



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



In the matter of:

)
)
)
)
)

ISCR Case No. 24-01030

Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: Peter Noone, Esq.

08/12/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the Guideline H (drug involvement and substance misuse) security concerns arising from her past and recent use of medical marijuana, which is prohibited by federal law. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed a security clearance application (SCA) on March 1, 2022. On October 29, 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On December 2, 2024, Applicant provided a response to the SOR (Answer). She admitted SOR allegations ¶¶ 1.a and 1.b, and she denied SOR ¶ 1.c. She requested a hearing before an administrative judge. On April 30, 2025, the case was assigned to me, and on May 20, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 9, 2025.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2. Applicant testified, three witnesses testified on her behalf, and she offered ten Applicant Exhibits (AE) A through J. All proffered documents were admitted into evidence without objection. I marked the Government's February 4, 2025 disclosure letter as Hearing Exhibit (HE) 1 and appended it to the record. DOHA received the hearing transcript (Tr.) on June 16, 2025.

Findings of Fact

Applicant is 29 years old. She is unmarried and does not have any children. She has been employed by a government contractor since July 2018, and she also received a secret security clearance in 2018. In May 2021, she earned her bachelor's degree in computer engineering technology. She submitted an SCA on March 1, 2022. When she completed the SCA, Applicant did not disclose her current use of medical marijuana, under Section 23 – Illegal Use of Drugs or Drug Activity, because her use was legal in her state of residence. (GE 1; Tr. 19, 21-22, 25, 41)

Drug Involvement and Substance Misuse

Applicant's past drug use was limited to marijuana only. She obtained marijuana at a medical dispensary using a state-issued medical marijuana card prescribed by her medical provider. The prescribed marijuana was used to treat Applicant's medical condition of anxiety and post-traumatic stress disorder (PTSD). During questioning, Applicant admitted that she was never officially diagnosed with PTSD. She was aware that she had been diagnosed with depression and anxiety. (GE1; Tr. 22, 38, 41, 80-81)

In March 2020, Applicant experienced a traumatizing breakup with a boyfriend. One day at work, she experienced trouble breathing, an accelerated heart rate, and suicidal ideations. She reported to her employer's medical office and was transported to a medical emergency room. She was admitted into the psychiatric ward for approximately nine days. She was diagnosed with depression and anxiety. She was prescribed Zoloft, Trazadone, and other medications, but she did feel the medications helped her and she stopped taking them. In June 2020, she discontinued seeing her mental health professional because she still experienced symptoms of anxiety and insomnia. (Tr. 22-29, 52, 54-56; GE 2)

Applicant contacted a medical marijuana dispensary near her residence and was given a list of state-licensed medical marijuana providers. In June 2020, she met with another mental health professional who prescribed medical marijuana to treat her symptoms. Applicant admitted she also conducted research about the use of medical

marijuana while possessing a DOD security clearance. She said the results were mixed – some reports said it was prohibited, and other research said it was acceptable. She also checked with her employer's medical department before obtaining the prescription to verify if marijuana use for medicinal purposes was permissible by her employer. She was told that as long as she had a medical marijuana card, it was acceptable. She was required to submit her medical marijuana card to her employer's medical department every year. (Tr. 22-29, 52, 54-56; GE 2; AE H)

Applicant admitted she used medical marijuana on a nightly basis from about June 2020 to at least March 2025. On cross examination, however, she stated she only used it three or four nights during the week for insomnia. She always purchased her medical marijuana from a state-licensed dispensary, and she has never used marijuana for recreational purposes. On October 29, 2024, the SOR was issued and detailed the reasons why her use of marijuana was inconsistent for individuals possessing a security clearance. She responded to the SOR on December 2, 2024. In her Answer, she denied the facts alleged in SOR ¶ 1.c, "You intend to continue using marijuana in the future," and explained,

I deny stating that I intend to continue using medical marijuana in the future. If you review [the investigator's summary of my [security clearance background interview]]...you will find that I expressed my willingness to discontinue the use of medical marijuana if it jeopardizes my security clearance or job. Furthermore, I indicated that I would seek an alternative solution to address my sleep issues if necessary. (Tr. 29-32, 61; Answer)

Despite Applicant's response after receipt of the SOR, she continued to use medical marijuana until late March 2025. Less than three months later during the security clearance hearing, she was asked how long she had been aware that using marijuana was illegal under federal law. She stated she has always known it was illegal under federal law, which is why she inquired about it with her employer's medical office before obtaining her prescription of medical marijuana. She did not provide supporting documentation to show that she was advised by her employer that it was acceptable to use medical marijuana while possessing a security clearance. She only provided documentation to her employer's medical department of her annual submission of her medical marijuana card, which showed she was authorized to purchase 2.5 ounces of marijuana per month in 2022, and then it doubled to five ounces a month for the following years. Applicant stated that she did not use nearly that much marijuana to aid her insomnia. (AE H; Answer; Tr. 58-59, 62)

Applicant received interrogatories from the Government that she completed and signed on October 13, 2024. She testified at the hearing that the interrogatories provided her some notice that the Government may be concerned about her use of medical marijuana. In her response to interrogatories, she verified the information provided in the investigator's summary of her security clearance background interview. Applicant was asked one question on the interrogatory itself – "When did you last use marijuana or any product containing Tetrahydrocannabinol (THC)?" Applicant responded she had used it

the night before while she was going to bed. She testified, “I’ve offered from the very beginning, like, hey, I’m willing to stop [using medical marijuana] if I’m told or anything like that, and no one’s actually at any point has strictly told me, hey, you need to stop.” (Tr. 63-64; GE 2)

Applicant acknowledged that the SOR gave her additional notice that the Government may be concerned with her continued use of medical marijuana, so she consulted with her employer’s security office for guidance. She was advised by a security office employee not to worry about the SOR because, in her response to the SOR, she could provide a cover letter to explain her use of marijuana for medical reasons, detail her compliance with the recommended usage, and submit a positive report of her work ethic. She did not provide any documentation from the security office to support her claim. Applicant testified that she stopped all use of medical marijuana in late March 2025 because it became “abundantly clear” to her, after being scheduled for a security clearance hearing, that her use of marijuana for medicinal purposes was considered inappropriate by the Government. (Tr. 33-36)

Character Evidence

Applicant had three witnesses testify on her behalf. Her roommate of five years stated that Applicant is trustworthy and honest. She never witnessed Applicant abusing her use of medical marijuana. Her roommate is also an employee at Applicant’s current workplace. The second witness, Applicant’s co-worker, stated that Applicant is extremely loyal, a rule follower, and a dedicated worker. The final witness, Applicant’s supervisor since late 2021, stated that she was not aware that Applicant was using medical marijuana. She admitted some memos about marijuana use had been submitted at the workplace by her employer, but she could not remember specifically if any of the memos addressed the use of marijuana for medicinal purposes. Applicant’s supervisor became aware of the security concerns when Applicant shared a copy of her October 2024 SOR. They discussed the SOR, and the supervisor believed Applicant was doing everything in her power to follow the rules. Within a week of their discussion, the supervisor told Applicant “that marijuana usage is federally illegal. And although she felt [Applicant] was following all of the rules, that DOD seems to be very clear that [medical marijuana use] was a violation [of] the federal law and that [Applicant’s use of medical marijuana] should be stopped.” She also reviewed Applicant’s Answer to the SOR where Applicant denied that she intended to use medical marijuana in the future. (SOR ¶ 1.c) Applicant’s supervisor testified that she was not aware until recently that Applicant had continued using medical marijuana until late March 2025. All three witnesses supported Applicant’s eligibility for a security clearance. (Tr. 112-150)

Applicant also submitted some written character reference letters and positive employee annual performance reviews. Applicant’s boyfriend, who is also a co-worker at Applicant’s current workplace, stated that Applicant is a woman of her word and that she used medical marijuana because it was the only solution she could use to effectively treat her PTSD. He stated, “Even now, after being notified of the chance of her clearance being revoked, she has stated she is willing to stop the use of medicinal marijuana immediately.”

He considers her to be a level-headed, upstanding person. Another co-worker, who has known Applicant since 2021 and also considers her as a friend, stated she was a trustworthy and engaged U.S. citizen of sound judgment. Both references believe she should retain her current security clearance. (AE A-F)

Applicant provided a letter from her therapist dated June 3, 2025. Her therapist acknowledged that Applicant is under her care for ongoing mental health treatment, and that Applicant has not exhibited any signs of substance abuse. The letter did not disclose a diagnosis, dates of treatment, or a prognosis. Applicant also submitted a signed declaration dated June 5, 2025, stating that she will not use any illegal drugs, including medical marijuana, in the future. (AE I, J)

Policies

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 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, these guidelines are applied 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 Executive Order 10865 provides that 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

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

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(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used and purchased medical marijuana, with varying frequency, from about June 2020 to at least late March 2025, and while she was employed in a sensitive position, i.e. one in which she held a security clearance. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following 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 or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibly.

Although potentially legal under certain state laws, Applicant's use of medical marijuana is still impermissible under federal controlled substances laws as well as DOD industrial security policy guidance. Applicant's uncontested testimony is that she asked her employer's medical department about the consequences of using medical marijuana while possessing a security clearance. She stated that she was told it was not an issue and continued her use from about June 2020 to late March 2025. She did not submit any documentation to support her claim.

Applicant continued to use marijuana for medicinal purposes, despite noting the illegal drug question when she filled out a March 2022 SCA, and after being questioned about her use of medical marijuana during her April 2022 background interview. The interrogatories she completed in October 2024, however, were definitely a "red flag" that should have put her on notice that the federal government was concerned about her continued use of medical marijuana, especially since she was already aware recreational marijuana use was prohibited by federal law. The only question listed in the interrogatory which required a response was, "When did you last use marijuana or any product containing Tetrahydrocannabinol (THC)?" Even if Applicant may have been provided incorrect information by her employer's medical department, when she read this question, the government's concern about her continued use of medical marijuana was made crystal clear. This concern is even more apparent when the SOR was issued the same month she provided her response to the interrogatory. The SOR specifically addressed her use of marijuana, and why a determination was necessary to see if her security clearance should be revoked.

I found Applicant to be credible, although somewhat naïve. What is really troubling, however, is that she denied any intent for future use of marijuana in her December 2024 SOR response. Her supervisor also testified that, about a week after Applicant received the SOR, she recommended to Applicant that stopping her use of medical marijuana would be in her best interests. Despite all of this information, Applicant chose to continue using medical marijuana until late March 2025, while working in a sensitive position or

having access to classified information, and less than three months before her security clearance hearing. Applicant's present short-term abstinence and her written June 2025 declaration that she will never use any illegal drugs in the future is insufficient, in and of itself, to guarantee against future use of marijuana. She has not established a sufficient pattern of abstinence. None of the mitigating conditions apply. As such, Applicant failed to mitigate the drug involvement and controlled substance misuse security concerns.

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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, their off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant's professionalism, dedication, and reliability at work have earned her the respect and trust of her co-workers and supervisor, who have no hesitation in recommending her for security clearance eligibility. Her continued use of medical marijuana despite her SOR response and receiving her supervisor's recommendation that she stop using it, continues to cast doubt on her current reliability, trustworthiness, and good judgment. In addition, not enough time has passed to demonstrate full rehabilitation.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of responsibility, and a better history of behavior consistent with her obligations under Federal law, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate the drug involvement and substance misuse security concerns.

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, and 1.c: Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge