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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
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Filing Date: September 9, 2011 )  
 ) Case No.: TSO-01109  
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Issued: November 10, 2011

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXX X. XXXXXX(hereinafter referred to as “the Individual”) to obtain a security clearance under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not grant a security clearance to the Individual.

**I. BACKGROUND**

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the Local Security Office (LSO) stated that the Individual had: (1) been diagnosed by a psychiatrist as suffering from cannabis abuse, an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability; (2) used marijuana and therefore engaged in illegal drug use; and (3) engaged in unusual conduct which brought his honesty, trustworthiness, and reliability into question by providing inaccurate information to DOE security officials.<sup>1</sup>

<sup>1</sup> *See*, 10 C.F.R. § 710.8(h), (k) and (l).

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on September 13, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, two of his supervisors, his Employee Assistance Program (EAP) Counselor (the Counselor), and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. TSO-1109 (hereinafter cited as "Tr."). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10, while the Individual submitted one exhibit, marked as Exhibit A.

## II. FINDINGS OF FACT

The present proceeding involves an Individual who is an applicant for a DOE security clearance. The Individual has a documented history of criminal activity. In April 1996, the Individual was charged with Contributing to the Delinquency of a Minor and Parties to a Crime. Exhibit 6 at 1. In approximately 2000, the Individual was charged with an Open Container violation. Exhibit 4 at 9. In May 2005, the Individual was charged and convicted of Driving Under the Influence. Exhibit 7 at 10.

The Individual was involved in a fourth incident requiring the intervention of law enforcement. The Individual admits that, on September 21, 2007, he smoked marijuana in the presence of his minor niece (the Niece). At that time, the Niece, her mother, and her sister were part of the Individual's household. The Niece reported this incident to her father, a former boyfriend of the Individual's sister-in-law who, unlike the Niece and her mother, was not a part of the Individual's household. Exhibit 10 at 3. The Niece's father contacted social service officials and reported the Individual's use of marijuana in the presence of his daughter, and further alleged that the Individual was hitting his daughter with shoes and a boat paddle. The Niece's father sought her removal from the Individual's household and requested that a restraining order be issued forbidding contact between the Niece and the Individual and his spouse. A court hearing was held on October 11, 2007, to consider the father's request for a restraining order. At this hearing, the Individual and his spouse both provided urine specimens which were immediately tested on the spot and found to be positive for marijuana.<sup>2</sup> The judge found in favor of the Niece's father and issued a restraining order which barred the Individual and his wife from contacting the Niece for a period of one year.

On September 27, 2010, the Individual submitted a Questionnaire for National Security Positions (QNSP) to the LSO.<sup>3</sup> Question 23(a) which asked "In the last 7 years, have you illegally used

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<sup>2</sup> The record shows that the Individual has had at least two more recent drug screening tests, one test administered by the LSO as part of its background investigation of the Individual and another administered by the Psychiatrist as part of his examination of the Individual. Both tests were negative.

<sup>3</sup> A copy of the September 27, 2010, QNSP appears in the record as Exhibit 8.

any controlled substance, for example, . . . THC (marijuana, hashish, etc.), . . . ?” The Individual answered in the affirmative. Exhibit 8 at 12. The Individual further indicated that his marijuana use was limited to one occasion, which occurred in September 2007. *Id.* On March 2, 2011, the Individual submitted a second QNSP to the LSO,<sup>4</sup> in which he repeated his answers to Question 23(a). Exhibit 7 at 13.

The Office of Personnel Management (OPM) conducted a background investigation of the Individual at the behest of the LSO. During this investigation, the Individual informed an OPM investigator that he had used marijuana on two occasions during the previous seven-year period.<sup>5</sup> Exhibit 10 at 3. The Individual further informed the Investigator that this marijuana use occurred twice during a one-week period. *Id.* The OPM investigator also interviewed the Individual’s spouse, who stated the Individual has used marijuana on “an infrequent basis over the years” with his most recent use occurring in February of 2008. Exhibit 10 at 4.

On April 26, 2011, the LSO conducted a Personnel Security Interview (PSI) of the Individual.<sup>6</sup> During this PSI, the Individual adamantly and repeatedly insisted that he had only used marijuana on one occasion, on September 21, 2007. Exhibit 9 at 9-10. The Individual continued to insist that he had only used marijuana on one occasion, even when he was informed that a source had revealed more extensive use to the OPM investigator. *Id.* at 10. The Individual contended that this one time use was limited to “one big puff.” *Id.* at 12-13. When the Individual was confronted with the discrepancy between his answer to QNSP Question No. 23(a) (that he had only used marijuana once) and his statements to the OPM Investigator (that he has used marijuana on two occasions during a one-week period), he replied with a series of equivocations before asserting that he did not recall informing the OPM investigator that he had used marijuana on two occasions. *Id.* at 15-17.

At the request of the LSO, the Individual was evaluated by the Psychiatrist on May 12, 2011. The Psychiatrist issued a report of his evaluation on May 13, 2011.<sup>7</sup> The Psychiatrist found that, in 2007, the Individual met the criteria for cannabis abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition, Text Revision (DSM-IV-TR). Exhibit 4 at 9. However, the Psychiatrist characterized the Individual’s past cannabis as “distant” and “mild.” *Id.* at 9. The Psychiatrist further found that the Individual did not show adequate evidence of rehabilitation or reformation from his *past* cannabis abuse disorder, stating that the Individual: “never sought treatment for this disorder, and maintained a high level of denial with respect to his substance abuse problem.”<sup>8</sup> *Id.* at 9. The Psychiatrist recommended that in order

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<sup>4</sup> A copy of the March 2, 2011, QNSP appears in the record as Exhibit 7.

<sup>5</sup> Excerpts of the OPM Report of Investigation appear in the record as Exhibit 10.

<sup>6</sup> A copy of the transcript of the April 26, 2011, PSI appears in the record as Exhibit 9.

<sup>7</sup> A copy of the May 13, 2011, psychiatric report appears in the record as Exhibit 4.

<sup>8</sup> The Psychiatrist further stated: “Another negative prognostic factor with respect to his rehabilitation is a past history of two significant alcohol related legal problems (DWI and open container violations), and of family history of substance abuse disorders (his father).” Exhibit 4 at 9.

to establish reformation or rehabilitation, the Individual needed to attend a six-month outpatient program, and abstain from marijuana and all illegal drugs.<sup>9</sup> *Id.* at 10.

During the Psychiatrist's examination of the Individual, the Psychiatrist questioned the Individual about his spouse's assertion that he used marijuana on several occasions. The Individual said that his wife might have "misinterpreted" what he was smoking when she saw him smoking tobacco cigarettes. *Id.* at 3. The Individual further informed the Psychiatrist that he did not consume any marijuana after September 21, 2007. *Id.* at 4.

In his Report, the Psychiatrist opines that the Individual's positive drug test contradicts his assertion that his only marijuana use occurred on September 21, 2007. The Psychiatrist concluded that a one-time use of marijuana would have been detected by a urine sample for only two to six days. Exhibit 4 at 4-5. The Psychiatrist noted that the Individual provided the urine sample at the October 11, 2007, hearing, some twenty days after the Individual claims he last used marijuana. Accordingly, the Psychiatrist concluded that the Individual most likely either used marijuana after the September 21, 2007, incident, or was a heavy habitual user of marijuana, and was therefore not being candid about his marijuana use. *Id.*

### **III. STANDARD OF REVIEW**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. ANALYSIS**

#### **A. Criteria K and H**

The LSO has invoked Criterion K, noting that the Individual has admitted using marijuana on at

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<sup>9</sup> The Psychiatrist further opined that: "Given his past history of alcohol related problems, I would also recommend that his treatment program include at least one month's abstinence from alcohol as well. After he completes one month's abstinence from alcohol, I would recommend that he resume alcohol use in moderation if and only if this is approved by his substance abuse evaluator/counselor." Exhibit 4 at 10.

least one occasion, and citing the Psychiatrist's opinion that the Individual met the DSM-IV criteria for cannabis abuse in 2007. Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 24. Citing the Psychiatrist's opinion that the Individual previously met the DSM-IV criteria for cannabis abuse, and has not shown reformation or rehabilitation, the LSO has also invoked Criterion H as well. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27.

The Individual admits that he used marijuana on September 21, 2007. Had the Individual's use of marijuana been limited to a one time use on that date, I might have concluded that the security concerns arising under Criterion K had been mitigated by the passage of time. However, the evidence in the record suggests that his marijuana use may have been more extensive than he admits. When interviewed by the OPM investigator, the Individual indicated that he had used marijuana on two occasions, during a one-week period. His spouse told the OPM investigator that the Individual has used marijuana several times a year until 2008. The Individual has subsequently claimed, on a number of occasions during this proceeding, that his marijuana use was limited to the "one puff" he took on September 21, 2007. At the hearing, the Individual and his spouse both testified, unconvincingly, that they provided incorrect information to the OPM investigator when they stated that the Individual had used marijuana on more than one occasion. Tr. at 45-47, 65-67, 84-85, 93-94.

In both his Report and his hearing testimony, the Psychiatrist explained in detail that the Individual's positive urine test shows that the Individual must have either used marijuana after September 21, 2007, or been a frequent and heavy user of marijuana. The Psychiatrist notes that a one-time use of marijuana would only be detectable in a person's urine for a maximum of six days after a one-time use. Exhibit 4 at 4. On the other hand, frequent and heavy use of marijuana can be detected in the user's urine for a longer period. *Id.* The Individual and his wife have both asserted that they provided the urine sample which tested positive, on the spot, at the October 11, 2007, restraining order hearing, twenty days after September 21, 2007. This evidence suggests that the Individual either used marijuana at some time after September 21, 2007, or had been a frequent and heavy marijuana user. *Id.*

Based upon the evidence before me, I am not convinced that the Individual only used marijuana once. Because I cannot rely on the information provided by the Individual concerning his marijuana use, I find that the security concerns raised under Criterion K by his marijuana use have not been resolved.

I turn now to the Psychiatrist's finding that the Individual has a past history of cannabis abuse, which, in the Psychiatrist's opinion, is an illness or mental condition which can cause a defect in judgment, reliability, or trustworthiness. The Individual did not question the diagnosis, so the issue before me, under Criterion H, was whether the Individual has been reformed or rehabilitated from his past cannabis abuse.

At the hearing, the Individual's Counselor testified on the Individual's behalf. The Counselor

testified that he had first met with the Individual on September 21, 2011, less than one month prior to the hearing. Tr. at 10. Since then, he has been seeing the Individual two times a week, for a total of seven sessions at the time of the hearing. *Id.* at 26, 35. The Counselor testified that he had read the Psychiatrist's report and agreed with it, including the Psychiatrist's finding of *past* cannabis abuse. *Id.* at 10-11. The Counselor testified that initially the Individual exhibited a great deal of denial about his past marijuana abuse. *Id.* at 13. After the third session with the Counselor, however, the Individual began to understand the detrimental effects alcohol and drugs had upon him. *Id.* The Counselor expressed his view that the Individual was sincerely committed to bettering himself and becoming drug free. *Id.* at 14-15. The Counselor testified that the Individual has developed "better problem-solving skills" and a "healthier outlook going forward." *Id.* The Counselor testified that he does not believe that the Individual currently has a drug problem. *Id.* at 16. The Counselor testified that the Individual is reformed and rehabilitated. *Id.* at 19.

The Psychiatrist was present for the testimony of each of the other witnesses during the hearing. After the other witnesses had concluded their testimony, the Psychiatrist testified. The Psychiatrist testified that had he believed that the Individual's use of marijuana was limited to one or two uses, he would not have concluded that the Individual met the DSM-IV criteria for cannabis abuse. Tr. at 98-99, 107. Although the Psychiatrist believed that the Individual has started to make a great deal of progress, he is still convinced that the Individual has not demonstrated adequate evidence of reformation or rehabilitation. *Id.* at 104-105. The Psychiatrist testified that the Individual is still in the early recovery phase of his treatment and that he hasn't spent enough time in his recovery program to resolve the doubts raised by his past diagnosis. *Id.* at 105. The Psychiatrist also cited the Individual's alcohol history, which includes two alcohol-related arrests, as a further risk factor which must be considered in determining whether the Individual has been reformed or rehabilitated from his past cannabis abuse.<sup>10</sup> *Id.* at 106.

I find that the Individual has not shown that he is reformed and rehabilitated from his past cannabis use. As discussed above at length, the record shows that the Individual cannot be relied upon to provide accurate information about his cannabis use. Without a clear picture of the true extent of the Individual's cannabis abuse and reliable information concerning when he last used cannabis, I cannot find that he has been reformed or rehabilitated. Accordingly, I find that the Individual has not mitigated the security concerns raised under Criterion H.

## **B. Criterion L**

The Individual has a significant history of criminal conduct and other rule violations. The Notification Letter sets forth a history of four arrests or legal incidents requiring the intervention of law enforcement, three of which involve substance abuse. In addition, as discussed at length above, the Individual has repeatedly provided the LSO with conflicting or less than credible accounts of his marijuana use. This information raises security concerns under Criterion L.

"Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and

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<sup>10</sup> The Psychiatrist did not elaborate upon this assertion.

regulations.” *Id.* at ¶ 30. “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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” Adjudicative Guidelines at ¶ 15. Moreover, previous Hearing Officers have denied recommending an access authorization to individuals who had a pattern of lying or making inconsistent statements about their history of illegal drug use. *See, e.g., Personnel Security Hearing, Case No. TSO-1086 (2011)* (an individual's provision of inconsistent information suggests a lack of candor on his part, which raises concerns about the individual's reliability and trustworthiness to protect classified information).<sup>11</sup>

I find that the security concerns raised under Criterion L by the Individual's eleven-year pattern of criminal activity have not been resolved or mitigated. His last incident involving law enforcement occurred approximately four years ago. While the Individual has begun to address, though counseling, the underlying issues that appear to have been among the root causes of his criminal activities, his counseling is still in its early stages.

Moreover, the Individual's provision of false information in his QNSP's, PSI, and psychiatric examination, show that he cannot be trusted to provide truthful information to DOE security officials. The Individual's lack of candor continued at the hearing showing that he continues to exhibit poor judgment, and cannot be relied upon or trusted. The DOE security program is based on trust. *Personnel Security Hearing, Case No. TSO-0920 (2010)*. If the DOE cannot fully trust an Individual, then it cannot allow them access to classified information or special nuclear materials. Accordingly, I find that the security concerns raised under Criterion L remain unresolved.

## V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria K, H, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should not be granted a security clearance. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: November 10, 2011

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<sup>11</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

