



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



In the matter of:)
)
) ISCR Case No. 24-01576
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2025

Decision

PRICE, Eric, Administrative Judge:

Security concerns arising under Guideline H (drug involvement and substance misuse) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 23, 2023. On October 17, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline H. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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), which became effective on June 8, 2017.

On October 31, 2024, Applicant responded to the SOR and requested a hearing. (Answer) On April 1, 2025, the case was assigned to me. On May 30, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for June 18, 2025. The hearing was held as scheduled.

Department Counsel offered Government Exhibit (GE) 1 through GE 3, which were admitted without objection. (Transcript (Tr.) 14-21; Hearing Exhibit (HE) I) Applicant testified but offered no documentary evidence. The record was held open to permit Applicant to submit documentary evidence and she timely submitted Applicant Exhibit (AE) A through AE I, which were admitted without objection. (HE II) The record closed on July 7, 2025. (HE III) On July 21, 2025, DOHA received the transcript of the hearing.

Findings of Fact

In Applicant's SOR response, she admitted the allegations in SOR ¶¶ 1.a and 1.b, with explanations. Her admissions are incorporated in my findings of fact.

Applicant is 61 years old and has been offered employment by a federal contractor contingent upon obtaining a security clearance. She served in the Navy from 1995 to 2017 and honorably retired as a chief petty officer (E-7). She has had no other employment since retiring from the Navy. She has a 100% service-connected disability as determined by the Department of Veterans Affairs (VA) and also receives social security disability benefits. She had a security clearance from about 2007 until 2017. (GE 1; Tr. 23-29, 56, 79-81; AE C)

Applicant was married from 1996 to 2003 and has three adult-age children. She received a bachelor's degree in 2002 and has earned additional college credits and certifications. (GE 1; Tr. 24, 55-56, 81-82; AE F)

Drug Involvement and Substance Misuse

The SOR alleges Applicant used tetrahydrocannabinol (THC) with varying frequency from about June 2023 until at least January 2024, and that she intends to use THC in the future. (SOR ¶¶ 1.a-1b; SOR response) She admitted both allegations and explained:

I understand the definitions of abuse and misuse of prescription and controlled substances as outlined in 21 U.S.C. § 802, as well as distinctions between federal and state mandates on this matter. Yes, I did make purchases, but these were made less frequently than every two months, as I use medications strictly according to my doctor's instructions and only as needed, rather than on a daily basis as is typical with traditional medications. I deny abuse....

[I] do not use flower or weed. Due to my pulmonary issues, smoking would exacerbate my condition... The mints, gummies, oils, and Theragels I use for anxiety, depression, and insomnia are significantly more effective than traditional medications. They help me stay focused without causing drowsiness or mental fog, and I experience fewer extreme highs and lows compared to traditional medication.

Finally, I self-reported my use of THC products purchased at state-licensed and approved facilities. I did not use these products before obtaining my license last year, and I have informed both my primary care and specialty doctors about my usage. This information has not been kept private, ensuring that my use of THC products cannot be used against me in relation to any information or access associated with a security clearance....I respectfully request that you carefully consider issuing my security clearance so that I may begin my work duties. (SOR Response)

In her August 2023 SCA, Applicant denied illegally using or purchasing any drugs or controlled substances in the last seven years or ever illegally using or being involved with controlled substances while possessing a security clearance. (GE 1 at 31-32) The sentence in the SCA immediately preceding questions about the illegal use of drugs or controlled substances states: "The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws." (GE 1 at 31) She did not list THC usage in her August 2023 SCA because she did not realize medical use of THC was prohibited under federal law. She acknowledged that, while in the Navy, she was aware marijuana was prohibited for personal use and said she had not paid attention to the legality of medical marijuana. She stated she had been forthright, thought she had disclosed her therapeutic use of THC in her SCA, and expected a security background investigation to discover she had a medical marijuana license. (GE 3 at 4; Tr. 45-46)

During an October 23, 2023 subject interview (S/I) with a government investigator, Applicant disclosed she was prescribed a medical marijuana card by a medical doctor; used THC products daily since June 2023, and purchased THC, cannabidiol (CBD) and gummies from a marijuana dispensary. She vapes with THC at night and takes THC capsules. She was prescribed THC products as an alternative to medications that caused her significant adverse reactions detrimental to her health. (GE 3 at 4)

In her March 7, 2024 response to interrogatories, Applicant reported using tincture of THC, THC gummies and a THC gel daily, as needed. She indicated she last used them in January 2024, and that they help keep her focused, help with her significant anxiety, and do not have the side effects of other prescriptions. She indicated the products were lawful under state law in State A and that she purchased them from a dispensary. She stated she stopped using them as "a test to see how I would respond," and then indicated she intended to "illegally use drugs or controlled substances in the future." (GE 2) She acknowledged that her marijuana use remains illegal under federal law and that any future use may affect her security clearance eligibility. She expressed her hope that she would be allowed to continue to use THC for therapeutic purposes. (GE 2 at 10)

Applicant testified that she first started using THC products to help with anxiety, insomnia and post-traumatic stress disorder (PTSD) attributable to events from her childhood through her military service. From 2016 to 2023 she was seen by various counselors and prescribed various medications. Although the medications sometimes helped with symptoms, the side effects impacted her ability to properly support her children, including two with a significant, chronic blood disorder. From about 2021 through

2024, she had a wonderful relationship with her treating psychologist, but the VA did not renew her referral for private counseling. The VA approved group counseling instead, but she is not comfortable in that setting. She has been prescribed Duloxetine (mood, anxiety, and pain) and Trazadone (insomnia), but sometimes felt sick, bloated, and gained weight with those medications. She had also been prescribed other medications at various times but could not recall the names. (Tr. 29-41, 76-80)

Applicant has reduced her THC intake. She no longer takes THC products daily because of the security clearance process and has tried to see "if [she] could go without it" but has had "some really hard days." (Tr. 38) She last ingested a few drops of tincture of THC in May 2025 to assist with pain, relaxation and to help her sleep. She has continued to consume THC gummies including two days prior to her hearing. She has also used a cannabis or THC infused ointment or oil for pain, but it is unclear when she last used it. (Tr. 37-45) After the hearing she submitted evidence that Quickies chews are infused with THC. (AE A) She submitted evidence that Transdermal Gel 1oz includes a "1:1 ratio of full spectrum THC to CBD." (AE B)

Applicant was asked why she continues to use THC products after acknowledging future use could affect her security clearance eligibility and after she was aware that THC products were prohibited under federal law. She replied that she did not use THC "as a recreational product [or] for getting high [but uses] it for therapeutic [purposes] for pain and to help [her] sleep." She acknowledged understanding that medicinal use of marijuana was illegal under federal law commenting "Maybe we need to change that[.]". She has discussed various other remedies to treat her medical issues with health care providers and has tried other methods to help her sleep but has not found anything that works better for her than THC products. When asked if the only way to obtain a security clearance was to stop using all THC products Applicant stated: "Yes, if I had to, because of my financial situation right now." (Tr. 46-49)

Applicant has a prescription issued by a medical doctor in State A valid for the purchase of certain THC products in dispensaries. She has not been treated or diagnosed with respect to drug use and has not attended a drug rehabilitation program. (Tr. 74-79)

Military Record

Applicant had a solid record of performance in the Navy. She earned decorations and medals including a Joint Service Commendation Medal, Navy and Marine Corps Commendation Medal, multiple Navy and Marine Corps Achievement Medals and Good Conduct Medals, Afghanistan Campaign Medal, Military Outstanding Volunteer Service Medal, NATO Medal (ISAF), and other personal and unit awards and citations. She was qualified as an Enlisted Surface Warfare Specialist and Aviation Warfare Specialist. She made multiple deployments including for one year in Afghanistan, earned numerous qualifications and completed many courses. In about 2016, she appeared at an Article 15, Uniform Code of Military Justice hearing for violating an order regarding selling insurance and provided guidance to other sailors about how they could sell insurance. Although though no punishment was imposed, she then decided to retire. With the

exception of financial issues in 2005, she has had no other security concerning incidents and held a top secret clearance for many years. (Tr. 25-29, 57-73; GE 1; AE C-I)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, 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 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. Thus, this decision should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 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

Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 that she purchased, used and intended to continue to use THC in the future establish the following three disqualifying conditions under 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
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The following mitigating conditions under AG ¶ 26 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.

The DOHA Appeal Board recently noted that “the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs [recreational marijuana use may deserve less, or even no negative inference],” which is “especially . . . true when the use occurs permissibly under state law.” ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025) (citations omitted).

Several factors are important in the assessment of mitigation of marijuana possession and use: 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; and broken 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; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 at 5 (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 permissible under state law; no marijuana use after notice that marijuana use was federally illegal; visible commitment to abandoning all future drug involvement).

Applicant purchased and used products containing THC from about June 2023 until at least June 16, 2025, two days before her hearing. She uses THC products to help with pain, anxiety, insomnia and PTSD and has experienced better results with THC products than with prescription drugs authorized under federal law or other non-medicinal options. There is no evidence she purchased or used THC in a state where such conduct was prohibited under state law, and I find that her purchases from dispensaries with a prescription and use of THC in State A were lawful under that state’s law. She is credited with voluntarily disclosing her involvement with THC during her October 2023 S/I and for the remainder of the security clearance process.

AG ¶ 26(a) is not established. Applicant’s purchase and use of products containing THC for almost two years until at least June 2025 was not infrequent, was recent, and did not occur under circumstances unlikely to recur. Her behavior casts doubt on her current reliability, trustworthiness and good judgment.

AG ¶ 26(b) is not established. Although Applicant declared her willingness to stop using THC if required to obtain a security clearance, she has not established a pattern of

abstinence. In addition, she submitted no evidence she has disassociated from drug-using associates and contacts, no evidence that she has avoided environments where she used drugs, and she has not submitted the signed statement of intent to abstain from future drug use as required by AG ¶ 26(b)(3).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's age, military record, security clearance history, work history, and that she disclosed her drug involvement and substance misuse in her October 2023 S/I and on multiple occasions thereafter. I found her testimony to be sincere, credible, and corroborated by other record evidence. I specifically found credible her claims that she uses THC products to help with pain, anxiety, insomnia and PTSD, and that she believes THC products work better for her than other lawful medications and methods she has tried. I considered that she has reduced her intake of THC, no longer takes THC products daily because of the security clearance process and has tried to see if she can "go without it."

I considered that, after Applicant acknowledged the purchase and use of THC products with a valid state prescription card remained prohibited under federal law and acknowledged future use may affect her security clearance eligibility, she continued to use THC for more than 14 months. I also considered that, during her hearing, she attributed her willingness to abstain from the future use of THC to obtain a security clearance to her current financial situation.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, EO 10865, and the Directive to the facts and circumstances in the context of the whole person. Applicant failed to meet her burden of persuasion, and the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual’s eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under her current circumstances, a clearance is not warranted. In the future, she may well demonstrate persuasive evidence of her security worthiness.

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**

Subparagraphs 1.a-1.b: **Against Applicant**

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge