



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



In the matter of: )  
 )  
 ) ISCR Case No. 23-02716  
 )  
Applicant for Security Clearance )

## Appearances

For Government: Dan O'Reilley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

04/10/2025

## Decision

LOUGHREAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

## **Statement of the Case**

On February 12, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on April 18, 2024, and requested a hearing before an administrative judge.

The case was assigned to me on November 21, 2024. The hearing convened as scheduled on February 10, 2025. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) M and N (AE A through L were attached to the response to the SOR), which were admitted without objection.

## **Findings of Fact**

Applicant is a 28-year-old employee of a defense contractor. She served on active duty in the U.S. military from 2019 until she was discharged under honorable conditions (general) for misconduct (drug abuse) in November 2022. She has a bachelor's degree. She has never married, and she has no children. (Transcript (Tr.) at 10-11; GE 1, 3; AE D)

Applicant held a security clearance in the military. She did not have access to classified information, but as a financial analyst, she had access to personally identifiable information (PII). She suffered from anxiety in the military and was diagnosed with unspecified anxiety disorder for her Department of Veterans Affairs (VA) disability claim. Her VA disability rating is 50%. (Tr. at 14-15, 20; Applicant's response to SOR; AE E, G, K)

Applicant was stationed in 2020 in a state where medical and recreational marijuana possession and use did not violate state law. In late 2020, as a means of dealing with her anxiety and loneliness brought on by the COVID-19 pandemic, she purchased about one to two tetrahydrocannabinol (THC)-infused drinks from a dispensary on about three occasions and drank them. (Tr. at 12-15, 23-30; Applicant's response to SOR; GE 2, 3) While it is not 100% clear from the record, there is sufficient evidence for a finding that what she purchased and consumed was delta-9 tetrahydrocannabinol (THC-9 or delta-9 THC), which is the THC that has been identified as "the active ingredient in marijuana" for decades.

Applicant deployed from about July 2021 to January 2022. When she returned, her relationship with her boyfriend ended. She felt sad in addition to her experiencing anxiety and loneliness. In about February 2022, she purchased one to three "joints" of marijuana from a dispensary and smoked them by herself. (Tr. at 30-32; Applicant's response to SOR; GE 2, 3)

Applicant was administered a urinalysis drug test in July 2022. Her urine sample tested positive for tetrahydrocannabinol-8 (THC-8 or delta-8 THC). (Tr. at 11, 16, 39; Applicant's response to SOR; GE 2, 3; AE F) Delta-8 THC is not to be confused with delta-9 THC. The Food and Drug Administration provides the following information about delta-8 THC:

Delta-8 tetrahydrocannabinol, also known as delta-8 THC, is a psychoactive substance found in the Cannabis sativa plant, of which marijuana and hemp are two varieties. Delta-8 THC is one of over 100 cannabinoids produced naturally by the cannabis plant but is not found in significant amounts in the cannabis plant. As a result, concentrated amounts of delta-8 THC are typically manufactured from hemp-derived cannabidiol (CBD). <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

The legality of delta-8 THC is murky, with arguments on both sides on whether it is a federally controlled substance. For this decision, a determination whether it is a federally controlled substance is unnecessary because it was banned along with other CBDs by the military.

Applicant waived her right to remain silent and was interviewed by military investigators. She admitted her illegal use of the THC-infused tea in 2020 and her marijuana use in February 2022. She denied intentionally using delta-8 THC. She vaped nicotine, and she used another person's vape pen. She theorized that she may have inadvertently ingested delta-8 THC. She has consistently maintained throughout the security clearance process that she did not intentionally use delta-8 THC. She added that another possibility is that she may have accidentally bought and used a delta-8 THC vape cartridge from the smoke shop where she bought her nicotine cartridges. (Tr. at 18, 32-38; Applicant's response to SOR; AE K)

Applicant was disciplined at nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for failure to obey an order or regulation under Article 92 of the UCMJ for the use of delta-8 THC, and wrongful use of a controlled substance under Article 112a for her marijuana use. She was reduced from pay grade E-4 to E-3. She was administratively discharged in November 2022. (Tr. at 11, 39; AE D, K)

Applicant started a civilian job in November 2022, shortly after her discharge from the military. She traveled to her hometown for Thanksgiving. While there, she went to a neighboring state where marijuana is legal under state law, and she or her friend purchased marijuana. She smoked the marijuana with her friend. (Tr. at 40-41; Applicant's response to SOR)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2023. She reported that she was separated from the military after a failed drug test. She reported that she used THC "a couple of times to help with stress and anxiety" between December 2020 and July 2022. She added "I do not intend on using THC in the future because there are other ways to cope, and I do not want [to] ruin my future any more than I already have. My career and my life are too important to me." She did not report her marijuana use in November 2022. (Tr. at 42-44; GE 1)

Applicant was interviewed for her background investigation in June 2023. She fully discussed her marijuana use as discussed above, including her use in November 2022. She denied knowingly using delta-8 THC. She could not answer why the November 2022 use was not reported on her SF 86. Falsification of the SF 86 was not alleged in the SOR, and Applicant credibly testified that she did not intentionally provide false information on it. (Tr. at 42-44; GE 3)

Applicant expressed remorse for her illegal drug use. She receives therapy for her anxiety disorder, and she has adopted other means to cope. She does not intend to use marijuana again. She passed drug tests administered in March and June 2024, and

she signed a 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. (Tr. at 16-22, 45-46; AE A-C, M)

Applicant submitted documents and letters attesting to her excellent job performance and strong moral character. The authors praised her trustworthiness, positive attitude, willingness to take care of others, ethical standards, honesty, reliability, leadership, dependability, maturity, dedication, decorum, compassion, work ethic, and integrity. (AE H-K, N)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse 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 guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual’s judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[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 number of 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.

Applicant possessed and used marijuana while she held a security clearance and was working in a sensitive position. AG ¶¶ 25(a), 25(c), and 25(f) are applicable.

Applicant was administered a urinalysis drug test in July 2022. Her urine sample tested positive for delta-8 THC. She testified that she did not knowingly use delta-8 THC. The Appeal Board has held:

The innocent consumption or use of an illegal drug or of a prescription medication without a prescription does not raise security concerns under Guideline H. For example, if an applicant consumes brownies laced with marijuana at a party without knowing or suspecting they contained marijuana, such consumption does not raise concerns about his or her reliability, trustworthiness, judgment, or willingness to comply with laws and regulations and does not establish disqualifying conditions under Guideline H. . . .

In positive drug test cases, the burden of establishing innocent consumption will be on the applicant. An applicant's positive test for an illegal drug is sufficient to establish various Guideline H disqualifying conditions, e.g., AG ¶¶ 25(a), "any substance misuse;" 25(b), "testing positive for an illegal drug," and possibly others depending on the circumstances. Once a positive drug test is proven, an applicant has the burden to rebut, explain, extenuate, or mitigate the security concerns arising from that positive test. Directive ¶ E3.1.15. When an applicant claims the positive drug test was the result of innocent use or consumption, the key issue will likely be whether he or she presented sufficient evidence to prove that claim and thereby refute the pertinent SOR allegations. ISCR Case No. 22-01176 at 4-5 (App. Bd. Aug. 24, 2023) (internal citations omitted)

Applicant vaped nicotine and theorized that she may have borrowed someone else's vape pen and inadvertently ingested delta-8 THC. Another possibility is that she may have accidentally bought and used a delta-8 THC vape cartridge from the smoke shop where she bought her nicotine cartridges. Marijuana use is prevalent in states that no longer outlaw it. Delta-8 THC products add another layer to the possibility of unknowing ingestion as they may be available in locations where THC-9 products are not sold. Applicant readily admitted that she used marijuana (delta-9 THC) on previous and subsequent occasions, but she credibly testified that she did not knowingly use delta-8 THC. I find that Applicant presented sufficient evidence to prove her claim of unknowing ingestion and thereby refuted the pertinent SOR allegation. SOR ¶ 1.b is concluded for Applicant.

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.

Applicant's marijuana use while holding a sensitive position gives pause. The Appeal Board has consistently held that after being adequately placed on notice that such conduct was inconsistent with holding a security clearance, an applicant who continues to use marijuana demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See, e.g., ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023).

However, I believe Applicant has matured. She expressed remorse for her illegal drug use. She firmly and credibly committed to being drug-free. She is receiving therapy for her anxiety, and she passed several drug tests. She signed a 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.

I conclude that Applicant's conduct no longer casts doubt on her reliability, trustworthiness, and good judgment. I find that she has abstained from illegal drug involvement for an appropriate period, and that illegal drug involvement is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

### **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 relevant 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 have incorporated my comments under Guideline H in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guideline H.

### **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

Subparagraphs 1.a-1.b:                          For Applicant

### **Conclusion**

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

---

Edward W. Loughran  
Administrative Judge