old senior clinical research associate who has worked for her clearance sponsor since 2021. She has never held a security clearance. She is single, with no children. She holds a doctorate and two bachelor's degrees. (Item 3.)

Applicant's employer does not permit use of illegal drugs but defines an illegal drug as, "[a]ny drug not legally obtained or obtainable. Unlawful possession of a controlled substance not prescribed by a physician is considered illegal drug use." A controlled substance is defined by her employer as:

A drug which may be approved by the federal Food & Drug Administration for medical uses; one prescribed to a patient by medical physician; or an illegal drug. Categories of controlled substances include narcotics, depressants, stimulants, hallucinogens and cannabis. (Item 4 at 33.)

Illicit drugs are defined as:

Includes all drugs, narcotics, and intoxicants for which possession or misuse is illegal under federal law, and includes prescription medications for which the individual does not have a valid prescription. The deliberate use of prescription medications and/or over-the-counter drugs in a manner inconsistent with dosing directions, and in a manner which may result in impairment, is considered illicit drug use. In addition, the use of chemical intoxicants for other than a legitimate and therapeutic purpose is considered illicit drug use. (Item 4 at 33.)

In Applicant's SOR Answer, she admits the sole allegation that she used and purchased marijuana (THC) with varying frequency from about November 2020 to about February 2025. She stated in Answer, "I admit to using marijuana for insomnia due to menstrual cycle hormonal fluctuations."

Applicant self-disclosed her marijuana use on her 2024 SCA. In acknowledging her illegal drug use on her SCA she wrote, "I use DELTA 9 THC edibles, which I purchase legally, and CBD, also legally purchased, as sleep aids. I use it to help with insomnia related to premenstrual syndrome, so I use about 3-4 nights a month." She explained further that "[i]f I am told I am not allowed to use it with a security clearance, then I will not use it. If I need to get a medical use exemption to continue using it, then I will obtain one." (Item 3 at 35; Answer.)

During her security clearance interview, Applicant confirmed her SCA statements. She noted she has never been involved in any illegal purchase of marijuana product. She never has felt dependent on it, and she has never tested positive on any drug test. She told the investigator she would continue to use marijuana again in the future, unless it is determined that she cannot use marijuana sleep aids while holding a security clearance. (Item 4.) In her Response to the FORM she stated:

At the time of completing my application and during the October 2024 interview, it was not clearly communicated to me that abstaining from THC was a formal condition of clearance. As a result, I continued using it for insomnia treatment.

However, upon receiving the interrogatory package in early March 2025, it became clear that continued THC use would be incompatible with holding a security clearance. I immediately ceased all THC use, with the last instance occurring during the premenstrual phase of my February 2025 menstrual cycle. I have not used THC since, and I do not intend to use it again in the future.

I understand and fully respect the federal government's position on THC use, regardless of evolving state laws. I am committed to upholding the integrity, reliability, and trustworthiness expected of those granted access to sensitive information. My past use was disclosed honestly and transparently, and I hope it demonstrates my willingness to comply fully with all expectations now and moving forward. (Response.)

Applicant voluntarily disclosed her actions involving marijuana on her SCA and fully discussed them during her security clearance interview. (Item 3; Item 4.) She has cooperated throughout the security clearance process. The evidence available shows her involvement with marijuana is limited in scope and nature and was never for a recreational purpose. She has stopped consistent with her representations throughout her security clearance application process. The security clearance interview does not read consistent with a person stating an intent to use marijuana in the future while holding a security clearance, rather it appears consistent with a statement that she has no intention to use marijuana regardless of the basis. (Item 3; Item 4; Answer; Response.)

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 in her SCA, security clearance interview, and Answer are sufficient to raise the following disqualifying conditions under this guideline: AG ¶ 25:

- (a): any substance misuse (see above definition); and
- (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 under 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.

The Appeal Board provided a detailed discussion of the mitigating conditions pertaining to marijuana possessions and use:

In recognition of the changing landscape of marijuana law and in consideration of the Director of National Intelligence's Clarifying Guidance Concerning Marijuana, the Board has noted that significant factual and legal differences may exist between an applicant's state-compliant marijuana use

and use of other illegal drugs, holding that such differences are an important aspect of the case that a reasonable person would expect to be addressed. See ISCR Case No. 22-02132 at 3 (App. Bd. Oct. 27, 2023). In initial eligibility determinations, if the record reflects such differences, the judge must articulate a rational basis for why, after consideration of those differences and the Clarifying Guidance, the conduct continues to cast doubt on the individual's current reliability, trustworthiness, and good judgment.

ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025) (internal footnotes omitted).

The SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications the Appeal Board cited states as follows:

[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 require them to use a “whole-person concept.” This requires adjudicators to carefully weigh a few 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. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged 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 Standard Form 86 (SF-86), Questionnaire for National Security Positions.

SecEA Guidance at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board has cited the importance of consideration of “the changing landscape of marijuana law and . . . of the Director of National Intelligence’s *Clarifying Guidance Concerning Marijuana*.” ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (noting the “evolving landscape of marijuana law and policy,” “the resulting increasing prevalence of marijuana use,” and in some instances “recreational marijuana use deserves less, or even no negative inference on judgment.”).

The Appeal Board has “never established a ‘bright line’ rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole.”

See ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). See also ISCR Case No. 24-01307 at 5 (App. Bd. July 17, 2025) (stating same).

Several factors are important in the assessment of mitigation of possession and use of illegal drugs: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; types of other illegal drugs used; continued association with drug users; broken promises not to use in the future; and promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; and used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use were not illegal under state law; no marijuana use after notice that marijuana use was federally illegal; and no evidence of broken promises not to use marijuana).

Applicant used marijuana three or four times a month during her menstrual cycle for just over four years and stopped in February 2025 when the Government's FORM made her fully aware her basis for use was not legal under Federal law. There is no evidence she engaged in recreational marijuana use.

AG ¶ 26(a) is established for SOR ¶ 1.a. While Applicant recognized marijuana was illegal Federally, she believed her limited use for issues during her menstrual cycle, with products purchased legally in her state, would not be problematic. There is no evidence in the record that she understood her marijuana use for menstrual issues would be problematic at the time and there was no evidence to the contrary. The Appeal Board has noted that:

Applicants cannot be expected to be constitutional law experts or versed in the concept of Federal supremacy. The ambiguity between state and Federal drug laws and the ensuing confusion was addressed by the Security Executive Agent in December 2021 in "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" (SecEA Clarifying Guidance). Relevant to the topic of notice, the 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]." SecEA Guidance at 2. Implicit in this guidance is the recognition that the SCA itself no longer puts applicants on notice and that employers should affirmatively be providing notice to prospective employees. The SecEA's guidance to employers, however, cannot be presumed to have been followed. See ISCR Case No. 23-02476 at 5 (App. Bd. May 1, 2024).

The Appeal Board cites several factors as important in weighing the assessment of mitigation of possession and use of illegal drugs: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; types of other illegal drugs used; continued association with drug users; broken promises not to use in the future; and promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) I find the consistency of Applicant's statements throughout the security clearance application process regarding the basis for her marijuana use, which was not for recreational purposes; that the marijuana was legally purchased; the general nature of the language of her company's drug policy; that this was her first security clearance application; and her Response reflects her willingness to comply with laws, rules, or regulations. See ISCR Case No. 20-02974 at 6 (App. Bd. Feb. 1, 2022).

AG ¶ 26(b) is established for SOR ¶ 1.a. Applicant voluntarily disclosed her actions on her SCA. I find that it is relevant that this is her first SCA. She acknowledges her past actions. In her Response she clearly states she will no longer use any marijuana products in the future. Her Response reflects her understanding that any future involvement in marijuana is grounds for revocation of a security clearance.

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 Applicant's admissions and explanations, including her explanation for why she started using marijuana. Applicant's responses in her SCA, security interview, Answer, and Response regarding her marijuana involvement reflect her recognition that she must not use marijuana. 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 mitigated the security concerns raised by her drug involvement.

Formal Findings

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

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge