



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00904

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel

For Applicant: John Adamson, Personal Representative

09/10/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 24, 2023. On January 2, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him 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.

Applicant answered the SOR on January 9, 2025, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 13, 2025. The case was assigned to me on June 26, 2025. On July 11, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 14, 2025. I convened the hearing as scheduled. Government Exhibits (GX)1 through 3 were admitted in evidence without objection.

Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I left the record open until August 25, 2025, to enable Applicant to submit additional evidence. He timely submitted AX H, which was admitted in evidence without object. DOHA received the transcript on August 25, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 46-year-old employee of a defense contractor. Before he was hired by a defense contractor, he was a self-employed mechanic. He attended high school but did not graduate. He married in May 2012 and divorced in May 2022. He has three children, ages 21, 14, and 11. He has never held a security clearance.

When Applicant submitted his SCA, he answered "No" to the questions about illegal drug use during the previous seven years. When he was interviewed by a security investigator in September 2023, he disclosed that he was kicked out of his home by his mother at age 15 and lived in the woods. He supported himself by breaking into vehicles and stealing money and drugs. When he was interviewed by a security investigator in September 2023, he disclosed that he broke into 50 cars. Court records reflect that he was charged with burglary eight times in 1995 and was sentenced to suspended jail sentences each time. Court records also reflect that he was charged with larceny seven times in 1998 and received an unconditional discharge. He told the investigator that he was held in a correctional facility for four to five months while awaiting trial and held in a minimum-security facility for 90 days while awaiting sentencing, and was sentenced to 1,000 hours of community service and placed on probation for five years. He disclosed that he used cocaine from about 1995 until 1999, and he used marijuana from about 1993 until the date of the interview. (GX 3 at 2-6)

When Applicant responded to DOHA interrogatories in November 2024, he disclosed that he used cocaine until July 1997 and continued to use marijuana weekly to control his post-traumatic stress disorder (PTSD). (GX 2 at 12) He testified that he stopped using cocaine in 2001, when he realized that his life "was falling apart and it wasn't getting any better." He stopped associating with his drug-using friends and "hooked back up" with his father, who gave him a job at the garage that he owned and operated. (Tr. 21-22)

Applicant worked for his father until his father developed dementia and reached the point where he could not run his business. Applicant unsuccessfully tried to run the business. He closed the garage and found work at another shop owned and operated by a father and son.

Applicant testified that he became very anxious about trying to run his father's shop alone, and he began having difficulty falling asleep. He went to his primary physician and obtained a prescription for marijuana. His doctor diagnosed him with post-traumatic stress disorder (PTSD), based on his childhood trauma, his father's dementia, and the sudden deaths of friends and acquaintances. (Tr. 37-38) His most recent medical marijuana card was issued in May 2024 and expired in May 2025. (AX A)

Applicant decided to apply for employment at a defense shipyard at age 45, when he realized that he needed to have some sort of retirement. He also felt an obligation to give back to his country for his behavior during his early years. (Tr. 23)

Applicant testified that he disclosed his marijuana use during the job interview. He underwent a hair follicle test for marijuana at the shipyard medical facility and presented his marijuana card to the testing personnel, who made a copy of it. He was hired, given an interim clearance, and began working. (Tr. 35)

Applicant testified that he knew that while marijuana was legalized in his state of residence, it was still federally illegal, but he did not really understand what that meant. (Tr. 41) When he could not "badge in" at work, he learned that his marijuana use was an issue. He stopped using marijuana and did not renew his marijuana card after it expired. In March 2025, he met with his physician to discuss alternatives to medical marijuana. His physician prescribed another drug for anxiety and hypertension. (AX B) Applicant testified that the alternate medication has been effective in controlling his anxiety and sleep issues. (Tr. 27) He underwent drug screening in July and August 2025, and his tests were negative for marijuana as well as amphetamines, benzodiazepines, cocaine, opiates, and oxycodone. (AX C; AX D).

Applicant testified enthusiastically about his job. He has been on administrative leave without pay, pending a decision about his clearance. (Tr. 36) When asked why he wants to return to work, he responded:

Because I love the job. I love what I was a part of. I loved my crew. It made me feel like I was—I finally had a purpose in life as far as, you know, providing for my country and making up for things I did in the past. And it was like the last step of completely repairing my life from being so bad when I was younger.

(Tr. 30)

Applicant no longer associates with drug users. He spends his limited free time doing restoration work on his house, and he spends weekends with his three children. (Tr. 48-49)

At the hearing, Applicant testified that he was willing to sign a statement of intent to refrain from further use of marijuana. I held the record open for him to do so, and he timely submitted it. (AX H)

A supervisory employee at the shipyard testified that she has known Applicant for five or six years, because her husband and Applicant work together restoring old vehicles. Applicant has become a family friend. When Applicant asked her about working at the shipyard, she advised him to disclose his marijuana use and let the employer decide what to do. (Tr. 18-19)

Applicant's area superintendent has observed his work for about a year and regards him as dependable, responsible, honest, and courteous. When Applicant was put on administrative leave, his crew missed him because of his patience and technical skills. (AX E) Applicant's immediate supervisor describes him as respectful, trustworthy, dedicated, professional, and a "crucial asset" to their department. (AX F) Applicant's shift operations manager considers him a dependable and responsible crew member. He describes Applicant as "a world-class shipbuilder with tremendous trade skills, dedication that is second to none." (AX G).

Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865

§ 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

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. . . .

Applicant’s admissions and the evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions 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 and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is established. Applicant's non-medical use of marijuana and illegal cocaine use are mitigated by the passage of time. His medical use of marijuana was more recent and frequent, but it is unlikely to recur now that Applicant has found a rewarding job, understands that marijuana is still illegal under federal law, and has found a substitute for marijuana to control his anxiety and sleep deprivation.

AG ¶ 26(b) is established. Applicant no longer associates with illegal drug users. He is now working and living in a rewarding and respectable situation, and he has provided the statement of intent set out in AG ¶ 26(b)(3).

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. His enthusiasm for his new job and changed lifestyle was obvious and supported by the testimonials from his coworkers and supervisors in his current job.

After weighing the disqualifying and mitigating conditions under Guideline H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised under that guideline.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

FOR APPLICANT

Subparagraphs 1.a through 1.d:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge