

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: April 18, 2025)
)
_____)

Case No.: PSH-25-0109

Issued: September 22, 2025

Administrative Judge Decision

Andrew Dam, 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 not be restored.

I. BACKGROUND

The Individual received a security clearance in conjunction with his employment with a DOE contractor. Exhibit (Ex.) 1 at 6.² In October 2024, the Individual submitted to a random drug screen with the DOE contractor and tested positive for marijuana metabolite. Ex. 7 at 25–26. Subsequently, the local security office (LSO) informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 6–8. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline H 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 at 10. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative review hearing.

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 Exhibits 1 through 8 submitted by the DOE were submitted as a single PDF, Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by the DOE.

At the hearing, the Individual testified and presented the testimony of five witnesses: his neighbor (Neighbor); his supervisor (Supervisor); the Facility Security Officer/Insider Threat Senior Program Official (FSO); his coworker (Coworker); and his wife (Wife). Hearing Transcript, OHA Case No. PSH-25-0109 (Tr.) at 3. The LSO presented no additional witnesses. *Id.* The LSO submitted eight exhibits (Ex. 1–8). The Individual submitted Exhibits A through K, as one exhibit notebook.³ After the hearing, one of the Individual’s witnesses, at the Individual’s direction, submitted a letter that I have designated as Exhibit L. I have also designated a post-hearing email from the Individual as Exhibit M.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

Under Guideline H of the Adjudicative Guidelines, the 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.” Adjudicative Guidelines at ¶ 24. Conditions that could raise a security concern under Guideline H include “testing positive for an illegal drug” while granted access to classified information or holding a sensitive position. *Id.* at ¶ 25(b). In invoking Guideline H of the Adjudicative Guidelines, the LSO cited the Individual “test[ing] positive for marijuana metabolite on a random drug test for his employment . . .” in October 2024. Ex. 1 at 5. Given this positive drug test, I find the LSO’s invocation of Guideline H to be justified.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires a Decision to reflect 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 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 her 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).

³ The first two pages of the exhibit notebook were unmarked and have been deemed as Exhibit K. This Decision will refer to the exhibit letter and the PDF page number when citing to the Individual’s Exhibits A through K.

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

a. Individual's Background and Hand Pain Pre-December 2023

Regarding the Individual's character, his witnesses described him in positive terms. *See, e.g.*, Tr. at 21 (Individual's Neighbor describing the Individual as a "bright, talented guy"), 39 (FSO testifying that his "interactions with him ha[ve] always been positive"), 64 (Individual's Supervisor testifying that he had "zero concerns about [the Individual] being a security risk to the United States of America"). The Individual's Wife described the Individual as a "very aboveboard, buttoned up person." *Id.* at 77. Similarly, his Coworker described the Individual as a "straight shooter." *Id.*

The Individual has suffered from chronic hand and wrist pain for over a decade. *See* Ex. G at 78 (letter from the Individual's hand surgeon (Surgeon) indicating that the Individual had been a patient of the Surgeon's orthopedic hand practice since 2011 for various complaints and injuries). In July 2020, the Individual received an official diagnosis of a specific type of arthritis. *Id.* The Individual's Surgeon indicated that he began treating the Individual's diagnosis with "nighttime splinting and [nutritional] supplementation" *Id.*

After six weeks, splinting provided inadequate pain relief, so the Individual began receiving cortisone injections. *Id.* Through 2020 to 2021, the Individual received cortisone injections every six months; however, the frequency of these injections increased to every three months in 2022. *Id.* The Surgeon indicated that the Individual "had to use other treatments including over the counter analgesic creams/lotions and oral meds, like anti-inflammatories and [T]ylenol, to get through different activities of daily living"; that he "began splinting earlier in the day and through the night"; and that, in 2023, the cortisone "injections were not helping as much" *Id.*; *see also* Tr. at 101–02 (Individual's testimony regarding treatment he received).

b. Individual's Deliberations on Whether to Use the CBD Product

"[A] couple of weeks before Christmas" 2023, the Individual told his Neighbor about his chronic hand pain, and the Neighbor, who had the same type of arthritis as the Individual, recommended a tincture that contained cannabidiol (CBD) oil (CBD product). Tr. at 101. The Individual testified that he learned about the presence of tetrahydrocannabinols (THC)⁴ in the CBD product from the product's "website probably" though he could not "recall exactly." Tr. at 103.

⁴ 21 U.S.C. § 812 sets forth schedules of controlled substances, which includes "[THC], except for [THC] in hemp (as defined under . . . [7 U.S.C. § 1639o])." Hemp products are further defined as products from "the plant *Cannabis sativa* L. . . . with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 1639o(1).

At the hearing, the Individual explained that he found, on the website of the CBD product's supplier, a third-party lab's report documenting the results of a test on the composition of the CBD product. Tr. at 118. The Individual submitted into the record the third-party lab's report. Ex. D at 66–73. The lab results measured a concentration of .25 percent delta-9 THC in the CBD product. Ex. D at 66. The lab report explicitly disclaims that the “[r]esults relate *only* to the submitted sample”—received on January 31, 2022—and that the lab “makes no claim about the other portions of this commodity/lot.” *Id.* (emphasis added).

At the hearing, the Individual could not provide exactly when he had first seen this laboratory report but estimated in 2024. Tr. at 117–18. When asked if he had reviewed the report prior to using the CBD product, he testified, “I don’t remember.” *Id.* The Individual expressed that he “started under the impression that there wasn’t any [THC in the CBD product] or at least not measurable amounts . . .” Tr. at 122. He also testified that he only reviewed the lab report carefully after his positive drug test in October 2024. *Id.* at 118.

However, the Individual’s own written statement, prepared specifically for the purposes of this hearing, contradicts his testimony:

I understood that [the CBD product] might contain residual THC, so I reviewed a test report . . . available on the [CBD product’s] web site that showed . . . low, but measurable, concentrations of [delta-9 THC]. I found [my Neighbor’s] good result compelling and the low levels of THC measured in the product by a third-party laboratory [sic], so I decided it was worth trying myself.

Ex. K at 1 (citing to Ex. D at 66). I interpret the above statement to mean that the Individual chronologically (1) had a concern that the CBD product contained THC, (2) read the lab report and observed the quantifiable amounts of the THC in the sample, and (3) decided to try the product based, in part, on his review of the lab report. At the hearing, the Individual admitted that such an interpretation would be “reading it [the written statement] correctly.” Tr. at 138–39. I also note that his Wife testified that she believed her husband “was very careful when he [first] considered taking this [CBD] product . . . as he is about everything . . .” Tr. at 78.

Based on the above, the Individual likely reviewed the lab report prior to his use of the CBD product, and I do not credit that the Individual only reviewed this report closely after his eventual positive October 2024 drug test.⁵ If the Individual consumed this particular CBD product, the Individual likely knew it had quantifiable levels of THC prior and likely reviewed the third-party laboratory’s disclaimer that other samples of the CBD product may contain different amounts of THC. It is unclear why he would testify in contradiction to this written statement. Regardless, the Individual admitted that, even if he had known about the concentration of THC, “[he] might have still taken [the CBD product].” Tr. at 122.

⁵ The Individual testified at the hearing that he could locate and share a screenshot of the date that he downloaded the report. Tr. at 138. After the hearing, the Individual indicated that he could not locate the date because he had made highlights to the PDF which changed the timestamp in the file folder. Ex. M. The Individual again indicated that “[he] cannot recall when [he] downloaded the file.” *Id.*

On December 17, 2023, the Individual emailed his FSO requesting guidance on using the CBD product as a clearance holder.⁶ Ex. E at 74, 76. The email also evinces that the Individual, prior to his use of the CBD product, knew of the risk: “A friend . . . has had good luck using a tincture that contains CBD oil in it. I am wondering if this might complicate matters if it is known to cause false positive⁷ results for random drug testing.” *Id.*

On December 18, 2023, the FSO emailed his response. *Id.* Regarding the Individual’s understanding of the FSO’s response, the Individual testified

[The FSO] didn’t know, period. And he didn’t know who to point me to. And he just made a blanket statement of look[,] . . . [“]I wouldn’t recommend anyone use it.[”] *He didn’t advise against it. He said I wouldn’t recommend anyone to use it . . .*

Tr. at 109 (emphasis added). I cannot discern, from the Individual’s above testimony, what distinction exists between the “advice” and “recommendations.” Regardless, upon review of the plain text of the December 18, 2023, email, the FSO rather clearly “*recommend[ed] to all [] clearance holders not to use CBD products* as there is a risk for it to produce a drug test with derogatory result.” Ex. E at 74, 76 (emphasis added); *see also* Ex. 6 (Individual’s statement in the October 31, 2024, Personnel Security Information Reporting Form explicitly acknowledging that the FSO “*recommended to not use a CBD product . . .*”) (emphasis added). The FSO further advised that the “CBD industry is still essentially unregulated.” Ex. E at 74, 76. The Individual’s testimony that the FSO “didn’t know who to point [him] to” also lacks support given that the FSO explained that “[t]his [wa]s the overall guidance *from the federal government* when this question comes up.” *Compare* Tr. at 109 *with* Ex. E at 74, 76 (emphasis added). For the aforementioned reasons, I conclude that, despite his assertions to the contrary, the Individual received explicit advice against using the CBD product.

On December 24, 2023, the Individual emailed his response to the FSO’s recommendation and added his Supervisor onto the email thread: “My arthritis is bad enough that I am willing to risk a false positive drug test to see it [sic] this CBD product helps. *I can live without a clearance* better than with the ongoing pain” Ex. E at 73 (emphasis added). In that email, the Individual also attached what he represented was a letter from his primary care physician “supporting this approach” *Id.*; *see also* Ex. K at 1 (written statement from the Individual received in August 2025 stating that his primary care physician’s letter “supported” his CBD use). However, the letter,

⁶ As part of his responsibilities, the FSO “initiate[s] clearances, monitor[s] clearances, give[s] [the clearance holders] training . . . [and] take[s] care of all those matters related to classified activities . . . that the DOE sponsors [the contractor] for.” Tr. at 29–30. The FSO confirmed that, as part of his job duties, he is regularly consulted with clearance-related questions from contractor employees. *Id.* at 47.

⁷ Regarding his belief that the cannabis product containing THC might result in a positive marijuana test, the Individual in this December 2023 email thread and throughout his testimony used the term “false positive.” *See, e.g.*, Ex. E at 76; Tr. at 104, 109 (Individual’s testimony). The Individual acknowledged during the hearing that the term “false positive means [a] positive [test result] when it shouldn’t be” and explicitly acknowledged he was not challenging the validity of the positive test precipitating this adjudicative proceeding. *Id.* at 112–13; *see also id.* at 122, 140 (Individual’s later testimony, again, using the term “false positive” but then again admitting he had THC in his system).

dated December 20, 2023, lacks any endorsement and simply states the following: “[The Individual] is a patient of this practice. He is followed by orthopaedics [sic] for his arthritis but will be trying [the CBD product] for pain relief. Should you have any questions, please do not hesitate to contact me.” Ex. F at 77.

On December 26, 2023, the Individual’s Supervisor sent an email indicating that he “agree[d] with the approach” noting that “[h]igh quality CBD products carry less risk of contamination which could cause a find in a random drug test.” Ex. E at 73; *see also* Tr. at 66–67 (Supervisor’s testimony). At the hearing, the Individual’s Supervisor testified that he could not remember any other time that he endorsed a course of action contrary to what the FSO recommended. Tr. at 67. He, however, explained that he agreed with the Individual’s approach after witnessing the Individual’s chronic pain and because “[they] were all trying to manage the risk with [the Individual] finding a high[-]quality product” *Id.* Regardless, the Individual’s Supervisor answered, “[n]o” when asked if he would consider it good judgment for the Individual to use this CBD product despite the advice that it possibly contained THC. *Id.* at 63. Similarly, the FSO testified that, in his three years in his position, “it [was] unusual for anybody to discount” his guidance. *Id.* at 47–48. The FSO provided that the Individual’s eventual decision to use the CBD product was “not good judgment as a clearance holder” though he acknowledged “it was [the Individual’s] last resort before surgery.” *Id.* at 40.⁸

c. Individual’s History of Use of the CBD Product, October 2024 Positive Drug Test, and Subsequent Proceedings

The Individual testified that he “wasn’t intentionally flouting advice or recommendations” Tr. at 111. Those assurances aside, in contravention to the explicit recommendation of the FSO, the Individual started using the product sometime after December 24, 2023. *Id.* at 113–14. The Individual described the CBD product as a solution in a bottle with a dropper. *Id.* at 104–05. When asked if the packaging or bottle mentioned anything about containing THC, the Individual testified that he could not remember: “I haven’t looked at that bottle in so long. It might. I don’t – I can’t say for sure I remember remarking [the packaging] was very small [T]he box was . . . pretty sparse.” *Id.* at 105–06.⁹

Every morning, the Individual used the dropper to place a drop—approximately .7 to .75 mL—of the CBD product under his tongue. *Id.*; Ex. 6 at 22. The Individual testified that the CBD product brought his “hands . . . back to normal” and that “he felt no [other] effect” Tr. at 113. In his prepared statement, the Individual wrote that he “noticed some reduced benefit over time during 2024 that [he] attributed to developing a tolerance.” Ex. K at 2.

⁸ The FSO provided a post-hearing, written statement indicating that he saw the Individual’s eventual use of the CBD product to be an “isolated incident.” Ex. L at 1. He expressed that he “d[oes] not question [the Individual’s] reliability and trustworthiness” and “believes[s] that [the Individual] will comply with the laws, rules, and regulations of a security clearance holder.” *Id.* This post-hearing statement lacks the evidentiary value of live testimony given under oath and subject to cross examination.

⁹ The Individual testified he still had the bottle in his home and that he would, after the hearing, submit a picture of the bottle to show whether the bottle warned of the presence of THC. Tr. at 125. The Individual sent an email after the hearing indicating that he no longer had the CBD product and could not take a photo of it. Ex. M at 1.

The Individual stopped using the CBD product for a few weeks in May 2024 due to travel to a foreign country. *Id.*; Tr. at 113–14; Ex. 6 at 22. Prior to the trip, the Individual researched whether the foreign country permitted CBD products. Tr. at 113–15. The Individual found it “unclear” whether he could take the CBD product to the foreign country and ultimately decided not to bring the CBD product on the trip, wanting to avoid a “Brittney Griner” incident. *Id.* He reported that his “hands got worse almost instantly.” *Id.* at 114. He “continued taking it once [he] returned” from his foreign travel. Ex. 6 at 22.

The DOE contractor selected the Individual for a random drug test on October 22, 2024. Ex. 7 at 25. The Individual tested positive for marijuana metabolite. *Id.* at 26. The Individual provided the following rationale for the positive drug test: “I swear that I have never partaken of [sic] marijuana products; taking the CBD oil daily must have accumulated from [sic] any residual THC in the CBD product.” Ex. 6 at 22. The Individual, at the hearing, maintained that he never used an illegal drug. Tr. at 140.

All the Individual’s witnesses stated they do not believe that the positive drug test resulted from the use of a marijuana product. Tr. at 23 (Neighbor’s testimony), 49 (FSO’s testimony), 61 (Supervisor’s testimony), 94 (Coworker’s testimony). However, the FSO acknowledged that the drug test result “could not tell the difference” between the marijuana metabolite derived from a CBD product or from a marijuana product. *Id.* at 38. The FSO further testified that his guidance is to not take a CBD product because it is not regulated by the Food and Drug Administration and because “even though the product says it might have .001 [percent] THC, it could be 100 percent THC” *Id.* at 38–39.

The Individual stopped taking the CBD product the day he received the positive drug test results. *Id.* at 124. A letter from his Surgeon, dated July 31, 2025, indicates that he underwent surgery on his left hand and that he continues to receive injections into his right hand for pain relief. Ex. G at 78. As of the date of the hearing, the Individual testified that, despite the surgery, his left hand is in “terrible shape” and “is unstable.” Tr. at 116; *see also id.* at 128 (“My hands . . . [and] my thumbs are in bad shape.”). The Individual described having to “learn[] how to live without [his] thumbs for the most part.” *Id.* at 128.

The Individual also submitted into the record a Supreme Court decision regarding a truck driver who ingested a purportedly THC-free product and subsequently lost his job when failing a drug test. Ex. C at 5–65. The Individual gave the following proffer for the submission:

First, I did not know at the time I started using a CBD product that THC-free versions existed. Second, the case illustrates how careful consumers of CBD products can be inadvertently and adversely impacted, which is my case. [The CBD product’s] supplier I used, recently started offering a 0% THC version that I would have used from the start if it had existed.

Ex. K at 1.

V. ANALYSIS

The Individual maintains that he has not used an illegal drug and that the October 2024 random drug test found marijuana metabolite in his system due to his use of a purportedly legal CBD product. Without the package or similar evidence, I have no basis to conclude that the Individual used the specific, purportedly legal CBD product or that he used a “CBD product” at all. In support, the Individual only produced a 2022 laboratory report of the purported CBD product indicating that the tested sample contained .25 percent THC, which is under the .3 percent cutoff to meet the legal definition of marijuana. However, the laboratory report tested a sample of the product from January 2022, nearly two years prior to when the Individual started ingesting the product after December 2023. Ex. D. at 66. The same laboratory report disclaims that the results “relate *only* to the submitted sample” and “makes no claim about other portions of this commodity/lot.” *Id.* at 66 (emphasis added). Even if I were to credit his claim that he used this specific CBD product, the lab report has limited probative value in determining whether the specific CBD products that he purportedly purchased and ingested were legal products.

Based on the record here, I cannot determine if the specific CBD product he claimed to have purchased and ingested throughout several months in 2024 would have met the definition of a legal CBD product. The drug test he underwent makes no distinction between marijuana metabolite from a legal or illegal product. The Individual received advanced warning that CBD products were unregulated and knew that a lab-tested sample of another batch of the CBD product in fact contained some quantifiable amount of THC. He also could not produce the CBD product’s bottle or packaging to demonstrate (1) that he even purchased and ingested this specific product and (2) that the CBD product’s supplier guaranteed that the product had no THC or contained THC under the legal threshold for marijuana. On December 21, 2021, the Director of National Intelligence issued a Memorandum for Distribution, which provided guidance on adjudicating these types of concern on the use of CBD products by clearance holders. Memorandum from the Director of National Intelligence to the Heads of Federal Agencies, ES2021-01529 (Dec. 21, 2021) (available at https://www.dni.gov/files/NCSC/documents/Regulations/12-21-21_Memo_SecEA_Clarifying_Guidance_re_Marijuana_21-01529_U_SIGNED-FINAL.pdf). (DNI Memo):

[P]roducts labeled as hemp-derived that contain greater than 0.3 percent THC continue to meet the legal definition of marijuana[] and therefore remain illegal to use under federal law and policy. Additionally, agencies should be aware that the Federal Drug Administration does not certify levels of THC in CBD products, *so the percentage of THC cannot be guaranteed, thus posing a concern pertaining to the use of a CBD product under federal law.*

DNI Memo at 3 (emphasis added). Given the above and the positive drug test for marijuana metabolite, I continue to find the concern regarding drug involvement and substance misuse as properly raised.

Conditions that can mitigate security concerns based on drug involvement and substance misuse include the following:

- (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.

Regarding paragraph 26(a), I cannot find that the behavior happened so long ago when the Individual tested positive for marijuana metabolite in October 2024, which was less than a year ago. I cannot find the use infrequent either, as he admitted to administering it to himself for approximately 10 months every day, save for a few weeks during a foreign trip. Last, as further explained below, the circumstances here indicate that use of the CBD product is likely to recur and also reflect poor judgment, reliability and trustworthiness.

With respect to recurrence, the Individual indicated that he took the purported CBD product because of chronic pain. While I am sympathetic to his medical condition, the Individual indicated that he continues to feel pain in his hands. As this concern arose from the Individual's purported use of a CBD product to manage his pain, it stands to reason that the Individual may again turn to a CBD product for current and future pain relief. That the Individual represented that the CBD product's supplier now offers a "0% THC free version" of the product does little to assuage the concern raised. As stated to him explicitly, CBD products are not regulated by the federal government, and if he chooses to use another CBD product, there is still no guarantee as to the contents of the product.

The circumstances here also reflect poor judgment, reliability, and trustworthiness. Guideline H explains that the concerns implicated by the use of illicit substances include not only impairment but also "a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guideline ¶ 24. The Individual received the FSO's advice to not pursue his proposed

consumption of the CBD product. The Individual chose to ignore such advice and explicitly acknowledged that he would rather lose his clearance. The FSO and his Supervisor agreed at the hearing that this demonstrated poor judgment. Furthermore, throughout this proceeding, the Individual provided contradictory statements and misconstrued many facts, suggesting a minimization of the issues and a tendency to reconstruct history in his favor. The most obvious inconsistencies include (1) his testimony that he could not remember when he reviewed the laboratory report and that he had not closely looked at the report until after the October 2024 positive drug test, which directly contradicts his prepared written statement stating he reviewed the lab report prior to using the product, and (2) his testimony that he had not been advised against the CBD product's use and that he "wasn't intentionally flouting advice or recommendations . . ." despite all evidence to the contrary. That the Individual failed to follow the FSO's recommendations and federal guidance, that the Individual persisted in his conduct despite explicitly acknowledging the risk to his clearance, and that the Individual subsequently acted as an unreliable historian of those events demonstrate poor judgment, reliability, and trustworthiness and reflect an unwillingness to follow laws, rules, and regulations, as they are communicated to him.

Regarding paragraph 26(b), the Individual has denied drug involvement and substance misuse despite the evidence that he had used an illegal drug. Accordingly, paragraph 26(b) is inapplicable. Since the concerns are not based on abuse of prescription drugs, paragraph 26(c) is patently inapplicable. Paragraph 26(d) is also inapplicable because the Individual did not enroll in or complete a drug treatment program.

Having concluded that the Individual has not established the applicability of any of the mitigating conditions, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline 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 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.

Andrew Dam
Administrative Judge
Office of Hearings and Appeals