



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



Appearances

For Government: Daniel P. O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On August 27, 2024, the Defense Counterintelligence and Security Agency (DSCA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance abuse guideline the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on September 16, 2024, and elected to have her case decided on the written record in lieu of a hearing. She received the File of Relevant Material (FORM), inclusive of the Government's exhibits (GEs 1-4), on September 25, 2024, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM. The case was assigned to me on July 8, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used and purchased marijuana with varying frequency from October 2016 to July 2023; (b) used mushrooms with varying frequency from May 2021 to August 2023; (c) purchased mushrooms from a stranger in about January 2023; (d) used unprescribed medication Adderall from May 2016 to November 2021; and (e) purchased Adderall from a friend in May 2021. (GE 1)

In Applicant's response to the SOR, she admitted each of the allegations with explanations and clarifications. She claimed that after experimenting with marijuana in 2016 at age 21, she sought therapy to address her underlying issues and reduced her marijuana use to social situations. She further claimed that she legally purchased marijuana from a dispensary in 2022 in her state of residence during a hiking trip to alleviate body aches and pain. She also claimed to have discontinued all marijuana use in 2023. (GE 2)

Addressing her involvement with mushrooms, Applicant claimed limited use of the drug. She claimed her purchase of mushrooms from a stranger was isolated (only one time in 2023) and regrets her poor use of judgment in making this isolated purchase. Acknowledging her use of unprescribed Adderall, Applicant claimed her use was irresponsible and potentially harmful. She further claimed that her purchase of Adderall from a friend (a roommate) in 2021 was inappropriate and represented a failure on her part to fully consider the legal and ethical implications of misusing prescription drugs.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 2013 at the age of 19 and divorced in November 2016. (GE 3) She has no children from this marriage. She earned a high school diploma in May 2013 and a bachelor's degree in May 2023. (GE 3) She reported no military service.

Since July 2023, Applicant has been employed as a software developer for her current employer. Previously, she worked for other employers in various jobs. While she continues to be sponsored by her current employer for a security clearance, she has never held a security clearance. (GEs 3-4)

Use of Illegal Substances

Over the course of seven years (October 2016 to July 2023), Applicant purchased and used marijuana (inclusive of edibles), a drug federally banned by the Controlled Substance Act (21 U.S.C. § 802, et seq.) (CSA), but legalized for medicinal purposes in her state of residence. (GEs 3-4) Marijuana was her major drug of choice, and one of only two illegal drugs she cited in the electronic questionnaires for investigations processing (e-QIP) she completed in August 2023.

In her personal subject interview (PSI), Applicant told the investigator that after experimenting with the drug in 2016 at the age 21, she used marijuana frequently (almost daily) between 2017 and 2018. Due to concern about her abusive use of marijuana, she sought therapy in 2019 to address her underlying issues of anxiety and depression. (GE 4) And, with the aid of therapy, she deceased her marijuana use to social situations (generally once a month) between 2019 and 2022, which enabled her to improve her focus on her studies. (GE 4)

Beginning in July 2022, Applicant resumed her use of marijuana. Between July 2022 and October 2022, Applicant used marijuana almost daily for alleviation of the pain she incurred on a long-distance hiking trip. (GEs 3-4) From October 2022 to January 2023, she used marijuana a few times a month before ceasing her use of the drug altogether in July 2023 out of concern for jeopardizing her employment status and lack of consideration of the legal and ethical implications of the use of illegal drugs. (GEs 2-3)

Applicant's purchases of marijuana began with her tri-monthly purchases of the substance from a friend at the rate of \$75 for a quarter ounce between 2016 and 2018. (GE 4) She ceased her purchases until July 2022, when she resumed her marijuana purchases from a legal dispensary to address her hiking-related aches and pains. Since her last purchase of marijuana in October 2022, she has made no further purchases of the drug. (GEs 3-4)

Besides marijuana, Applicant used hallucinogenic mushrooms on several occasions between May 2021 and January 2023, mostly in micro-dose form. (GE 3) When interviewed by a government investigator in her October 2023 PSI, she told the investigator she used mushrooms intermittently between May 2021 and August 2023. (GE 4) Altogether, Applicant admitted to using the mushrooms twice in 2021 and eight times between October 2022 and August 2023 to enhance her creativity and give her a boost. (GEs 3-4) Her mushroom purchases were limited to a one-time purchase from a stranger in January 2023. (GEs 2-4) Her purchases of mushrooms consist of three purchases from a stranger in January 2023. (GEs 2-4) Applicant ceased using mushrooms in August 2023 out of concern for her employment.

While a college student, Applicant used unprescribed Adderall on several occasions between May 2016 and November 2021 for study aid purposes. (GEs 2-4) In 2016, she was given an Adderall pill by a family member to help her with an exam. And,

in 2021, she purchased Adderall pills from a friend who had a medical prescription for the drug. (GEs 2-4)

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a right to a security clearance.” 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. Eligibility for access to classified information may only be granted “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.

Application approvals 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Burdens of Proof

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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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

Security concerns are raised over Applicant's history of purchases and usage of illegal and unprescribed drugs (i.e., marijuana, hallucinogenic mushrooms, and unprescribed Adderall) While she has never been granted a security clearance, she continues to be sponsored by her current employer.

Drug Involvement concerns

Applicant's recurrent purchase and use of marijuana, mushrooms, and unprescribed Adderall over a multi-year period between October 2016 and August 2023 are detailed in her e-QIP, PSI, and SOR response, On the strength of the evidence presented, two DCs of the AGs for drug involvement apply to Applicant's situation: DC ¶¶ 25(a), "any substance misuse" and 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia."

While Applicant has unconditionally committed to abstinence from the use of illegal drugs (marijuana and hallucinogenic mushrooms), as well as unprescribed medications (Adderall), her abstinence decisions are still very recent (less than two years) and lack the durability necessary to make safe non-recurrence risk predictions. Under these circumstances, none of the potentially mitigating conditions covered in the Directive are available to Applicant. See ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018); ISCR Case No. 07-10804 (App. Bd. June 19, 2008). Mitigation is available only for her infrequent use of unprescribed Adderall medication while in college.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of illegal drug purchases and use (marijuana, hallucinogenic mushrooms) and unprescribed use and purchases of a medication (Adderall) over a considerable number of years reflect judgment lapses incompatible with his holding a security clearance.

From a whole-person perspective, Applicant has not established enough independent probative evidence of her overall, trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. While she is deserving of considerable credit for the contributions she has made to the defense industry and candor she has displayed, it is too soon to absolve Applicant of risks of recurrent marijuana and mushroom purchases and use. Only her limited use and purchases of unprescribed Adderall reflect enough evidence of

mitigating circumstances and time lapse to warrant mitigation on a piecemeal basis independent of her other incidences of substance abuse.

I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that Applicant's past use of federally banned marijuana and hallucinogenic mushrooms are not mitigated. Mitigated are her use and purchases of unprescribed Adderall. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
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Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e::	For Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge