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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: January 28, 2025)	Case No.: PSH-25-0072
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_____)	

Issued: May 22, 2025

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material or Eligibility to Hold a Sensitive Position."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

I. Background

As part of the continued access authorization process, the Individual completed, signed, and submitted a Questionnaire for National Security Positions (QNSP) in early July 2024. Exhibit (Ex.) 4. In the QNSP, the Individual disclosed that between March 2024 and April 2024, he used marijuana while on medical leave for "nausea related to [his] medical condition[.]" *Id.* at 42. He estimated that he used marijuana approximately fifteen times, and once his "symptoms abated[, he] stopped using" the substance. *Id.*

The Local Security Office (LSO) began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct) and H (Drug Involvement) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-25-0072 (hereinafter cited as "Tr."). The Individual also submitted five exhibits, marked Exhibits A through E. The DOE submitted six exhibits, marked as Exhibits 1 through 6.

II. Notification Letter

Guideline E

Under Guideline E, "[c]onduct 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "concealing or omitting information, concerning relevant facts to an employer, investigator, [or] security official . . . involved in making a recommendation relevant to a national security eligibility determination[.]" *Id.* at ¶ 16(b). Under Guideline E, the LSO alleged that the Individual used marijuana from March 2024 to April 2024, while in possession of an access authorization, and failed to report his marijuana use pursuant to DOE Order 472.2A.² Ex. 1 at 5. The LSO's invocation of Guideline E is justified.

Guideline H

Under Guideline H of the Adjudicative Guidelines, "[i]llegal 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." Adjudicative Guidelines at ¶ 24. Conditions that could raise a concern under Guideline H include "any substance misuse," "illegal possession of a controlled substance," and "any illegal drug use while granted access to classified information or holding a sensitive position[.]" *Id.* at ¶ 25(a), (c), (f). Under Guideline H, the LSO alleged that the Individual disclosed in his July 2024 QNSP that he used marijuana approximately fifteen times between March 2024 to April 2024 while he was in possession of an access authorization. Ex. 1 at 5. The LSO's invocation of Guideline H is justified.

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 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

² Reportable events, including illegal drug use, must be disclosed by persons holding access authorization "immediately" with written confirmation within three working days. DOE Order 472.2A at ¶ 4(w)(5) (Jun. 10, 2022).

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 determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

In September 2023, the Individual began suffering from intractable headaches that caused him to seek medical attention in October 2023. Ex. E; Tr. at 13, 15, 28. Medical personnel conducted imaging of the Individual’s head, and the Individual was diagnosed with a life-threatening intracranial condition that required hospitalization. Ex. E; Tr. at 13, 15. Accordingly, the Individual went on disability in October 2023. Tr. at 13. Around November 2023, the Individual began experiencing other symptoms, which included severe nausea. *Id.* at 28. Two months after the initial diagnosis, imaging revealed that the Individual’s condition had worsened. Ex. D; Tr. at 15–16. Although doctors had provided a deferential diagnosis, they could not determine the cause of the intracranial condition at that time. Ex. D.

In December 2023, security personnel contacted the Individual, “indicating that [his] clearance was due for renewal and that [he] needed to fill out” another QNSP. Tr. at 13. The Individual notified security personnel he “was on bedrest and unable to complete” the QNSP. *Id.* In response, the Individual was informed that if he did not complete the QNSP, then his clearance would lapse, which would necessitate that he reapply for a clearance in the future. *Id.*

The Individual’s condition continued into the early months of 2024. *Id.* As medical personnel could not pinpoint the cause of the condition, the Individual underwent a physically taxing medical procedure that ultimately did not alleviate his symptoms and caused a second life-threatening medical condition to form.³ *Id.* at 13–14. Approximately four to five months after his initial diagnosis, the Individual received medical treatment that proved successful in treating the intracranial condition, and around April 2024, imaging of the Individual’s head revealed that the condition had improved. Ex. C; Tr. at 14–16, 28.

Although the intracranial condition had significantly improved in the spring of 2024, the Individual continued to suffer from headaches and nausea. Tr. at 14, 28. Further, as he had spent months in a

³ The Individual sought treatment for this second life-threatening matter in April 2024. Ex. B.

supine position in the hospital, he also suffered from vertigo.⁴ *Id.* at 18, 26, 28, 34. The Individual's nausea was severe, deterring him from eating food. *Id.* at 29. Accordingly, the Individual lost forty pounds. *Id.* As the Individual struggled with severe nausea throughout his period of illness, his primary care physician placed him on several different prescription drugs, all of which failed to provide the Individual any relief. *Id.* at 17–18, 30–31. Early on in his experience with nausea in fall or winter 2023, the Individual's physician had suggested in a conversation following a routine visit that the Individual use an “edible” to alleviate his symptoms, as the Individual lives in a state where marijuana and products containing the psychoactive ingredient found in marijuana are legal to purchase.⁵ *Id.* at 16, 19, 24, 27, 35. As prescription medication had failed to control his symptoms, in spring 2024, the Individual proceeded to purchase an edible product, as well as several marijuana cigarettes. *Id.* at 18. The Individual could not consume the edible product, as his nausea prevented him from doing so. *Id.* However, his nausea was not worsened when he smoked the marijuana cigarette. *Id.* The Individual was able to find relief from his nausea symptoms using the product, and he smoked marijuana approximately fifteen times from March 2024 to April 2024. *Id.* at 18, 21. He discontinued the use of marijuana cigarettes when his nausea symptoms subsided, and he has not used any marijuana since then.⁶ *Id.* at 21, 28–29.

He testified that because he did not complete the QNSP when asked to do so, he was under the belief that his clearance had lapsed. *Id.* at 14. Accordingly, he did not believe that he held a clearance during the time he used marijuana. *Id.* at 14, 19. As his condition was life-threatening during the time of his hospitalization, he also believed that he would not be returning to work. *Id.* at 14–15, 20, 37. Because the Individual received appropriate and life-saving medical care, he was ultimately “stable on [his] feet again[,]” and returned to work in the summer of 2024. *Id.* at 15. Upon his return to work in early July 2024, the Individual saw a late May 2024 email from the LSO, asking him to complete a QNSP for reinvestigation purposes, suggesting that his clearance had not lapsed. *Id.*; Ex. A. The Individual completed and submitted the QNSP the following day, and disclosed the marijuana use under the belief that he had discharged his duty to disclose his marijuana use. Tr. at 15, 21–22.

The Individual confirmed in his testimony that he had no intention of omitting anything from his QNSP, which is why he disclosed the marijuana use. *Id.* at 12. He did not use marijuana to achieve “a high” or alter his emotional or mental state. *Id.* at 17. The Individual also made clear that he “follow[s] rules, laws, and regulations” as a matter of course. *Id.* at 20. To illustrate his point, the Individual testified that had he known that he was going to return to work that required a clearance, he would have “just endured” the severe nausea. *Id.* at 35. The Individual explained that he underwent surgery for a separate illness in 2022, as well as treatment that is known to cause nausea and vomiting. *Id.* As he knew he was returning to work on that occasion, he “dealt with the nausea” caused by the treatment and did not use marijuana then. *Id.* The Individual has no intention of using marijuana again. *Id.* at 24–25.

⁴ The Individual's nausea was made worse by the ongoing vertigo. Tr. at 29–30.

⁵ The Individual purchased marijuana products from a licensed business that sells such items to the general public. Tr. at 19, 24.

⁶ While the Individual's nausea has since resolved, he still receives physical therapy to cope with symptoms of vertigo. Tr. at 26, 34.

V. Analysis

Guideline E

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline E include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

Under 10 C.F.R. § 710.7(c), I am to consider, among other things, “the circumstances surrounding the conduct” which includes “the motivation for the conduct[,]” as well as “the likelihood of continuation or recurrence” of the conduct. The Individual credibly provided information, and medical documents to corroborate, that he experienced a life-threatening intracranial condition through which he suffered from fall 2023 to spring 2024, necessitating months of bedrest. It is noteworthy, and indicative of the Individual's honesty and credibility that he disclosed his marijuana use on his QNSP the day following his return to work. As I find the Individual to be a

credible witness, I am satisfied that the Individual was in fact asked to resubmit a QNSP during the time he was on bedrest, and I am also satisfied that the Individual was told that there would be a lapse in his clearance if he failed to complete the QNSP. Thus, I also believe that the Individual used marijuana in March and April 2024 under the earnest belief that he no longer held a clearance. I also believe that the Individual intends to follow rules, regulations, and laws. Considering the circumstances surrounding the instances of drug use and the lack of intent to obfuscate or keep this information from the LSO, I am satisfied that the incident took place under such unique circumstances that it is unlikely to recur and does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. Considering the circumstances surrounding the incident, the Individual's motives for the behavior, and the fact that these circumstances are unlikely to recur, I conclude that the Individual has mitigated the stated Guideline E concerns pursuant to mitigating factor (c). Additionally, as the Individual promptly disclosed his marijuana use in the QNSP that he completed upon his return to work prior to being confronted with the information, I find that the Individual mitigated the stated concerns pursuant to mitigating factor (a).

Guideline H

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline H include:

- (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:
 - (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;
- (c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) Satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Adjudicative Guidelines at ¶ 26.

Again, as indicated above, under 10 C.F.R. § 710.7(c), I am tasked with considering “the circumstances surrounding the conduct” which includes “the motivation for the conduct[,]” as well as “the likelihood of continuation or recurrence” of the conduct. As the Individual is a credible witness and considering the severity and duration of his medical condition, the evidence before me indicates that he suffered from a myriad of ongoing and persistent symptoms, which included nausea severe enough to cause the Individual to lose forty pounds. This nausea occurred in the context of a life-threatening condition that has since been resolved by medical personnel. Additionally, as indicated above, the Individual had initially been told in 2023 that his clearance would lapse if he did not complete his QNSP for reinvestigation, which was his understanding at the time he used marijuana. Further, the Individual was clear and steadfast in his assertion that he had used marijuana under the advice of a medical professional and not for any other purpose outside of alleviating his nausea. He credibly testified that he did not use marijuana to achieve an altered mental or emotional state, and once his nausea subsided, he discontinued his use of the substance. I am even further confident that this incident is unlikely to recur because the Individual explained that he did not use marijuana to treat the nausea caused by the treatment he received around 2022, evincing his commitment to comport with what is expected of him as a clearance holder. Based on the circumstances and the Individual’s motivation for using marijuana, I believe that the Individual’s marijuana use occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. Accordingly, the Individual has mitigated the stated Guideline H concerns pursuant to mitigating factor (a).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and H of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the Guidelines E and H concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual’s access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals