

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. 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 six exhibits (Ex. 1–6). The Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf, and no other witnesses were called. Hearing Transcript, OHA Case No. PSH-25-0124 (Tr.).

II. THE SECURITY CONCERNS

Pursuant to the Bond Amendment, “a Federal agency may not grant or renew a security clearance for a [] person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b). An addict is “any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.” 21 U.S.C. § 802(1). According to DOE policy,

[a]n unlawful user of a controlled substance is any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of the controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate the individual is actively engaged in such conduct.

DOE Order 472.2A Chg.1 A, Appendix C. In citing the Bond Amendment, the LSO relied upon the results of the Individual’s random drug test, which showed he had tested positive for marijuana metabolite.³ Ex. 1 at 5. The information cited by the LSO justifies its invocation of the Bond Amendment. 50 U.S.C. § 3343(b).

Guideline H, under which the LSO raised additional security concerns, relates to security risks arising from drug involvement and substance misuse. “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. In citing Guideline H, the LSO relied upon the results of the Individual’s random drug test, which showed he had tested positive for marijuana metabolite. Ex. 1 at 5. The information cited by the LSO justifies its invocation of Guideline H. *See* Adjudicative Guidelines at ¶ 25(b), (f) (indicating that “testing positive for an illegal drug” and “illegal drug use while granted access to classified information or holding a sensitive position” could raise security concerns under Guideline H).

III. REGULATORY STANDARDS

³ Marijuana is a “Schedule I” controlled substance. 21 U.S.C. § 812(b)(1).

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 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 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.* at § 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

On February 3, 2025, the Individual was randomly selected for a drug screening while at work. Ex. 4 at 17. That drug screening came back with a positive result for marijuana metabolite. *Id.* at 18. The Individual has been undergoing random drug screenings regularly for about ten years. Tr. at 21. When he first got his security clearance, the tests were approximately monthly because of a Human Reliability Program certification that the Individual held. *Id.* at 21–22. He estimated that he had undergone seventy-five to one hundred random drug screenings since he received his security clearance and, prior to the February 2025 test, they had all been negative. *Id.* at 23. The Individual learned about his positive test on February 10, 2025. Ex. 4.

The Individual underwent an evaluation with a certified substance abuse counselor the day after he learned about his positive test. Ex. A. The report of the evaluation stated that the Individual was "at a loss to explain [his positive test]" and noted that his only theory was that someone had brought marijuana-laced food to his home after several close family members passed away in the middle of January 2025. *Id.* at 1. Based on his evaluation, the substance abuse counselor recommended that the Individual complete two hours of educational counseling on "on the nature of common drugs of abuse with focus on [Cannabidiol (CBD)] products and [Tetrahydrocannabinol (THC)]; and for high risk decision making." *Id.* at 2. The report of the evaluation also noted that the Individual would be considered "fit for duty" when he produced a letter stating he had completed the two hours of educational counseling the counselor had recommended and a statement that he was "at low-risk of being [positive] on a random [urine drug screening] on the job." *Id.*

When the Individual first learned of his positive test, he was unsure what he had consumed to cause him to test positive. Tr. at 9. When he began to look into the matter, he claimed that a family

member implied that someone had brought brownies laced with “CBD-oil-type stuff⁴” to the Individual’s home after one of the family deaths in January. *Id.* at 9–10. He testified that more than one hundred friends and relatives came through his home in mid-January. *Id.* at 10. None of the Individual’s friends or family members would admit to having brought the allegedly CBD-laced brownies to his home. *Id.* at 14. The Individual is familiar with the feeling of marijuana intoxication from marijuana use as a teenager, but he did not recall feeling intoxicated after consuming the brownies. *Id.* at 11–12. He also did not recall the brownies tasting “weird,” but after talking to the medical review officer who conducted his drug screen, it was his understanding that the CBD oil he speculated was used in the brownies could be flavored in a way that would mask a traditional marijuana flavor. *Id.* at 12.

The Individual testified that he completed the educational counseling, but the certificate showing he completed the counseling was in his work email, which he testified he had been locked out of since March 2025. *Id.* at 30. As such, he was unable to submit it as an exhibit at this hearing.

Since his positive test, the Individual has tried to avoid consuming food that he has not prepared himself. *Id.* at 29. He has been attempting to be more conscious of what he is consuming so he does not inadvertently consume a marijuana product again. *Id.* The Individual testified that he had not knowingly used marijuana since approximately 2013. *Id.* at 25.

V. ANALYSIS

A. Bond Amendment

As stated above, the Bond Amendment provides that federal agencies “may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” Based on the evidence in the record here, I conclude that the Individual is an “unlawful user” of a controlled substance as defined by the Bond Amendment based on his positive marijuana metabolite drug test result in February 2025. While the Individual testified that he had not intentionally consumed any marijuana products in the time preceding the positive drug test, he did not provide any corroborating evidence for his claim. *See Personnel Security Hearing*, OHA Case No. PSH-24-0083 (2024) (where the Administrative Judge found that an individual was not an unlawful user of a controlled substance based on eight months of negative drug tests and testimony of a psychologist). Without any evidence to the support the Individual’s testimony, I find that the Bond Amendment prohibits the Individual from holding a security clearance.

B. Guideline H

⁴ In 2018, Congress passed a law which removed hemp products, which are defined as products from “any part of the cannabis sativa plant with no more than 0.3% of tetrahydrocannabinol (THC),” from the Controlled Substances Act, effectively legalizing CBD products derived from hemp under federal law. About CBD, CDC, <https://www.cdc.gov/cannabis/about/about-cbd.html> (Jan. 31, 2025). These federally legal CBD products are the only marijuana products that may be legally purchased under state law in the state where the Individual resides. *See State Medical Cannabis Laws*, NATIONAL CONFERENCE OF STATE LEGISLATURES (June 27, 2025), <https://www.ncsl.org/health/state-medical-cannabis-laws> (showing the states where marijuana is legal for medical and non-medical use under state laws). It is unclear from the record in this case exactly what type of product the Individual consumed. Regardless, the security concern here is that he tested positive for use of an illegal drug.

An individual may be able to mitigate security concerns under Guideline H through the following conditions:

- (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.

First, the Individual tested positive for marijuana metabolites less than eight months prior to the hearing. He did not present any evidence to support his assertion that he had not intentionally used marijuana in the time period preceding the positive test, nor did he present any evidence to support his assertion that he had consumed marijuana inadvertently. Without such evidence, I cannot say that the Individual's consumption was infrequent either. As such, I cannot find that the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur, and the security concern is not mitigated pursuant to mitigating factor (a).

Next, the Individual did not provide any evidence that would establish a pattern of abstinence from marijuana use. Without such a showing, I cannot find that mitigating factor (b) applies.

Mitigating factor (c) does not apply here because there is no allegation that the Individual was abusing prescription drugs.

Finally, mitigating factor (d) does not apply because no healthcare professional prescribed the Individual a drug treatment program and the Individual's two-hour counseling would not constitute a drug treatment program even had he provided evidence of having completed it.

Therefore, I find that the Individual has not mitigated the security concerns raised under Guideline H.

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 H 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 set forth in the Summary of Security Concerns or to demonstrate that he is not prohibited from holding access authorization pursuant to the Bond Amendment. 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.

Erin C. Weinstock
Administrative Judge
Office of Hearings and Appeals