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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: January 16, 2026)	Case No.: PSH-26-0046
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Issued: March 27, 2026

Administrative Judge Decision

Erin C. Weinstock, 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 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 DOE. Exhibit (Ex.) 1 at 1. On October 30, 2025, the Individual was selected for a random drug test while at work. Ex. 6 at 2. The result of the drug test showed that the Individual had tested positive for marijuana. *Id.* at 2–3. As a result of the positive test, the local security office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), in which he indicated that he had used tetrahydrocannabinols in October 2025, when he was a clearance holder. Ex. 5 at 4. In the LOI, the Individual also admitted that he had used marijuana products before he was a clearance holder, from 2009 to 2016, as he had previously disclosed in the Questionnaire for National Security Positions (QNSP) that the Individual completed in 2018. *Id.*; Ex. 3 at 54.

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 eight exhibits (Ex. 1–8). The Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf and called two other witnesses. Hearing Transcript, OHA Case No. PSH-26-0046 (Tr.).

II. THE SECURITY CONCERNS

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(a)–(b), (f). 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 LSO also cited the Individual’s marijuana use between 2009 and 2016. *Id.* The information cited by the LSO justifies its invocation of Guideline H.

Guideline J, under which the LSO raised additional security concerns, provides: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *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, and his marijuana use between 2009 and 2016. Ex. 1 at 4–5. This derogatory information adequately justifies the LSO’s invocation of Guideline J.²

² The LSO also raised security concerns under Guideline E, citing to the same information that was cited under Guideline H and additionally stating that in a 2018 QNSP, the Individual stated that he had “NOT used marijuana since meeting [his] girlfriend 7/2016 and never plan[ned] on using it again.” 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. There is no indication in the record that the Individual used marijuana between July 2016 and the date he completed the QNSP or that he had plans to use marijuana in the future at the time that he completed the QNSP. Therefore, the LSO’s allegations do not raise a security concern under Guideline E because there is no indication in the record that the Individual deliberately provided false facts to DOE, deliberately omitted information, or otherwise engaged in conduct covered by Guideline E when he completed the 2018 QNSP. *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

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 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

Between 2009 and 2016, the Individual used marijuana socially about eighteen times when it was offered to him at parties in college and young adulthood. Ex. 3 at 72; Tr. at 44. In August 2024, the Individual began the onboarding process for a job with DOE, taking a pre-employment drug test and signing a security acknowledgement form. Tr. at 45–46; Ex. 7 (pre-employment drug screen with negative results); Ex. 8 (security acknowledgment form). The security acknowledgment form explained that DOE employees were not permitted to use illegal drugs. Tr. at 46; Ex. 8. The Individual was granted a security clearance through his employment with DOE sometime in the summer of 2025. Tr. at 36–37.

The Individual was diagnosed with sleep apnea in the summer of 2022 or 2023 and was directed to use a CPAP as treatment. *Id.* at 47. The CPAP and other treatment options were not effective for the Individual because of a nasal obstruction, and in between late 2024 and 2025, he was suffering from a greater sense of fatigue than was usual and having trouble breathing at night. *Id.* at 42, 48. In December 2024, his ENT offered several suggestions, including using a nasal steroid spray, using nasal strips, elevating his head while sleeping, and keeping a humidifier next to his bed. *Id.* at 11–12. The ENT told the Individual that he was a good candidate for a surgical procedure to fix the issue. *Id.* at 12 (stating that even in his initial consultation, the ENT talked to the Individual about surgery because the issue had been "going on for a very long time"). The Individual did not want to undergo the surgery because he had concerns about the risks. *Id.* at 50.

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).

The Individual tried using sleep aids like melatonin and over-the-counter drugs, but they were ineffective. *Id.* at 83. On October 18, 2025, and October 19, 2025, the Individual consumed a marijuana edible as a sleep aid. *Id.* at 42–43; Ex. 5 at 4. The Individual purchased the marijuana edibles at a state-licensed dispensary. Ex. 5 at 5. The Individual’s use of marijuana was not recommended by his ENT. Tr. at 20. The marijuana edibles did not help the Individual to fall asleep, and the Individual testified that he stopped using them after that date. *Id.* at 43. He did not report the marijuana use to DOE because his reporting responsibilities were “not fully clear to [him] at the time.” *Id.* at 84. However, the Individual also testified that he was fully aware that consuming marijuana products was a violation of federal law. *Id.* at 82. On October 30, 2025, the Individual was selected for a random drug test and that test came back positive for marijuana use. Ex. 6 at 2–3.

In December 2025, the Individual began to see a therapist to help him to deal with issues related to anxiety and stress. Ex. E; Tr. at 63–64. The Individual also saw the therapist once per month in January 2026 and February 2026. Ex. E; Tr. at 64.

On January 5, 2026, the Individual took a urine drug test through a local laboratory. Ex. F at 17. The results came back negative for all of the substances that were tested for, including marijuana. *Id.* The Individual took a second urine drug test on February 5, 2026. *Id.* at 18. Those test results were also all negative. *Id.* According to Quest Diagnostics, the company that administered the Individual’s tests, tests detect “recent drug use in the previous 24 to 72 hours.” *Frequently Asked Questions: Drug Testing*, QUEST DIAGNOSTICS, <https://www.questdiagnostics.com/content/dam/corporate/restricted/documents/employer-solutions/-drug-testing-collateral/Quest--drug-tesing-FAQ23.pdf> (last visited on Mar. 27, 2026).

On February 4, 2026, the Individual underwent a surgical procedure to correct the issues with his breathing. Ex. A at 2 (letter from ENT confirming procedure); Tr. at 15. The Individual testified that he has been very satisfied with the results of the surgery, saying it has helped him to breathe through his nose a lot more easily, and is sleeping better because he can now tolerate the CPAP. *Id.* at 53. The ENT testified that based on his evaluation at the Individual’s follow-up appointment, the procedure was successful. *Id.* at 19.

The Individual took a four-hour online marijuana education course in December 2025. Ex. D at 10. It was a self-paced course where he learned about “different aspects related to marijuana.” Tr. at 61. In January 2026, he completed a “self-recovery” program, which was a self-paced educational course designed for people with substance abuse and addiction problems. Ex. D at 11; Tr. at 62–63. The self-recovery program helped him to consider new tools to deal with stress and anxiety. Tr. at 63.

The Individual has had consistently good performance reviews since starting his job at DOE in 2024. Ex. G; Tr. at 24–25.

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 about five months prior to the hearing. While the Individual testified that he only consumed the marijuana edibles on two occasions as a clearance holder, I cannot say that his marijuana use was infrequent due to the lack of clear, objective evidence about his recent marijuana use or his past social use. While he provided several drug tests, the tests measure such a brief period of time that they provide minimal evidence as to the frequency or recency of his drug use. Finally, at the hearing, the Individual testified that he was using the marijuana products in an attempt to solve a long-standing problem related to his sleep apnea that he has since solved. While he has resolved that specific issue, the longstanding nature of his health issues make me skeptical that the use of marijuana was particularly unusual. The Individual did not describe any particularly acute problem or incident that caused him to turn to marijuana as a coping mechanism; particularly considering that his ENT had recommended interventions he could have turned to in lieu of illegal drugs. Additionally, I find it concerning that the Individual used marijuana products that he knew were illegal under federal law while holding a security clearance and that choice continues to cast doubt on his good judgment. *See* 10 C.F.R. 710.7(c) (explaining that DOE officials involved in decision-making processes under Part 710 “shall consider” “the circumstances surrounding the conduct, to include knowledgeable participation”). 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. Those tests, while they provide some information, are not sufficient to show that the Individual has abstained from marijuana consumption since his positive test because there is no evidence that those tests cover more than a period of a few days each. Even if those tests covered a longer period of time, the Individual did not present any objective evidence that he had not used marijuana products for the majority of November 2025 or February 2026. Without clearer proof of the Individual's abstinence from drug use, 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.

Mitigating factor (d) does not apply for several reasons. First, there is no evidence that the Individual enrolled in a "prescribed drug treatment program." Second, while the Individual provided evidence that he completed two drug and substance abuse education programs, he did not present any evidence that there were treatment components of those programs or even that the programs were facilitated by qualified medical professionals.

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 five months prior to the hearing. As I explained above, the Individual's health problems were not particularly novel. His decision to use an illegal drug to self-medicate without consulting the physicians who were treating him, despite being recommended a procedure that could control his symptoms without recourse to illegal drugs, continues to cast doubt on his reliability and good judgment. 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 used an illegal drug.

The Individual did not present sufficient evidence of successful rehabilitation from his illegal drug use. While his sessions with the therapist and the educational course that he took were good first steps, neither intervention was a formal drug treatment program and his positive drug test was too recent for me to conclude that he has successfully established rehabilitation. Further, as the Individual has not been charged with a crime, the factors concerning restitution and compliance with terms of parole or probation do not apply. As to the factor regarding a good employment record, there is no indication in the record that the Individual's employment record has changed since his drug use in October 2025. 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