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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: April 14, 2025 )  
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Case No.: PSH-25-0103

Issued: July 1, 2025

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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."<sup>1</sup> 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 not be restored.

**I. BACKGROUND**

Following a background investigation, the Individual was granted access authorization in 2023. *See* Exhibit (Ex.) 7 (report of the background investigation); Ex. 2 at 11 (appeal by the Individual that led to this proceeding indicating when he was granted access authorization).<sup>2</sup> In September 2024, the local security office (LSO) received information indicating that the Individual and his wife owned a business (Real Estate Business) that leased commercial space to a business selling marijuana products (Dispensary). *See* Ex. 4 at 18 (summarizing information collected in connection with the present adjudication of the Individual's eligibility for access authorization).

In December 2024, the LSO issued the Individual a letter of interrogatory (LOI) concerning the aforementioned lease. Ex. 5. In his response to the LOI, the Individual confirmed that he was a co-

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<sup>1</sup> 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.

<sup>2</sup> DOE's Ex. 1–7 were Bates numbered in the upper right corner of each page. DOE's Ex. 8, submitted after the other exhibits, did not continue the Bates numbering. This Decision will refer to the Bates numbering when citing to Ex. 1–7 and will restart at "1" when citing to Ex. 8.

owner of the Real Estate Business and that he was aware of the Dispensary's intent to sell marijuana from the premises leased by the Real Estate Business prior to signing the lease agreement. *Id.* at 20.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline J of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted eight exhibits (Ex. 1–8). The Individual submitted nine exhibits (Ex. A–I).<sup>3</sup> The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-25-0103 (Tr.) at 3, 38. The LSO called a supervisory personnel security specialist to testify. *Id.* at 3, 11.

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

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "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 regulations." Adjudicative Guidelines at ¶ 30. The SSC cited the Individual's admission to having knowingly leased space to and collected rent from a marijuana business. Ex. 1 at 5. In a May 21, 2025, letter,<sup>4</sup> the LSO indicated that it had concluded that the Individual's conduct violated 21 U.S.C. § 856, which states that it is unlawful to "[k]nowingly[ ] lease . . . any place . . . for the purpose of manufacturing, distributing, or using any controlled substance." Ex. 8 (quoting 21 U.S.C. § 856). Marijuana/cannabis is a controlled substance. 21 U.S.C. § 812. The LSO's allegation that the Individual engaged in criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).<sup>5</sup>

## III. REGULATORY STANDARDS

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<sup>3</sup> The Individual's exhibits C–E incorporated by reference DOE's exhibits 1, 5–6. Accordingly, I will refer to DOE's exhibits when referencing those documents.

<sup>4</sup> DOE submitted the letter in response to a May 14, 2025, request that I issued for a more definite statement of the basis for the LSO's allegation that the Individual had engaged in criminal conduct.

<sup>5</sup> The Individual appeared to argue at the hearing that the LSO was precluded from raising this security concern because the Real Estate Business entered into the lease with the Dispensary prior to the Individual seeking access authorization, the lease was a "public record," and he was granted access authorization even though the LSO "could have" learned of the lease. Tr. at 7–8. The record establishes that the LSO was unaware of the lease before receiving an alert from the Office of the Director of National Intelligence (ODNI) in September 2024. *Id.* at 21 (supervisory personnel security specialist testifying that the LSO was unaware of the lease until receiving the ODNI alert). There is no basis for the Individual's assertion that a security concern may not be raised because the LSO could hypothetically have learned of it earlier through a more thorough investigation.

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 Dep't 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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**

The Individual and his wife are the sole trustees of a revocable trust which owns the Real Estate Business. Ex. 5 at 20 (indicating in response to the LOI that he and his wife "own" the Real Estate Business); Ex. B at 25–28. In March 2021, the Individual, on behalf of the Real Estate Business, executed an agreement pursuant to which the Real Estate Business leased commercial space to the Dispensary for a term of five years beginning in September 2021. Ex. A at 4–23. The lease agreement specifically indicated that the Dispensary would use the premises for "[t]he sale of cannabis [sic], CBD and related products." *Id.* at 8; *see also* Ex. I at 50 (providing license numbers for the Dispensary pursuant to which it is authorized to conduct business under state law).

The Individual was granted access authorization in 2023. *See* Tr. at 22. In September 2024, the LSO received an alert from the Office of the Director of National Intelligence (ODNI) as part of the continuous evaluation program monitoring the eligibility of enrolled individuals for security clearances. *Id.* at 11. The alert indicated that the Individual leased space to a business engaged in the sale of marijuana. *Id.*; *see also* Ex. 4 at 18. Prior to receiving the ODNI alert, the LSO was unaware that the Individual owned the Real Estate Business. Tr. at 22.

In November 2024, the Individual executed an agreement on behalf of the Real Estate Business engaging the services of a broker for the sale of the property in which the Dispensary leased space. Ex. H at 35–40. As of the date of the hearing, the Individual was still attempting to sell the property in which the Dispensary leased space. Tr. at 43–44; *see also id.* at 44 (testifying that the property had previously been "under contract" but that "the sale fell through").

In December 2024, the LSO issued the Individual the LOI. Ex. 5. In response to the LOI, the Individual confirmed that he and his wife co-owned the Real Estate Business, that he was aware of the Dispensary's intent to sell marijuana products pursuant to state law when the Dispensary leased the commercial space, and that he was aware that the sale of marijuana was illegal under Federal law. *Id.* at 20. With respect to his future intentions regarding leasing space to the Dispensary, the Individual indicated that the Real Estate Business intended "to honor the legal lease it signed in March 2021." *Id.* at 21. At the hearing, the Individual indicated that he had a "fiduciary responsibility under [state] law[] to honor that lease." Tr. at 42.

## V. ANALYSIS

### Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

On December 21, 2021, the Director of National Intelligence issued a memorandum containing guidance on numerous marijuana-related issues in the adjudication of the eligibility of individuals for access to classified information or to hold a sensitive position. Memorandum from the Director of National Intelligence to the Heads of Federal Agencies ES2021-01529 (Dec. 21, 2021) (available at [dni.gov/files/NCSC/documents/regulations/12-21-21\\_MemoPSecEA\\_Clarifying\\_Guidance\\_re\\_Marijuana\\_2021-01529\\_U\\_SIGNED\\_FINAL.pdf](https://dni.gov/files/NCSC/documents/regulations/12-21-21_MemoPSecEA_Clarifying_Guidance_re_Marijuana_2021-01529_U_SIGNED_FINAL.pdf)) (DNI Memo). While not directly addressing facts as those presented in this case, the DNI Memo indicates that agencies should consider whether or not an individual has divested himself or herself from marijuana-related activity in considering whether marijuana-related financial investments should preclude an individual from holding a security clearance under Guideline J of the Adjudicative Guidelines. *Id.* at 3. Notably, while the Individual may stand to suffer financial consequences from prematurely terminating the lease with the Dispensary or selling the property owned by the Real Estate Business at a lower price than he is currently willing to accept, he has not severed the relationship between himself and the Dispensary. Thus, analogous to an investor who has not divested from marijuana-

related investments, the Individual continues to financially benefit from marijuana-related business activity in this case.

As of the date of the hearing, the Individual remained a beneficial owner of the Real Estate Business and the basic facts that gave rise to the security concern remained unchanged. Accordingly, the potential criminal activity pursuant to 21 U.S.C. § 856 remained ongoing as of the date of the hearing. The Individual has no alleged history of criminal activity, and the lease giving rise to the security concerns was executed prior to the Individual seeking access authorization. Additionally, given the legality of the lease under state law and the Individual's lack of direct involvement in the sale of marijuana, the seriousness of the Individual's alleged criminal conduct is somewhat minimized. *See* 10 C.F.R. § 710.7(c) (requiring consideration of the seriousness of the conduct in applying the mitigating conditions). These considerations suggest that the Individual's alleged unlawful conduct was an unusual event in his life and that he will not demonstrate a disregard for laws, rules, and regulations in the future. Weighed against these considerations are the facts that the Individual executed the lease despite knowing that the sale of marijuana was unlawful under Federal law, he made minimal progress at divesting himself from the lease with the Dispensary despite the passage of approximately six months from his learning of the security concerns in the LOI to the hearing, and that he has denied the validity of the LSO's security concerns rather than committing to resolving them by divesting himself from the lease as soon as is reasonably possible. *Id.* (requiring consideration of "the circumstances surrounding the conduct," the "recency of the conduct," and "the voluntariness of participation").

The security concerns presented by the Individual's conduct are far from grave. However, an intrinsic element of possessing access authorization is submitting to rules and procedures that may, from the subjective perspective of an individual, appear arbitrary, unnecessary, or overly strict. How an individual responds to rules in other contexts is probative of how he or she will do so in connection with his or her access authorization. The Individual's response in this case has been to deny the validity of the concerns and to defiantly argue the appropriateness of his actions. *See* Tr. at 8, 39 (reflecting statements by the Individual in his opening statement and testimony at the hearing that his conduct was "legal," "DOE's concern is speculative," "none of it [DOE's adjudication of his eligibility for access authorization] makes any sense," and that as long as his tenants "pay rent and know what they're doing is legal . . . under [state law], what they do, I could care less"). This behavior does not suggest that the disregard for rules presented by the Individual's conduct in leasing commercial space to the Dispensary is unlikely to recur. For the aforementioned reasons, I find that the alleged criminal conduct did not happen under such unusual circumstances that it is unlikely to recur. Thus, I find the first mitigating condition inapplicable. Adjudicative Guidelines at ¶ 32(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not assert that he was pressured or coerced into engaging in criminal activity. *Id.* at ¶ 32(b).

With respect to the third mitigating condition, the Individual claimed that 21 U.S.C. § 856 did not apply because the statute "requires purpose and direct involvement," which he believed was not the case for him because the Real Estate Business is owned by him through a trust. Tr. at 39. Furthermore, he argued that "there is no case law[ ] supporting the application of [21 U.S.C. §] 856 to passive landlords leasing to a licensed business in legal states [sic]." *Id.* at 8. This argument

fails for two reasons. First, under the Adjudicative Guidelines, a mere credible allegation of unlawful conduct may pose a security concern under Guideline J regardless of whether an individual has been charged with any offense. Adjudicative Guidelines at ¶ 31(b). Record evidence shows that the Individual is the beneficial owner<sup>6</sup> of the Real Estate Business through a trust, he executed the lease with the Dispensary on behalf of the Real Estate Business, and he knew the Dispensary's business purpose included the distribution of a controlled substance. Accordingly, the LSO credibly alleged that the Individual's actions were unlawful pursuant to 21 U.S.C. § 856. Whether Federal law enforcement agencies have exercised their discretion in choosing not to charge or prosecute leases to marijuana-related businesses that are licensed under state law is irrelevant to whether the conduct is technically unlawful under Federal law. Moreover, the burden of proof is on the Individual to come forward with evidence of the legal status of landlords leasing space to marijuana businesses. 10 C.F.R. § 710.7(a). The fact that the LSO has not brought forth case law to show that landlords have been prosecuted pursuant to 21 U.S.C. § 856 for conduct similar to the Individual is insufficient to show that there is no reliable evidence that the Individual committed criminal conduct. Adjudicative Guidelines at ¶ 32(c).

The fourth mitigating condition is irrelevant to the facts of this case because the Individual's alleged criminal activity is ongoing, he has not been sentenced to parole or probation, and he has not brought forward evidence of any activities relevant to the examples of rehabilitation specified in the mitigating condition. *Id.* at ¶ 32(d).

For the aforementioned reasons, I find that none of the mitigating conditions are applicable to the facts of this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

## VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline J of the Adjudicative Guidelines. After considering all the relevant information, 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 not brought forth sufficient evidence to resolve the security concerns asserted by the LSO. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals

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<sup>6</sup> "A beneficial owner is a person or entity who has an interest in a property that is distinct from the title ownership, the title holder of the property maintaining it for the ultimate benefit of the beneficial owner. A trust divides beneficial ownership from legal ownership, so that the legal owner, the trustee, owns, possesses and controls the property subject to trust to the benefit of the beneficial owner, or beneficiary." THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION, *Beneficial Ownership* (2012).