



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



In the matter of:)
)
) ISCR Case No. _____
)
Applicant for Security Clearance)

Appearances

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

06/04/2025

Decision

BLAZEWICK, R. B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

On September 27, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The action was taken 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on November 5, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on November 21, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit

material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 18, 2024, and he did not respond. The case was assigned on March 4, 2025. The Government's documents identified as Items 3 and 4 are admitted in evidence without objection.

Upon review of the evidence, it was determined that a one-letter scrivener's error had been made in SOR ¶ 1.b, causing the allegation to allege use of a chemical, amyl nitrate, unrelated to the one intended to be alleged, amyl nitrite. On April 8, 2025, both parties were contacted and informed that the record would be reopened to make a clerical amendment to the SOR, to take administrative notice of two hearing exhibits pertaining to amyl nitrite, and to allow both parties to lodge any objections to the amendment or hearing exhibits and to submit any additional exhibits they deemed appropriate. Both parties responded in a timely manner with no objections to the amendment or the hearing exhibits. Applicant submitted Applicant Exhibit A, which was admitted into the record. The record closed on April 15, 2025.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from about July 2019 to about August 2024 (SOR ¶ 1.a); and that he used amyl nitrite with varying frequency from about May 2021 to about August 2024 (SOR ¶ 1.b). In his answer, Applicant admitted both allegations.

Applicant is 23 years old. He has never been married and he does not have any children. He earned a bachelor's degree in May 2023. He has been employed with a defense contractor since May 2023. He has never held a security clearance. (Item 3)

Applicant first used marijuana just before he started college at age 18. He continued to use marijuana in college once or twice a month. Since graduating college in 2023, he has used marijuana about every two to three months. He has three friends that he uses marijuana with, and he believes these friends will continue to smoke marijuana in the future. At the time he completed his security clearance application (SCA) in March 2024, he estimated his total marijuana usage to be about 50 times, and he expressed an intent to use marijuana in the future. In his May 2024 background interview, he stated that he would not use marijuana again until he was granted a security clearance, and that he would probably resume using marijuana after receiving a security clearance. He stated that he has heard that marijuana usage will not keep someone from receiving a security clearance. He further stated that he thinks marijuana being classified as a Schedule I drug is "absurd" and that he "can get away with breaking the law" when he uses it because it is pretty harmless and is not a danger to himself or others. In his response to interrogatories, he reported his last date of marijuana usage was August 2024 and that he did not have an intent for future use. He also reported using a Delta-8 vape in August 2024 with no intent for future use. Although not alleged, he also reported purchasing marijuana about once a year with his last purchase in July 2024. (Items 3-4)

Applicant reported using inhalants, specifically “poppers,” which contain chemicals belonging to a class of drugs called alkyl nitrites, including amyl nitrite. They are sold online, in adult novelty stores, and other locations for purposes other than consumption, but are misused recreationally to obtain a brief euphoric effect. Amyl nitrite is a prescription medication used to relieve chest pain. Poppers are unregulated and have not been evaluated by the FDA for safe use. (HE I, II)

Applicant's first use of inhalants was in May 2021, at age 19. He used them recreationally and for sexual encounters approximately twice a month, estimating his total usage to be around 100 times. On his March 2024 SCA, he expressed an intent to continue using inhalants. In his May 2024 interview, he stated that he purchases amyl nitrite poppers every five to six months from a local sex shop, which refers to it as a “cleaner” sold under the brand name “Rush.” He told the interviewer that his last usage was the week prior to the interview and that he intended to continue using amyl nitrite poppers. In his response to interrogatories, he reported that he used amyl nitrite and that his frequency of usage was once every one to two months with his last usage in August 2024, with no intent for future use. He also reported purchasing amyl nitrite about twice a year, with his last purchase in January 2024. (Items 3-4)

In his response to interrogatories, Applicant listed one friend he still associates with who uses illegal drugs. When asked in the interrogatories what changes he has made which might be indicative of a change in lifestyle away from his past drug usage, he answered, “none.” In his answer to the SOR, he stated that his use of both substances has been very infrequent and that he has had no trouble abstaining from the use of the substances at various points in his life. He stated that his use of these substances has never had a negative impact on his life and reiterated that he has been truthful about his drug usage throughout the security clearance process. He stated that he has not used or purchased either substance since August 2024. He submitted a statement of intent to abstain from further drug involvement and substance misuse, understanding that any further misuse is grounds for his eligibility for a national security position to be revoked. As of April 15, 2025, he confirmed that he still has not used either of the substances alleged on the SOR since August 2024. (Items 2, 4; 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 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.

The following disqualifying conditions are relevant:

AG ¶ 25(a): any substance misuse (see above definition);

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(g): expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

AG ¶¶ 25(a), 25(c), and 25(g) are established by Applicant's admissions and evidence in the FORM for SOR ¶ 1.a.

AG ¶¶ 25(a) and 25(g) are established by Applicant's admissions and evidence in the FORM for SOR ¶ 1.b.

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; and

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.

In 2021 the Director of National Intelligence (DNI) issued guidance that made clear that prior recreational marijuana use by an individual applying for a security clearance or national security position might be relevant to adjudications, but not determinative. The guidance instructed federal agencies to adjudicate each potential applicant through a "whole-person concept" by evaluating multiple variables in an individual's life to determine whether past marijuana use raises a security concern and whether that concern has been mitigated. I have incorporated my whole-person analysis here.

Applicant has been a consistent user of marijuana and amyl nitrite for the past four to five years. Though the seriousness of his use did not rise to the level of addiction, it was far more regular and extensive than mere experimentation. He participated voluntarily and with full knowledge of his actions and purchased both substances with the intent to use them. Though the frequency of use varied somewhat, he was most recently using marijuana every two to three months and amyl nitrite every one to two months, with last use of both substances in August 2024. With his last use being only eight months ago, his age and maturity are essentially unchanged from his last drug use and substance misuse. While he has stopped using both substances for eight months, it is too soon to conclude that this period of abstinence indicates a permanent behavioral change. The motivation for his drug use and substance misuse appears to be primarily social, and thus it is possible that there could be pressure in the future from his social group or a partner to participate in marijuana or amyl nitrite use once again.

AG ¶ 26(a) is not established with respect to his marijuana use or his use of amyl nitrite. Applicant's involvement with both substances was recent, frequent, and did not occur under circumstances making recurrence unlikely. His last use of marijuana was only eight months ago, continuing well into the security clearance investigative process. He is a regular user of marijuana and has used it consistently for years. He is aware of the illegality of marijuana use but believes that he "can get away with breaking the law." Similarly, his last use of amyl nitrite was recent, occurring in August 2024. His attitude that he is above the law casts doubt on his ability or willingness to comply with laws,

rules, and regulations. He has not met his burden to establish that his marijuana and amyl nitrite use do not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant acknowledged his drug involvement and substance misuse but has provided little evidence showing efforts made to overcome the problem. Most significantly, there is insufficient evidence of an established pattern of abstinence in this case. Throughout the investigation, he made multiple statements expressing an intent to use marijuana and amyl nitrite in the future. Of particular note was the May 2024 interview statement that he planned to stop using marijuana until he got his security clearance, and then he would probably start using again once he got it. He now states that he stopped using marijuana in August 2024, which means he did not stop using marijuana like he said he would in his interview. I am considering his marijuana use after initiating the security clearance process only for the limited purpose of noting a failure to maintain abstinence after stating an intention to abstain. Although Applicant continued using marijuana after completing the SCA and being interviewed, there is insufficient evidence to establish that he understood the security significance of further marijuana use after initiating the security clearance process and therefore I did not consider that as an independent security concern. ISCR Case No. 23-00476 at 5 (App. Bd. May 1, 2024); ISCR Case No. 22-02132 at 4 (App. Bd. Oct. 27, 2023); ISCR Case No. 23-00093 at 3 (App. Bd. Nov. 21, 2023). Both his belief that marijuana use would not be a bar to receiving a security clearance and his stated intention to resume marijuana use after receiving a clearance illustrate that he did not understand the security significance of further marijuana use. Furthermore, his statements regarding its illegality, particularly how he justifies his use despite it being illegal, calls into question whether he genuinely understood the security significant aspects pertaining to the legality of further marijuana use.

Given the timing of this recent, eight-month period of abstinence from marijuana and amyl nitrite, his usage of marijuana after stating he would abstain, and his prior statements regarding future use of both substances, there is insufficient evidence that he has an established pattern of abstinence from either substance. Furthermore, he maintains contact with at least one drug-using associate, and he has not changed anything in his life to avoid environments where drugs are used. Although he submitted a statement of intent, it is not sufficiently mitigating to overcome these security concerns because he acknowledged that despite marijuana's Federal status as a controlled substance, he "can get away with breaking the law." His attitude toward the law and his continued use after stating he would stop create doubt about his commitment to his statement of intent.

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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. 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 drug involvement and substance misuse.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 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.

Robert B. Blazewick
Chief Administrative Judge