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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: March 22, 2017)

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Case No.: PSH-17-0017

Issued: May 31, 2017

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX XXXXX (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, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ 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.²

I. BACKGROUND

On December 2, 2016, the Individual submitted an Electronic Questionnaire for Investigations Processing (eQIP) to the Local Security Office (LSO). In his eQIP, the Individual reported that he had been using marijuana during a time period in which he held a DOE security clearance. This information 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 January 5, 2017. Because the PSI did not resolve the security concerns raised by the Individual’s marijuana use, 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

¹ Under the Regulations, “Access authorization” means 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). Such authorization will also be referred to in this Decision as a security clearance.

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

Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on March 24, 2017. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-17-0017 (hereinafter cited as "Tr."). The LSO submitted four exhibits, marked as DOE Exhibits A through D (hereinafter cited as "Ex."). The Individual submitted no exhibits.

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 Guidelines E and H of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005) (the Guidelines).

The LSO alleges, under Guideline H, that the Individual used marijuana several times during the time period beginning in December 2013, and continuing until July 2016. Use of an illegal drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Guideline H at ¶ 24. Under the Guidelines, marijuana is considered to be an "illegal drug." Guideline H at ¶ 24(a)(1). The LSO further alleges that the Individual's use of a controlled substance prohibits him from possessing an access authorization pursuant to the Bond Amendment, codified at 50 U.S.C. § 3343(b), which states that security clearances cannot be maintained by a "person who is an unlawful user of a controlled substance...." The Individual's admission that he used marijuana from 2013 until July 2016 adequately justifies the LSO's invocation of Guideline H and the Bond Amendment.

The LSO alleges, under Guideline E, that the Individual used marijuana while maintaining a DOE security clearance. Use of an illegal drug while maintaining a security clearance exhibits an unwillingness or inability to comply with rules and regulations which can in turn raise questions about that individual's judgment, reliability, trustworthiness, and ability to protect classified information. Guideline E at ¶ 15. The Individual's admission that he repeatedly used marijuana while holding a security clearance adequately justifies the LSO's invocation of Guideline H.

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:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.

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, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of 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). 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

On December 14, 2016, the Individual submitted an eQIP to the LSO. In this eQIP, the Individual admitted that he had “either smoked or ingested edible marijuana on a few separate, very isolated occasions.” Ex. B at 26. The Individual’s eQIP indicates that his marijuana use occurred during a period beginning in December 2012, and ending in June 2016.³ The Individual reported that he used marijuana while holding a security clearance. Ex. B at 27. The Individual also stated that he does not intend to engage in illegal drug use in the future. Ex. B at 27.

On January 5, 2017, the LSO conducted a PSI of the Individual. During this PSI, the Individual acknowledged that he had used marijuana and other illegal drugs frequently as a teenager and young adult, but had given them up until about a year after he received his security clearance. Ex. C at 3-8. The Individual then described a history of sporadic marijuana use as an access authorized employee of a DOE contractor. Ex. C at 9-12. The Individual reported that his last use of marijuana occurred on the Fourth of July weekend of 2016. Ex. C at 10. The Individual admitted that he used marijuana at times when he was less likely to get caught. Ex. C at 10. He further admitted that he realized he was putting his security clearance at risk by using marijuana. Ex. C at 17. When the Individual was asked why he reported his marijuana use, he stated that he wanted to be “honest” and did not want to have “secrets going forward.” Ex. C at 24.

V. ANALYSIS

At the hearing, only one witness testified: the Individual. The Individual testified that he had a difficult childhood which led him to use drugs and alcohol from the age of 14 until 19, when he began dating his future spouse. Tr. 13-15. At the age of 19, he and his future wife moved to another town, where the Individual maintained a drug-free lifestyle. Tr. at 13. The Individual moved back to his hometown and began working for a DOE contractor in a position that required him to have a security clearance. Tr. at 14. However, returning to his hometown resulted in the Individual experiencing an “identity crisis” which led to his marijuana use. Tr. at 14. As the Individual testified at the hearing:

I was now internally struggling with which version of myself I was; the upstanding, confident leader I had become or the teenager that smoked pot all the time and got

³ The Notification Letter alleges that the Individual’s marijuana use began in 2013 and concluded in July 2016.

in trouble. I was associating with old friends again, and none of whom were aware of the changes I had made during my time in [another town]. I believe it was this struggle that led to my desire to occasionally smoke pot while having my clearance. I justified it as not being very often, or by telling myself that I was on vacation and it was okay to do, or by thinking that it would eventually be legalized anyway. The truth that I've come to realize is that I was only lying to myself.

Tr. at 14-15. The Individual further testified that in working through some of the tribulations he was facing in his life, he learned the value of honesty and realized that he needed to be honest about his marijuana use. Tr. at 15-16. The Individual testified that he has chosen to abstain from future marijuana use, and that his decision was motivated by his desire to preserve his career. Tr. at 25. The Individual further testified that he has not used marijuana for ten months⁴ and that he no longer associates with anyone who uses marijuana, except for family members who understand that they cannot use marijuana around him. Tr. at 16. The Individual testified that his family members who use marijuana know that he has decided to abstain from marijuana use and support his decision to abstain.⁵ Tr. at 19-20. He further noted that he has never failed a drug test.⁶ Tr. at 17, 22. The Individual recognized that he had been “dishonest and deceptive” in the past and apologized for this behavior. Tr. at 17. The Individual testified that he had not tried to conceal his marijuana use from the LSO. Tr. at 25. The Individual testified that he was unaware of his obligation to report his illegal drug use prior to his submission of his eQIP. Tr. at 18.

Criterion H and Bond Amendment Concerns

As an initial matter, I note that, but for the Individual’s honesty when completing his eQIP, the LSO would not have known about his marijuana use. The Individual’s candor exhibited exactly the type of good judgment, reliability, and trustworthiness expected of a DOE security clearance holder. Guideline H sets forth four conditions that can mitigate security concerns arising from illegal drug use, two of which are relevant to the present case. Guideline H at ¶ 26. The first of these conditions exists when an individual’s illegal drug use “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.” Guideline H at ¶ 26 (a). While it cannot be said that the Individual’s illegal drug use “happened so long ago,” I am convinced that the Individual is unlikely to use marijuana in the future and that the Individual is currently trustworthy and reliable, and that he exhibits good judgment.

A second mitigating condition exists when an individual has established “a demonstrated intent not to abuse any drugs in the future, such as: (1) Dissociation from drug-using associates and contacts; (2) Changing or avoiding the environment where drugs were used; [and] (3) An appropriate period of abstinence.” Guideline H at ¶ 26(b). The Individual has convincingly testified that he intends to abstain from future marijuana use. Moreover, he testified that he has disassociated himself from

⁴ The Individual testified that he last used marijuana in 2016, during the Fourth of July weekend. Tr. at 24.

⁵ These family members live in a state where the state government has legalized the recreational use of marijuana. Tr. at 18, 20.

⁶ The Individual testified that he had been randomly tested for illegal drugs on four or five occasions while holding his security clearance. Tr. at 23.

drug-using associates and contacts, and is avoiding the environment where drugs were used. He has also established a ten-month period of abstinence.

Accordingly, I find that the security concerns raised under Guideline H by the Individual's marijuana use have been resolved. Moreover, since I have found that the Individual is no longer a "user" of illegal drugs, the security concerns raised by the LSO under the Bond Amendment are also resolved.

Criterion E Concerns

The Notification Letter accuses the Individual of concealing his marijuana use. First, the Notification Letter states that the Individual used marijuana when he was least likely to get caught. However, that fact does not provide any additional concern about the Individual's judgment, reliability, and trustworthiness that was not raised under Guideline H. More problematic for the Individual is his repeated use of an illegal drug while maintaining a security clearance, and while he was aware that illegal drug use violated both the law and DOE security policies. The Individual's willingness to repeatedly disregard the law and DOE policy raises questions about his judgment, reliability, and trustworthiness as well as his willingness to comply with rules and regulations. Guideline E at ¶ 16(d)(3).

Guideline E sets forth six conditions which may mitigate security concerns arising under Guideline E, two of which are relevant to the present case. Specifically, Guideline E provides that security concerns can be mitigated when "the individual has acknowledged the behavior and obtained counseling to change the behavior *or* taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Guideline E at ¶17(d) (emphasis added). As discussed above, the Individual has acknowledged the behavior, has changed his behavior and has taken positive steps to alleviate the stressors, circumstances, or factors that caused his untrustworthy, unreliable, or other inappropriate behavior, and I am convinced such behavior is unlikely to recur. Guideline E further provides that security concerns can be mitigated when "association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations." Guideline E at ¶ 17(g). As discussed above, the Individual has testified that he no longer associates with people who use illegal drugs other than family members (who have agreed not to use illegal drugs in his presence).⁷

Moreover, I find that the Individual's self-reporting of his marijuana use, and subsequent conduct during the present proceeding, shows that his judgment, reliability, and trustworthiness have improved greatly since July 2016 and now suffice to allow him to maintain a DOE security clearance. Accordingly, I find that the security concerns raised under Guideline E have been resolved.

⁷ I find that the Individual's continued association with these relatives under these circumstances does not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Guideline E at ¶ 17(g).

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines H and E. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guidelines H and E. 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: May 31, 2017