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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:	May 1, 2025)	Case No.: PSH-25-0114
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)	

Issued: August 20, 2025

Administrative Judge Decision

Diane L. Miles, 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."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*. (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In January 2025, the Individual completed a Questionnaire for National Security Positions (QNSP). In the section of the QNSP titled "Illegal Use of Drugs or Drug Activity," the Individual answered "Yes" when asked whether, in the last seven years, he "illegally used any drug or controlled substance." Exhibit (Ex.) 4 at 59–60.² The Individual reported that, in September 2022, during a party, he smoked a friend's "vape pen" that contained marijuana. *Id.* at 60. The Individual also answered "Yes" when asked whether he used marijuana while possessing a security clearance. *Id.*

Due to unresolved security concerns raised by the Individual's drug use and his failure to timely report it, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex.

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.

² The DOE's exhibits were combined and submitted in a single, 166-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the DOE's exhibits by reference to the exhibit and page number within the combined workbook regardless of any internal pagination.

1 at 6–8. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines. *Id.* at 5.

In April 2025, the Individual requested an administrative hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). Ex. 2. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened in August 2025, pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual. *See* Transcript of Hearing, OHA Case No. PSH-25-0114 (Tr.). Counsel for the DOE submitted five exhibits, marked as Exhibits 1 through 5. The Individual submitted eight exhibits, marked as Exhibits A through H.

II. The Summary of Security Concerns

A. Guideline E (Personal Conduct)

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 are the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.” *Id.* at ¶ 16(a). In invoking Guideline E, the LSO cited the Individual’s use of marijuana while in possession of a DOE security clearance. Ex. 1 at 5.³ The LSO also cited the Individual’s failure to timely report his use of marijuana, as required by DOE Order 472.2A.⁴ *Id.*

B. Guideline H (Drug Involvement and Substance Misuse)

Under Guideline H of the Adjudicative Guidelines, the illegal use of controlled substances⁵ “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 security concern under Guideline H include “any illegal drug

³ The use of marijuana while holding a security clearance is not a security concern under Adjudicative Guideline E, and therefore I will only consider it as a concern under Guideline H.

⁴ DOE Order 472.2A requires that individuals holding a DOE access authorization report, within three working days, “[t]he use of any Federally illegal drug (to include the abuse or misuse of any legal drug), and any drug-or alcohol-related treatment.” DOE Order 472.2A, Attachment 5, ¶ 6(e).

⁵ A “controlled substance” is “a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B” of title 21 U.S.C. Chapter 13, Subchapter I. 21 U.S.C. § 802(6); Adjudicative Guidelines at ¶ 24.

use while granted access to classified information or holding a sensitive position.” *Id.* at ¶ 25(f). In invoking Guideline H of the Adjudicative Guidelines, the LSO cited the Individual’s disclosure, in his January 9, 2025, QNSP, that in September 2022, he used marijuana⁶ while in possession of a DOE security clearance. Ex. 1 at 5.

Considering the conduct described above, I find the LSO’s invocation of Guidelines E and H of the Adjudicative Guidelines to be 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 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 their eligibility for an access authorization. The Part 710 regulations are drafted 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

The Individual has been employed with a DOE contractor since 2019, and he has held a DOE security clearance since 2020. Tr. at 12, 16–17. In the January 2025 QNSP, the Individual disclosed that in September 2022, during his bachelor party, he “drank heavily one night and smoked a friend’s vape pen that contained [marijuana].” Ex. 4 at 60. The Individual also explained that his use of marijuana was a “one time mistake, has not happened since, and it will not happen again.” *Id.*

In September 2022, during his bachelor party, the Individual was consuming alcohol with his friends. Tr. at 19. After the party, he went to his hotel room, “took a hit” of a vape pen containing marijuana, and went to bed. *Id.* The Individual stated that his recollection of the details of what happened the night of his bachelor party was “a little fuzzy,” but he stated the vape pen did not belong to him, he did not purchase the vape pen, and he did not use any other form of marijuana

⁶ Marijuana is a “Schedule I” controlled substance. 21 U.S.C. § 812(b)(1).

at that time. *Id.* at 19. He explained that at the time he used the vape pen, he was under the influence of alcohol, and was experiencing stress from planning his wedding, dealing with the “fallout” from being diagnosed with obsessive compulsive disorder (OCD) in 2021, and managing his emotions from his mother’s reaction to his OCD diagnosis. *Id.* at 20, 29; Ex. D.

The Individual admitted that he used marijuana in September 2022, knowing that use of the drug is prohibited for individuals holding a security clearance. Tr. at 21. He explained that his use of marijuana was “a very poor decision,” and that he does not intend to use marijuana in the future.⁷ *Id.* at 20, 23. As to his failure to report his use of marijuana to the DOE, the Individual testified that he knew he was required to report his use of marijuana to the DOE, but he did not “fully understand” the requirement. *Id.* at 26–27, 29–30. When asked why he failed to report his use of marijuana to the DOE, he responded that he did not know what to report or how to report it. *Id.* at 27. He took security refresher training offered by the DOE that discussed his reporting requirements and the use of controlled substances, but he said the reporting requirements were not on his mind when he used the vape pen, and he was scared to report his drug use to the DOE. *Id.* at 33–34. He also acknowledged that in 2020, he completed a QNSP, which included questions about drug use, so he knew he would have to answer questions about his drug use in his 2025 QNSP. *Id.* at 27–28.

The Individual further testified that he has not used marijuana since September 2022. Tr. at 21–22, 24. The Individual submitted the results of drug testing taken in April 2025, June 2025, and July 2025, all of which were negative. Ex. B. Since September 2022, he has tried to avoid places where he knows marijuana will be present. Tr. at 22. He has not spoken to the individuals who attended his bachelor party in several months. *Id.* He has also told his friends that, as a clearance-holder, he is not allowed to use marijuana. *Id.* He also submitted evidence he completed a one-hour, online course, provided by a not-for-profit organization, that discussed “the dangers of being addicted to marijuana,” in April 2025. *Id.* at 31–32; Ex. C.

V. Analysis

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;

⁷ The Individual submitted a sworn statement, indicating that he will not consume illegal drugs in the future, including the use or possession of any illegal drug and the use of prescription drugs “in a manner inconsistent with their intended purpose.” Ex. A. The Individual also submitted a copy of his resume, performance appraisals for years 2022 through 2024, certificates of service awarded from his employer, and seven letters of recommendation from his supervisor and several colleagues, describing the Individual’s good character and professionalism at work. Ex. E; Ex. F; Ex. G; Ex. H.

- (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 ¶ 26.⁸

As to factor (a), the Individual's use of marijuana was not frequent, as he used the drug once during September 2022. Although the Individual's use of the drug occurred just three years ago, he knew that, as a clearance-holder, his use of the drug was prohibited, yet he made the voluntary decision to use it anyway. This was a serious lapse in judgment, and he has not brought forth sufficient evidence to convince me that his behavior, or decision-making, has changed. So, his drug use still casts doubt on his judgment, reliability, and trustworthiness. *See* 10 C.F.R. § 710.7(c) (requiring me to consider the "seriousness of the conduct," "knowledgeable participation," and "voluntariness of participation" in evaluating whether the Individual has resolved the security concerns). Finally, the Individual's use of marijuana occurred after he was socializing with friends, which is a routine occurrence, and I do not believe the stress the Individual claimed he felt from planning his wedding, or receiving a diagnosis of OCD, constitutes an unusual circumstance. Any stress the Individual was experiencing while partying in September 2022 does not lessen the seriousness of the Individual's use of marijuana, a controlled substance, while holding a security clearance. Based on the foregoing, I cannot conclude that the Individual's use of the drug is unlikely to recur. Therefore, the Individual's conduct continues to cast doubt on his current reliability, trustworthiness, or good judgment, and he has not mitigated the security concerns under the factor at ¶ 26(a) of the Adjudicative Guidelines.

As to factor (b), the Individual admitted that he used marijuana while possessing a security clearance and claimed that he has not used the drug since September 2022. The Individual also claimed that he has not spoken to his drug-using associates, in several months. Assuming that is true, it does not mean that he has stopped associating with them completely. The Individual did

⁸ The security concerns raised by the LSO do not involve an allegation that the Individual abused prescription drugs, and the online course which the Individual completed does not appear sufficiently lengthy or rigorous to constitute a drug treatment program. Even if the online course was a form of drug treatment, the Individual has not submitted evidence of a favorable prognosis by a duly qualified medical professional. Therefore, the mitigating factors found at subparagraphs (c) and (d) are not applicable to this case.

not provide evidence suggesting that he no longer communicates with his drug-using associates, only that he has not done so recently. Although he testified that he tries to avoid places where he knows marijuana will be present, his use of marijuana occurred during his own bachelor party, with people he chose to be around, and while he knew his use of the drug was prohibited because he held a security clearance. He also submitted evidence he completed a one-hour online course on the topic of marijuana use, but he did not provide evidence as to the substance of this course and whether it addressed the stressors he claimed contributed to his use of marijuana in September 2022, such as his emotions surrounding his OCD diagnosis and his level of alcohol consumption at the time. Finally, because the Individual's use of marijuana occurred while engaging in a social activity, after having held a security clearance for two years, and knowing his use of marijuana was prohibited and would result in adverse consequences for him, I do not find the Individual's sworn statement that he will not engage in illegal drug use in the future persuasive. Therefore, the Individual has not mitigated the security concerns under ¶ 26(b) of the Adjudicative Guidelines.

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

B. 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 ¶ 17.⁹

As to factor (a), the Individual admitted to using marijuana in September 2022, while possessing a security clearance, and he failed to report for over two years his use of the drug to the LSO, as required by DOE Order 472.2A. I do not find the Individual credible as to his claim that, after taking security refresher trainings provided by the DOE, he did not know what information he was required to disclose or how to report his drug use. Considering that the Individual should have been aware of his obligation to report his illegal drug use within three working days, but failed to do so for over two years, I find that the Individual did not make prompt, good-faith efforts to correct his failure to report his use of marijuana while holding a security clearance, and he has not mitigated the security concerns under ¶ 17(a) of the Adjudicative Guidelines.

As to factor (b), the Individual did not claim, and there is no evidence in the record to suggest, that the Individual's failure to report his use of marijuana to the LSO, as required by DOE Order 472.2A, was caused or contributed to by the advice of legal counsel or some other professional. The Individual admitted that he knew he was required to report his use of marijuana to the DOE. Therefore, I find that the mitigating factor at ¶ 17(b) is not applicable to this case.

As to factor (c), the Individual's failure to comply with DOE's reporting requirements and report his use of marijuana to the LSO, is not a minor offense. The Individual testified that he was aware of the DOE's reporting requirements when he used marijuana in September 2022. His failure to report, despite knowing he was required to do so, shows an unwillingness to follow the rules. His use of marijuana occurred in September 2022, three years before the hearing, and his failure to report continued for over two years, until he was questioned about his drug use in the 2025 QNSP. Finally, as explained above, the Individual's use of marijuana, while holding a security clearance, occurred after being in a social setting with people he knew, which was not an unusual circumstance, and he knew he was required to report his drug use, but admitted he was afraid to do so. Therefore, I am unable to conclude that the Individual's failure to report is unlikely to recur, and the Individual has not mitigated the security concerns under ¶ 17(c) of the Adjudicative Guidelines.

As to factor (d), the Individual admitted that he used marijuana while holding a security clearance and that he did not comply with DOE's requirement that he report his drug use to the LSO. He did not submit evidence that he obtained counseling or took other positive steps to address his poor

⁹ The security concerns do not involve an allegation that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. There is no allegation that the information used to form the basis of the security concerns came from a source of questionable reliability. Finally, the LSO did not allege that the Individual was associated with anyone involved in criminal activity. Therefore, the mitigating factors found at subparagraphs (e), (f), and (g) are not applicable to this case.

judgment or decision-making in failing to report his conduct. Therefore, I cannot conclude that the Individual's behavior is unlikely to recur, and he has not mitigated the security concerns related to his failure to report his use of marijuana while holding a security clearance under ¶ 17(d) of the Adjudicative Guidelines.

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

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 not brought forth sufficient evidence to resolve the Guideline E and H concerns set forth in the SSC. Accordingly, the Individual has not 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Diane L. Miles
Administrative Judge
Office of Hearings and Appeals