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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: October 20, 2025) Case No.: PSH-26-0007
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Issued: January 27, 2026

Administrative Judge Decision

Erin C. Weinstock, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXX (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 was granted access authorization in connection to his employment with a DOE contractor. Exhibit (Ex.) 1 at 1. On June 10, 2025, the Individual was selected for a random drug test while at work. Ex. 4 at 1. The result of the drug test showed that the Individual had tested positive for marijuana. *Id.* On June 18, 2025, the Individual completed a personnel security information report (PSIR) that informed DOE that he had consumed tetrahydrocannabinols, including an “old prescription” that was used in combination with over-the-counter CBD gummies. Ex. 5 at 8. On July 18, 2025, the Individual completed a Letter of Interrogatory (LOI), in which he indicated that he had used tetrahydrocannabinols between August 2017 and July 2025, including when he was a clearance holder. Ex. 7 at 2.

The LSO subsequently 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 1–3. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained

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.

that the derogatory information raised security concerns under Guideline E, Guideline H, and Guideline J of the Adjudicative Guidelines. *Id.* at 4–5.

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 twelve exhibits (Ex. 1–12). The Individual submitted ten exhibits (Ex. A–K). The Individual testified on his own behalf and called two other witnesses. Hearing Transcript, OHA Case No. PSH-26-0007 (Tr.).

II. THE SECURITY CONCERN

Guideline H, under which the LSO raised 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. Conditions that can raise a security concern include: “any substance misuse,” “testing positive for an illegal drug,” and “any illegal drug use while granted access to classified information or holding a sensitive position.” *Id.* at ¶ 25. In citing Guideline H, the LSO relied upon the Individual’s admission that he used tetrahydrocannabinols while he was a DOE security clearance holder and the results of the Individual’s random drug test, which showed he had tested positive for marijuana. Ex. 1 at 4. The information cited by the LSO justifies its invocation of Guideline H. *See* Adjudicative Guidelines at ¶ 25(a)–(b), (f).

Guideline J, under which the LSO raised additional security concerns, provides: “Criminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* at ¶ 30. Conditions that could raise a security concern under Guideline J include: “evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b). The LSO cited the results of the Individual’s random drug test, which showed he had tested positive for marijuana. Ex. 1 at 4–5. This derogatory information adequately justifies the LSO’s invocation of Guideline J.²

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

² The LSO also raised security concerns under Guideline E, citing to the same information that was cited under Guideline H. Ex. 1 at 5. 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. The allegations that the LSO raised do not raise a security concern under Guideline E. *See id.* at ¶ 16 (explaining conditions that could raise a security concern under Guideline E include: deliberate omission or falsification of facts to DOE or other government actors, credible adverse information not covered under any other single guideline, conduct that creates a vulnerability to exploitation, violation of a written commitment made by the individual to an employer as a condition of employment, and association with people involved in criminal activity).

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

In December 2015, the Individual was diagnosed with a serious form of cancer that required chemotherapy. Tr. at 40. The Individual was treated for that cancer and went into remission until around 2017, when he relapsed. *Id.* The Individual then underwent a bone marrow transplant and continued with relevant follow up appointments for about five years after that. *Id.* The Individual's primary symptom during this time was intense nausea that made it difficult for him to consume enough food, particularly when he had not had adequate sleep. *Id.* at 31, 41. When the Individual was prescribed several common anti-nausea medications to help him cope with this symptom, he had severe adverse reactions including intense anxiety, jitters that made it difficult for him to sleep, and severe migraines. *Id.* at 51; Ex. B at 2 (consultation notes from doctor describing the Individual's known allergies). For a period of time from about 2015 to 2021, the Individual consumed marijuana products that he knew were not legal to help him to cope with the nausea when his prescription anti-nausea medication did not work. Tr. at 41; Ex. 5 at 59. According to the Individual, the last time he consumed a marijuana product that he understood to be illegal under federal law was October 2021. Tr. at 37. The Individual disclosed this marijuana usage on a Questionnaire for National Security Positions when he first applied for access authorization in March 2023. Ex. 3 at 59. The Individual's cancer was in remission at the time of the hearing, but he was still affected by the nausea caused by the cancer. Tr. at 45.

The Individual's doctors discovered two medications that would fight his nausea, an antidepressant that had a secondary effect of fighting nausea, and Dronabinol, an FDA-approved synthetic marijuana medication that is typically prescribed to fight nausea and vomiting caused by chemotherapy. *Id.* at 43, 50; Ex. A at 29; *Dronibonal*, NIH NATIONAL LIBRARY OF MEDICINE (last accessed January 20, 2026), <https://www.ncbi.nlm.nih.gov/books/NBK557531/>. The Individual testified that while both medications relieved his nausea, both also made it impossible for him to carry on with the rest of his day normally. Tr. at 50–51. Because of the side effects of the Dronabinol specifically, the Individual did not use the medication on a regular basis. *Id.* at 65.

When the Individual told his doctor he was not taking the medication regularly, the doctor said he would not renew the prescription, but the Individual should continue to store the medication properly and take it when he needed it. *Id.* at 65–66. The Individual’s doctor discontinued the prescription in December 2019. Ex. A at 29 (medical records showing the prescription was discontinued).

In early June 2025, the Individual became nauseous due to a combination of food poisoning and a lack of sleep while caring for his young child. Tr. at 31. Over a period of about three days, he had only consumed about 400 calories and, for the most part, was only consuming water. *Id.* On Sunday, the third day of his illness, the Individual decided to take action so he could eat enough food that he would be able to function at work on Monday. *Id.* at 32. Therefore, the Individual decided that he should try taking his old Dronabinol prescription. *Id.* at 30, 44. When the Dronabinol did not help with his nausea, the Individual decided to try a CBD gummy that his brother had purchased for him from a shop in a state where federally-legal CBD was the only type of marijuana product that could be legally purchased. *Id.* at 30, 64. In the years since his nausea began, the Individual had used similar products to reduce his nausea when his prescription did not work, though he did not testify or provide other evidence about how recently or regularly he had used these products. Ex. 3 at 59. During the Individual’s bout of nausea, he lost about twenty pounds of body weight because he was unable to eat. Tr. at 23.

On June 9, 2025, the Individual was randomly selected for a drug screening while at work. Ex. 4 at 1. That drug screening came back with a positive result for marijuana. *Id.* at 2. When the Individual was told about the test result, he was told by his managers that he should fill out a PSIR, and he did so. Tr. at 28–29; Ex. 5 (completed PSIR). In the PSIR, the Individual stated that he had consumed “Tetrahydrocannabinols – dronabinol, CBD [Cannabidiol], CBG [Cannabigerol³], CDC.⁴” Ex. 5 at 8. At the hearing, the Individual explained that while he was fairly certain he had only consumed the Dronabinol and a CBD gummy, he admitted that there was a “small possibility” the gummy could have been a different hemp-derived product because he did not still have the original packaging to be certain. Tr. at 30. The Individual does not have any of his old Dronabinol prescription medication or any of the gummies he took in his home anymore. *Id.* at 68.

After his positive test, the Individual underwent a mandatory evaluation from a treatment provider through his employer’s employee assistance program (EAP). Ex. I (letter from EAP psychologist detailing the Individual’s EAP treatment). According to a letter written by an EAP psychologist, the Individual was diagnosed with cannabis misuse and took responsibility for his choice to try to self-treat his nausea with his old medication and CBD products. *Id.* Between July 2025 and September 2025, he attended six individual therapy sessions with the EAP psychologist to successfully complete the recommended treatment and also determined that he needed to arrange for follow-up medical appointments to avoid future attempts at self-treatment. *Id.*; Ex. H (EAP treatment completion note sent to the Individual’s employer). The Individual was cleared to return

³ CBD and CBG are non-psychoactive compounds that are legal under federal law if they are derived from hemp. *About CBD*, CDC (last accessed January 20, 2026), <https://www.cdc.gov/cannabis/about/about-cbd.html>; *Cannabigerol (CBG): A Comprehensive Review of Its Molecular Mechanisms and Therapeutic Potential*, NIH NATIONAL LIBRARY OF MEDICINE (last accessed January 20, 2026), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11597810/>.

⁴ It is unclear from the record what the Individual believed “CDC” stands for.

to duty by the site occupational medicine director after an evaluation on October 2, 2025, and he was cleared to return to duty by a licensed clinical social worker in the DOE site's safety office after an evaluation on the same date. Ex. F (letter from site occupational medicine director); Ex. G (letter from licensed clinical social worker); Tr. at 57–58 (testimony discussing the Individual's interactions with the site occupational medicine director and the licensed clinical social worker).

The Individual found a new oncologist in July 2025. Tr. at 48; Ex. B (consult note from new oncologist). The oncologist who originally treated his cancer had retired around the beginning of 2024, and the Individual had been overdue for a checkup. Tr. at 48–49. The Individual got a referral from the new oncologist and saw a gastroenterologist in August 2025 to try to help him to find a better way to deal with his chronic nausea. *Id.* at 46; Ex. C. The Individual was prescribed a new medication that has helped reduce the frequency and length of his bouts of nausea. Tr. at 46–48; Ex. D at 2 (after visit summary showing a list of the Individual's medications).

The Individual provided confirmation from his employer's human resources department that he had completed one return-to-work drug test and one random drug test since his positive test, and both came back negative for marijuana use. Ex. J (email from human resources employee to the Individual confirming negative tests).

The Individual testified that he had never knowingly used marijuana since he was granted his DOE access authorization. *Id.* at 36. When he was ill, the Individual consumed CBD products that, to his understanding, were hemp-derived products that are legal under federal law, as well as a medication that was legally prescribed to him. *Id.* The Individual provided a signed letter stating that he is committed to leading a "substance-free life." Ex. E.

V. ANALYSIS

Guideline H

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 less than six months prior to the hearing. He explained at the hearing that his use of the products that caused the positive test was consistent with his past use of substances to cope with his nausea. It is unclear from the Individual's testimony and other evidence, how recent or regular that substance use was. 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).

The Individual acknowledged his drug involvement and substance misuse and has taken actions to overcome the problem. However, I cannot find that two drug screens show an established pattern of abstinence, even in light of the Individual's statement that he intends to abstain from all drug involvement in the future. As such, the Individual has not mitigated the security concern pursuant to mitigating factor (b).

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

Finally, the Individual has not mitigated the security concerns pursuant to mitigating factor (d).. While the Individual did successfully complete the treatment recommended by his EAP, he did not present any evidence regarding the EAP psychologist's prognosis. Further, there is not sufficient evidence to conclude that the Individual's EAP program included appropriate rehabilitation and aftercare.

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

Guideline J

An individual may be able to mitigate security concerns under Guideline J though the following conditions:

- (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.

The Individual's positive drug test occurred about six months prior to the hearing. The Individual did not provide sufficient evidence to show that this positive test occurred due to the consumption of legal substances. Further, he admitted that he had consumed the same products that had caused the positive test in the past. Based on the information in the record, I cannot find that the Individual has mitigated the security concerns pursuant to mitigating factor (a).

Mitigating factor (b) is not relevant to the security concern here because there is no allegation that the Individual was pressured or coerced into taking any action.

Mitigating factor (c) does not apply because it is uncontested that the Individual tested positive for marijuana in his drug test. Without clearer evidence to show that the Individual's positive drug test was attributable to use of a legal product, I cannot find that the security concern is resolved pursuant to mitigating factor (c).

The Individual did not present sufficient evidence of successful rehabilitation. While his sessions with the EAP psychologist were a good step, his positive drug test is too recent for me to evaluate whether it constitutes successful rehabilitation. Mitigating factor (d) does not apply.

Therefore, I find that the Individual has not resolved the security concerns raised pursuant to 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 and 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. 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