



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 24-01855

Appearances

For Government:

Andrew Henderson, Esquire, Department Counsel

For Applicant:

Emily Goeke, Esquire
Armstrong Teasdale LLP

07/23/2025

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On January 14, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. 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 answered the SOR in writing (Answer) on March 18, 2025, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 15, 2025. The case was assigned to me on April 22, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 28, 2025. I convened the hearing as scheduled on July 2, 2025. The Government submitted Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits 1 through 9 and A through C. Her exhibits were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 14, 2025.

Findings of Fact

Applicant is 31 years old and married. She has a master's degree. She has been employed by a defense contractor since 2015. She became a manager of proposals in December 2023, and seeks to retain national security eligibility and a security clearance in connection with her employment. (Government Exhibit 1 at Sections 12, 13A, and 17; Tr. 17-18.)

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. She admitted both allegations under this paragraph with explanations.

1.a. Applicant admitted that she used marijuana in various forms at least seven times between 2011 and 2023. Between 2011 and 2016 she smoked or vaped marijuana three times. She did not like the burning sensation. Twice in 2017 and twice in 2023 she used THC edibles. She credibly stated that she has no future intentions of using marijuana. She realizes the negative impact continued marijuana use can have on her life and career. (Tr. 18-24.)

1.b. Applicant admitted that she used THC edibles four times, twice in 2017 and twice in 2023, while holding a sensitive position, i.e., one in which she held a security clearance. She has stated that she will not use marijuana in any form in the future. (Government Exhibit 4; Tr. 24-25.)

Applicant provided a written statement of intent not to use marijuana or any other illegal drugs in the future. She has taken a marijuana awareness course and had several negative drug tests since issuance of the SOR. She avoids social situations where marijuana is used. Her friends and her husband know that she cannot be around illegal drugs. As stated, she evinces a credible intent not to use marijuana in the future. (Applicant Exhibits 1, 2, 3, 9, B, and C; Tr. 25-28.)

Department Counsel indicated some concern that Applicant's testimony was at odds with her previous written statements about the extent of her marijuana use. I have examined the statements and, while they are different, the difference is insufficient to show any attempt at falsehood on Applicant's part. They are set forth below:

Applicant has filled out Electronic Questionnaires for Investigations Processing (e-QIPs), in 2016 and 2024. Question 23 of the e-QIP asks about drug use.

In the October 2016 e-QIP she stated in answer to Question 23, "I rarely have used drugs with THC. If I could estimate it would be around five times in my lifetime." (Government Exhibit 2.)

In the January 2024 e-QIP she stated in answer to Question 23 that her use in the period between 2016 and 2023 was, "Infrequent use: If anything once or twice a year." (Government Exhibit 1.)

Finally, during an interview with a government investigator and later in DOHA interrogatories Applicant stated that she may have used marijuana "1 to 2 times per year" between 2011 and 2023. (Government Exhibit 3.)

Applicant adamantly stated that these figures were incorrect and that she only used marijuana in any form seven times. Viewing the evidence as a whole, the difference is *de minimis*. (Tr. 28-30.)

Paragraph 2 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows poor judgment, untrustworthiness, or unreliability as set forth in Paragraph 1, above. Applicant admitted the single allegation under this guideline with explanations. The facts set forth above apply to this allegation as well.

Mitigation

Applicant is viewed as an outstanding manager by her supervisors. Her performance evaluations show a driven and talented person who has advanced rapidly to a management position while in her early 30s. She is described as someone who exhibits “strong leadership.” She has received work awards. (Applicant Exhibits 4 and 5; Tr. 30-31.)

Applicant submitted three character reference letters from co-workers, including a former manager. All of the letter writers knew of the allegations in the SOR, particularly using marijuana while holding a security clearance. She is described as “ethical,” “trustworthy,” and a person of “integrity.” They recommend her for a position of trust. (Applicant Exhibits 6, 7, and 8; Tr. 31.)

Policies

When evaluating an applicant’s national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

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

Applicant possessed and used marijuana on a very infrequent basis from 2011 to 2023. She used marijuana in the form of edibles four times while holding a sensitive position. All of the stated disqualifying conditions have application to this case.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana and issued the Guidance to "provide clarifying guidance." She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by

holders of security clearances. She provided further clarification of Federal marijuana policy, writing that “prior recreational marijuana use by an individual may be relevant to adjudications but [is] not determinative.” She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant’s marijuana use is two years in her past and has not been repeated. She explained at length that she thoroughly understands the consequences of any future drug use or exposure, and has taken several steps to avoid it. She credibly testified and submitted a written declaration of her intent not to misuse drugs in the future. She also acknowledged that such misuse would be grounds for revocation of national security eligibility. Her husband and friends know that marijuana is no longer a part of her life. Viewing her marijuana use in the context of the whole person, Applicant has mitigated the security significance of her past drug involvement. Security concerns under Guideline H are mitigated. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions under AG ¶ 17 are applicable to Applicant's conduct:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

As stated under Paragraph 1, above, Applicant has expressed remorse for her infrequent drug abuse. There is compelling evidence that it shall not be repeated. She has mitigated the single allegation under this guideline. Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of her prior drug use and the associated personal conduct. As stated elsewhere in this decision, and supported by the evidence, Applicant is a talented and

successful young engineer and manager who has learned from her mistakes and has moved forward with her life without drugs. Her conduct has earned her the privilege of being granted national security eligibility. Paragraphs 1 and 2 are found for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge