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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: August 17, 2016 )  
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Case No.: PSH-16-0083

Issued: January 31, 2017

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should be restored.<sup>2</sup>

**I. BACKGROUND**

A Local Security Office (LSO) obtained information that raised concerns regarding the Individual’s eligibility to hold a security clearance. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on June 16, 2016. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on October 28, 2016. At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his girlfriend (the Girlfriend) and two of his colleagues. *See* Transcript of Hearing, Case No. PSH-16-0083 (hereinafter cited as “Tr.”). The LSO submitted six exhibits, marked as Exhibits 1 through 6. The Individual submitted three exhibits, marked as Individual’s Exhibits A through C.

<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraph (l)<sup>3</sup> of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

The Individual acknowledges that he used marijuana on two occasions in July and August 2010, while he possessed a DOE security clearance. The Individual's use of an illegal drug, in contravention to his employer's and DOE's policies, while possessing a DOE security clearance, raises significant security concerns. The Adjudicative Guidelines state in pertinent part: "Conduct involving questionable judgment . . . or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at ¶ 15 (emphasis added). Accordingly, the LSO properly determined that the information in its possession raised security concerns under the Adjudicative Guidelines.

## **III. REGULATORY STANDARDS**

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). 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**

The factual bases of the security concerns at issue in the present case are uncontroverted. The Individual, who has maintained a DOE security clearance since 1993,<sup>4</sup> experimented by smoking

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<sup>3</sup> Criterion L refers to information indicating that the Individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

<sup>4</sup> Tr. at 87.

a small amount of marijuana<sup>5</sup> in July 2010. The Individual again experimented with marijuana in August 2010.<sup>6</sup>

Pursuant to a regularly scheduled background re-investigation, the Individual completed, signed, and submitted a Questionnaire for National Security Positions (QNSP) on December 18, 2015. In that QNSP, the Individual reported his marijuana use as described above.<sup>7</sup> Ex. 4 at 35. During a PSI conducted by the LSO on June 2016, the Individual provided essentially the same information about his marijuana use that he provided in the QNSP. The Individual acknowledged, during the PSI, that he had used marijuana while possessing a DOE security clearance, that his conduct was illegal, and that by using marijuana he had violated his employer's and DOE's policies against illegal drug use. Ex. 5 at 34.

## V. ANALYSIS

At the hearing, the Individual's girlfriend of nine years testified on his behalf. She testified that the Individual is: "probably the most scrupulous, ethical, you know, follow the rules kind of person

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<sup>5</sup> The Individual reported that he had shared a small portion of a marijuana cigarette with his girlfriend. He further reported that he did not experience any noticeable effects as a result of this experiment.

<sup>6</sup> The Individual again reported that he had shared a portion of a marijuana cigarette with his girlfriend. He further reported that he discontinued smoking the marijuana cigarette when he began experiencing the effects of the marijuana, and found that they made him uncomfortable.

<sup>7</sup> Specifically, the Individual stated:

Approximately 5 years ago, a friend was surprised that I had NEVER tried or used ANY illegal drugs in my whole life, including marijuana. In a playful dare, she asked me to and insisted that I try a few puffs of marijuana, which unfortunately, I did. A month later, she badgered me to try again a few puffs, which regrettably I did again. In the heat of the moment, I did not think of the consequences nor fully appreciate the gravity of the situation, namely that I was using an illegal drug. The two very brief experiences were primarily driven because of my friend's insistence, my lack of consideration, and bad judgement. Since then, I have NEVER tried or used any illegal drug again.

Ex. 4 at 35. The Individual also indicated that he did not intend to use illegal drugs in the future stating:

My philosophy about life is to be a minimalist when it comes to prescribed drugs, even to go as far as not using painkillers after surgery. I had NEVER used illegal drugs before in my life until this incident and was proud of that fact. When my friend insisted that I try a few puffs of marijuana, I was not thinking of the consequences and that I was just about to break my clean record of not ever having used illegal drugs. She was being "playful" and daring me to try. Had the illegal-aspect of the drug entered my mind at the time, I would not have taken the puffs. Unfortunately, this thought did not cross my mind at the moment of these events. I don't smoke, nor do I seek to use illegal drugs. I am truly sorry and regret that I even tried this drug, and if I had to do it over again, I definitely would not have done so. I absolutely do not plan to use any illegal drugs in the future.

*Id.*

that I know. He's very aboveboard, very honest, very hard working, extremely reliable and dependable. He always does what he says he's going to do." Tr. at 16. She further described him as "very ethical and moral" and the "kind of person who owns up to his mistakes." Tr. at 37, 50. The Girlfriend testified that she provided the Individual with marijuana on both occasions when he experimented with it, and that he had done so at her encouragement, after he had initially declined her suggestion to try marijuana.<sup>8</sup> Tr. 21- 24. She recalled that, during the Individual's second experimentation with marijuana, he stopped smoking when he started to feel its effects, which he did not like. Tr. at 24-25. They have not used illegal drugs since the two occasions in 2010. Tr. at 26. The Girlfriend testified that she has not used illegal drugs since 2010. Tr. at 19, 29. The Girlfriend testified that the Individual's marijuana use was out of character for him, and blames herself for cajoling or teasing him into trying it. Tr. at 28-29.

The Individual testified that he comes from a family with a history of substance abuse, and has therefore avoided illegal drugs, and has only used alcohol on a very infrequent basis. Tr. at 88-90. The Individual testified that he even avoids prescription pain medication. Tr. at 89. The Individual testified that, other than for traffic violations, he has never been in any legal trouble. Tr. at 90. The Individual characterized his marijuana use as "a mistake, completely out of character for me." Tr. at 101. He recalled that he discussed the fact that he had never tried any illegal drugs with his Girlfriend, and that she was surprised. Tr. at 101. She then urged him to experiment with it. Tr. at 101-102. Even though he initially declined her offer, he eventually gave in and gave it a try. Tr. at 102. The first time he tried marijuana, he did not feel its effects. Tr. at 102. About a month later, he tried marijuana again. Tr. at 103. The second time he tried marijuana, he felt its effects. Tr. at 103. He did not like its effects, so he never used marijuana again. Tr. at 104. The Individual stated that he saw his marijuana experimentation as "a relatively short-lived, short-lasting event." Tr. at 106. He admitted that he had let his "guard down," and had made a "mistake." Tr. at 107. He admitted that he did not actively consider the legal implications, or other consequences, before deciding to experiment with marijuana. Tr. at 108, 125. The Individual noted that he has been subject to random drug tests and has had three of them, and passed each test. Tr. at 109. The Individual testified that he will never use marijuana again. Tr. at 112.

The Adjudicative Guidelines provide that when a sufficient time has passed since the last occurrence of a behavior which raises significant security concerns, that passage of time without reoccurrence can mitigate that concern. Adjudicative Guideline E at ¶ 17(c). In the present case, six years have passed without further illegal drug use or any other known violation of law, rule or regulation. Moreover, the behavior which occurred only twice, was infrequent, another factor that the Adjudicative Guidelines indicate can mitigate significant security concerns. *Id.* The isolated occurrence of the Individual's marijuana use, as well as the significant period of time in which it has not reoccurred, have convinced me that it is highly unlikely to recur, and therefore does not cast doubt upon the Individual's present reliability, trustworthiness, or good judgment. *Id.* For these reasons, I find that the Individual has mitigated the security concerns raised by his illegal use of marijuana, while maintaining a DOE security clearance, in violation of DOE and his employer's policies.

## VI. CONCLUSION

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<sup>8</sup> The Girlfriend testified that she had received two marijuana cigarettes in 2010 from a friend as an unsolicited "gift." Tr. at 24-25.

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The Local Security Office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

Date: January 31, 2017