



Administrative Judge in this matter. At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO submitted seven exhibits (Exs. A-G) and the Individual submitted eight exhibits (Exs. 1-8) into the record of this proceeding. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E and H of the Adjudicative Guidelines.

The LSO alleges that the Individual admitted to using marijuana in 2013 approximately four times within a month while possessing a security clearance and after previously signing a Drug Certification form. Ex. A. Under Guideline E, 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. Adjudicative Guidelines at ¶ 15. Thus, a concern may be raised by “credible adverse information that . . . when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, [or] unwillingness to comply with rules and regulations . . . .” *Id.* at ¶ 15(d). A concern may also be raised by a “violation of a written . . . commitment made by the individual to the employer as a condition of employment.” *Id.* at ¶ 15(f). The Individual’s admitted marijuana usage raises a concern under the “whole person” concept and violated his written agreement with the DOE. The LSO therefore appropriately invoked Guideline E.

Under Guideline H, 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.” *Id.* at ¶ 24. Concerning behavior includes “[t]esting positive for an illegal drug” or “[a]ny illegal drug use while granted access to classified information or holding a sensitive position . . . .”<sup>3</sup> *Id.* at ¶ 24(b), (f). The Individual admitted using marijuana while possessing a security clearance. Accordingly, the LSO appropriately invoked Guideline H.

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security

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<sup>3</sup> Marijuana falls within the Adjudicative Guideline’s definition of controlled substance. Adjudicative Guidelines at ¶ 24.

determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

Approximately fourteen years ago, the Individual was charged with possession of a controlled substance (marijuana) and paraphernalia. Ex. C at 29; Ex. D at 7. As a result, he served two years of probation and described the experience as being “miserable.” Tr. at 82. In 2010, he obtained a position working for a DOE contractor that required him to obtain a security clearance. As part of that clearance process, the Individual was questioned about the circumstances that lead to his 2005 charges, including his history of using of marijuana. Ex. D. During a 2010 PSI, the Individual acknowledged that using marijuana is incompatible with possessing a security clearance and stated his intent to abstain from using marijuana in the future. Ex. D 6-7, 14-16, 20. The Individual also signed a Drug Certification form (“Drug Certification”) that reflected his understanding that marijuana use was prohibited and his promise to abstain while possessing a security clearance. Ex. D at 20; Ex. E. In 2010, the Individual was granted a security clearance.

Three years later, while possessing a security clearance, the Individual used marijuana and subsequently failed a random drug test. Ex. F at 1. As a result, his employer terminated his employment. Ex. F at 1. During his PSI, the Individual explained that he smoked marijuana after being offered it at a party. Ex. C at 10. He attempted to explain why he used marijuana despite knowing that such conduct was prohibited. *See e.g.* Ex. C at 9-13. He stated that he and his wife had increased their “partying” behavior and had been consuming alcohol and got “carried away” on the first night he used marijuana. Ex. C at 9-13. He also admitted that while he “struggled with” his decision to use marijuana, he used it three more times within a month before being caught. Ex. C at 11-12. He stated that, at the time, he believed the risk of getting caught was low and he intended to stop using marijuana after a short period. Ex. C at 23. At the hearing, the Individual explained that, at the time, he felt using marijuana was more acceptable because his wife was doing it with him. Tr. at 124-25.

The Individual presented evidence to demonstrate that after losing his job in 2013 he struggled to make ends meet for his family. He testified that, prior to being terminated, he was living paycheck to paycheck while supporting his wife and young child. Tr. at 102. Afterward, he described starting

his own trucking business out of desperation. Tr. at 98. As a self-employed trucker, he funded his own drug testing program. Tr. at 122. However, his business struggled. Tr. at 99-100; Ex. F at 1. Around the same time, the Individual depleted his 401(k) to make ends meet. Tr. at 102. Eventually, he accepted a job that required him to remain in a different state as he continued struggling to pay his family's bills and mortgage. Tr. 100, 102, 107; Ex. F at 1. As part of the new out-of-state employment, he was subject to random drug testing and submitted to four drug tests, which he asserted he passed without issue. Ex. C at 35-36; *See also* Tr. 128-29; Ex. 1.

The Individual asserted that he matured a lot in the two years he worked in the other state due to missing time and memories with his family and dealing with feelings of having let everyone around him down. Ex. F at 1. He described it as "the hardest period in his life," and one that he does not want to repeat. Tr. at 118. He spent weeks away from his family each month, "worked every day" ensuring the company could run "trucks 24/7," and described his quality of life as "terrible." Tr. at 132.

Despite his efforts, the out-of-state work began to slow down, and he again began searching for other employment opportunities—going so far as to apply for positions in Canada. Tr. at 106. In 2016, the Individual applied for and, to his surprise, obtained his present position with a DOE contractor. Ex. F at 1. As part of the process, the Individual passed an employment screening drug test near the end of 2016. Tr. at 108; Ex. 6. After being on the job for about two years, his manager asked him to obtain a security clearance. Ex. F at 1.

The Individual asserted that his current position is extremely important to his future plans, and drug use will not be involved in his lifestyle. Ex. F at 2. To reinforce the latter statement, the Individual stated that he has changed his drinking habits so that he no longer consumes alcohol with others to get "drunk," and he testified that he does not spend time with people who use marijuana Tr. at 117-18. He also testified that, if he were ever in a situation where he suspected that somebody in his presence possessed marijuana, he would remove himself from the situation. Tr. at 135. Furthermore, he stated that he no longer has the desire to use marijuana and keeps himself extremely busy by focusing on improving his financial circumstances. Tr. at 123. In addition to his full time job, he works part-time with the company he previously worked with out-of-state, and he built his own home. Tr. at 123. He also stated that he spends most of his spare time doing activities with his family outdoors. Ex. F. Finally, he testified that he views his current position as a second chance after a hard lesson, Tr. at 119-20, and he does not want to "ruin that again." Tr. at 123.

Regarding violating his Drug Certification, the Individual testified that he has learned the importance of integrity through losing his. Tr. at 126. He testified that when he was provided the opportunity to review and sign a new Drug Certification, he was more than willing to commit to himself and the DOE that he will not use marijuana while in possession of a security clearance. *See* Tr. at 140-141.

The Individual's wife testified at the hearing. She believes that she and the Individual chose to use marijuana, even though they knew the risk to the Individual's job and security clearance, due to recklessness, weakness against peer pressure, and alcohol use. Tr. at 21, 23-24, 34-35. She also testified how it was heart-wrenching for the Individual to be separated from his family and miss the memories, time, and relationships. Tr. at 28. She stated the experience humbled him and

changed him to the core. Tr. at 28. Regarding future use of marijuana, she stated unequivocally that she will not accept it in her life or in the Individual's life. Tr. at 28. She also stated that the Individual told her that using marijuana in the future is "not an option," and that they have both set boundaries to prevent placing themselves in a position to use marijuana. Tr. at 34-36. Those boundaries include not spending time with the people from the 2013 incidents. Tr. at 21, 35-37.

The Individual's father also testified regarding the changes he had observed in the Individual. The father recalled lecturing the Individual back in 2005 that drug use would make life more difficult. Tr. at 69. As the Individual's father watched the Individual struggle to support his family after being terminated in 2013, he witnessed the Individual become more family oriented. He believes the hardship impressed upon the Individual the importance of maintaining the obligations of a security clearance. *See* Tr. at 71-72. As a result, he testified that he believes the Individual will not use marijuana again. Tr. at 71-72.

Lastly, the Individual's out-of-state supervisor testified at the hearing. The supervisor stated that he hired the Individual as a truck driver in 2014 when the Individual was struggling with his small business. *See* Tr. at 42. He has worked with the Individual for about four years, Tr. at 42, and he testified that the Individual is reliable and honest when he makes mistakes at work. Tr. at 48. The supervisor also confirmed that the Individual successfully participated in a random drug testing program while driving trucks for the supervisor's company.<sup>4</sup> Tr. at 47.

## V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and witnesses. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual should be granted access authorization. I find that granting the Individual a security clearance will not endanger the common defense and security, and that it is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this Decision are discussed below.

### A. Guideline H: Drug Involvement and Substance Misuse

The following relevant conditions may mitigate Guideline H security concerns:

- (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;
- (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:

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<sup>4</sup> The Individual clarified that while he was initially enrolled in the supervisor's company's random drug testing program, he was not so enrolled after leaving the company to pursue a full-time position with his current employer nor when he returned to the supervisor's company for contemporaneous part-time employment. Tr. 60-61, 127-28.

- (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;

....

Administrative Guidelines at ¶ 26.

Under the first mitigating factor above, the Individual presented significant evidence that the condition happened so long ago or under circumstances that it is unlikely to recur or cast doubt on his current reliability, trustworthiness, or good judgement. The evidence demonstrates that the Individual last used marijuana approximately five years ago, which is a significant period of time. The Individual's testimony is corroborated by the testimony of his witnesses and negative drug tests over the years. Additionally, as to the circumstances under which the Individual last used marijuana, he did so with friends whom he no longer spends time with and a wife whom has since stopped using marijuana and is fully supportive of a lifestyle that does not involve it. His testimony also demonstrates that he views marijuana as a direct threat to his career prospects and ability to care for his family. He also testified that he no longer places himself in similar situations to the partying he previously engaged in by regulating his alcohol intake, spending time with his family or other people that do not use marijuana, keeping himself busy with work, and focusing on his commitment to abstain and support his family. Thus, the evidence demonstrates that it is unlikely the Individual will find himself in similar circumstances that facilitated his use of marijuana.

Similarly, under the second mitigating factor, the Individual presented significant evidence to mitigate the Guideline H concern. First, he acknowledged that he used marijuana several times, including disclosing it in his application for his current position, and as stated above, took action to address the problem by changing his behavior with alcohol, his boundaries around socializing, and his mindset regarding marijuana. Second, he provided evidence that he established a pattern of abstinence for approximately five years in which he (1) disassociated from the people with whom he used marijuana and no longer spends time with anybody that he suspects uses it, (2) has committed to avoiding environments where drugs were used or may be used, and (3) signed a Drug Certification statement of his intent to abstain from all drug involvement which includes his acknowledgement that his future involvement is grounds for revocation of his clearance eligibility.

I find, based on the information above, that the Individual has demonstrated that he has mitigated the security concerns associated with Guideline H. However, the Individual must also resolve the remaining Guideline E concerns in order to for me to find that he is eligible for a security clearance.

#### **B. Guideline E: Personal Conduct**

While Guideline E lists several conditions that may mitigate related security concerns, the only two relevant to the present case are whether:

....

- (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;
- (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;

....

Administrative Guidelines at ¶ 17.

As to the first mitigating condition, a significant period of time has passed since the Individual last engaged in the poor judgement and behavior that caused him to violate his Drug Certification. The evidence demonstrates that he has not used marijuana since 2013. The Individual also presented substantial evidence to demonstrate a change in his mentality and behavior over the last five years regarding marijuana use. He described how his experience enduring the severe consequences of his actions matured him and impressed upon him the importance of maintaining his commitment to not use marijuana in violation of his Drug Certification and security clearance requirements. It is clear from the evidence that depleting his life savings and working a difficult schedule while being separated from his young family was a sobering experience that made a perspective-changing impact.

As to the second condition, the Individual acknowledged that violating the Drug Certification was a very poor decision that deprived him of integrity and violated the DOE's trust. He expressed remorse for his conduct, and has taken several positive steps to alleviate the circumstances and other factors that contributed to his inappropriate behavior. For instance, he stopped engaging in drinking to get drunk, thus altering the pattern of his alcohol consumption that placed him in a compromised state and contributed to his marijuana use. He also disassociated from the friends he used marijuana with in the past, aside from his wife whom herself is committed to abstinence, and he has been occupying his time with his family and businesses pursuits while intentionally taking steps to ensure he does not place himself in a position where he may be around people using marijuana in the future. Additionally, he testified that he would proactively remove himself from any situation in which he suspected marijuana may be present. Thus, it appears very unlikely that he will be in a position where he is tempted to engage in conduct that would violate the Drug Certification in the future—especially given the hardship he suffered as a result of such conduct. The evidence demonstrates that he has a profound understanding of what the Drug Certification means to his livelihood, and that he has changed his patterns of behavior that led to his lapse in judgment. I find the evidence demonstrates that the Individual has learned from his mistake through experiencing the significant consequences and he is therefore not likely to repeat it by violating his Drug Certification in the future. I therefore find that he has mitigated the Guideline E security concerns.

## VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines E and H of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving these concerns. Therefore, I conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals