



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



Appearances

For Government: Lauren L. Shure, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant provided sufficient evidence to mitigate security concerns raised under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 26, 2024. On November 26, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H. The DOD acted under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 17, 2024, and requested a hearing before an administrative judge. The case was assigned to me on June 5, 2025, and on the same date, the Defense Office of Hearings and Appeals (DOHA) notified Applicant her hearing was scheduled to be conducted by video teleconference on June 26, 2025.

The hearing was convened as scheduled. Government Exhibits (GE) 1 through GE 5 were admitted in evidence without objection. Applicant testified and offered six character letters, which I labeled as Applicant's Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on July 8, 2025.

Findings of Fact

In her Answer to the SOR, Applicant denied SOR ¶ 1.a, the single allegation in her case. She admitted using marijuana during college, between October 2015 and August 2017, which she had previously disclosed. She denied knowingly consuming marijuana in January 2023. After thorough review of the pleadings, documentary evidence, and testimony, I make the following finding of facts.

Applicant is 27 years old. She earned her high school diploma in May 2015. She attended college from August 2015 through May 2019, and earned her bachelor's degree with great distinction in May 2019. During college, Applicant enjoyed a productive lifestyle where she participated in myriad student internships and volunteer activities. She also mentored elementary school children through a university program. She is unmarried and has no children. (GE 1-3; Tr. 16-17)

In May 2019, Applicant accepted her first position working as a business consultant with a defense contractor. Her position requires a security clearance and she completed both her non-disclosure agreement and her first SCA in May 2019. In Section 23 of the SCA, she disclosed using marijuana recreationally a few times between October 2015 and August 2017, during her college years. She never purchased marijuana, and the few times she used it occurred in social settings "pregame" or before a party or event, with other college students. Alcohol was also part of this social scene. Marijuana made her feel nauseous, uneasy, and more anxious, and she could not consume much. She regarded it as participation in the college social scene. (Tr. 17-18, 40-42)

In September 2019, Applicant was granted a secret security clearance. She worked on large-scale DOD projects conducting cost-management, and payroll. Her work-hours were long and involved, she learned a great deal in her field, and excelled. Her employer lost a contract bid, and she was assigned to another DOD contract doing information technology (IT) security or cybersecurity-type work instead of cost management. Applicant stayed with the company, taking the initiative to earn all cybersecurity certifications while working in cost management in preparation for her transfer to another position. (GE 3, 4; Tr. 17-18)

In January 2024, Applicant accepted a custom software engineering position with the company who won the bid on the previous DOD contract she had worked under. The position required a higher-level security clearance and Applicant completed her second SCA in March 2024. In Section 23 of the SCA, she again disclosed her recreational marijuana use during college, and she added an unknowing marijuana use that occurred in January 2023. Concerning her marijuana use, she commented:

[I used] a few times recreationally in college, in a social setting. One time outside of college unintentionally, this was in January 2023. (GE 2, 3)

She responded “yes” to the question of whether her marijuana use occurred while possessing a clearance, and “no” to the question of whether she intended to use marijuana in the future. (*Id.*)

Applicant provided details concerning the January 2023 incident where she believed she unintentionally ingested marijuana. She was 25 years old at the time and enjoyed going out occasionally on weekends with other young professionals. She worked hard and going out during this period was fun, she attended shows, parties, and the similar events. She attended a party at a bar or club. People were enjoying themselves, socializing and dancing. She said she had a few alcoholic beverages though she was not intoxicated. She was dancing, feeling happy, and making conversation when a woman on the dance floor offered to share her vape. She accepted the gesture because she was being social, and friendly, and it was an atmosphere of enjoyment after a long week. Applicant believed the vape contained tobacco. She did not ask what was in it. (GE 2, 3; Tr. at 42-52)

After a short time, Applicant said started to feel nauseated and anxious and this led her to believe she ingested marijuana. She did not know what it was at the time and she regretted accepting this gesture. She had never done this before although this is not unusual in a party atmosphere nowadays. Applicant did not confirm the vape contained marijuana, no drug test or urinalysis was performed, and there was no objective proof that the product she ingested was marijuana. She went home shortly after she began feeling nauseous. (GE 3; Tr. at 42-52)

Applicant did not report the January 2023 incident because she did not know the process. She did not know the identity of the facility security officer (FSO) or how to contact them. Out of an abundance of caution, she reported what she believed was an unknowing ingestion of marijuana in her March 2024 SCA. (GE 2, 3; Tr. at 42-52)

Applicant would never use anyone’s vape again if offered. She is also more careful about alcohol consumption though this has never been a problem. She is much more cautious and aware. She is much more mindful of her surroundings and keeps a high level of awareness. (*Id.*)

Applicant submitted six character letters from work colleagues, longtime friends, and a family member. Her civilian and military team leaders both attested to her professionalism, accountability, and unwavering integrity in all aspects of her work. Each expressed confidence in her loyalty, judgment, and suitability for a high-level security clearance and requested that her overall record of integrity, performance, and professionalism be considered. Applicant’s friend of more than 10 years, a lawyer with a security clearance, attested to her strong moral and ethical values, and her commitment to public service, particularly services in underprivileged communities. She commented favorably on her honesty, integrity, judgment, and truthfulness even when facing negative

consequences, and endorsed her application for a security clearance. Applicant's longtime friends of over 15 years and family attested to her honesty, truthfulness, exceptional character, resilience, and quiet strength. Her tenacity, empathy, leadership, dedication to public service, and commitment to mentoring and teaching today's youth were noted, along with her diligence and commitment to excellence, and integrity. All endorsed her for a security clearance. (AE A)

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 security concern for drug involvement and substance misuse is described 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable are:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted she used marijuana on a few occasions during her college years between October 2015 and about August 2017, and that she believed she unknowingly ingested marijuana in January 2023. Her admissions are supported by prior statements already in evidence. AG ¶¶ 25(a) and 25(f) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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) and 26(b) apply. About 31 months ago, Applicant used a vape instrument that she believed contained tobacco but later concluded likely contained marijuana, which she unknowingly consumed. The record is void of independent proof that the substance she consumed was indeed marijuana. Applicant reported her belief that she unknowingly and unintentionally consumed marijuana in 2023, in her 2024 SCA out of an abundance of caution, to be fully transparent in the security clearance process.

Applicant knowingly and occasionally used marijuana between October 2015 and August 2017, while in college. She has abstained from the knowing use or ingestion of marijuana since that time. Even assuming the substance she ingested from a vape instrument in January 2023 that she believed was tobacco contained marijuana, Applicant unknowingly and unintentionally consumed it. This incident occurred more than two years ago under circumstances unlikely to recur, and it does not cast doubt on Applicant's current reliability, trustworthiness, and judgment. Applicant established a pattern of abstinence. She also committed herself to never again using a vaping instrument of an unknown person, or one that contains an unknown substance. She has matured, disassociated from people and places where drugs may be used, and has reduced her alcohol consumption to keep her focus and judgment intact. The drug involvement and substance misuse security concerns are mitigated.

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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances of this case. I considered that Applicant disclosed her use of marijuana during college and her apparent unknowing ingestion of marijuana in January 2023. I also considered the character letters from Applicant's work colleagues, longtime friends, and family, attesting to her professionalism, accountability, loyalty, good judgment, and suitability for a high-level security clearance. Others attested to her strong moral and ethical values and her commitment to public service, particularly service in underprivileged communities, and all endorsed her for a security clearance. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all evidence in the whole-person context, I conclude Applicant mitigated the security concerns raised in this case.

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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

It is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Gatha LaFaye
Administrative Judge