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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, 2023) Case No.: PSH-23-0130
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Issued: January 16, 2024

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”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 be restored.

I. Background

The Individual is employed at a DOE facility in a position that requires her to hold a security clearance. On March 13, 2023, the Individual was selected for a random drug test, which resulted in a positive result for marijuana metabolites (hereinafter referred to as “marijuana”). Exhibit (Ex.) 1 at 1.

Due to unresolved security concerns related to the Individual’s positive drug test, the local security office (LSO) informed the Individual in a Notification Letter that it had suspended her security clearance because it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In the Summary of Security Concerns (SSC), attached to the Notification Letter, the LSO explained that the derogatory information raised a security concern under Guideline H (Drug Involvement) of the Adjudicative Guidelines and that since she had been an unlawful user of a controlled substance (marijuana), the Bond Amendment, 50 U.S.C. § 3343(b), barred her from possessing a security clearance. Ex. 1 at 1.

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.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted six numbered exhibits (Exs. 1–6) into the record. The Individual testified on his own behalf and introduced seven lettered exhibits (Exs. A–G) into the record.² The Individual also presented the testimony of her workplace supervisor (Supervisor). The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 Department 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).

The 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). The individual is afforded a full opportunity to present evidence supporting his 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.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

² The Individual’s first six exhibits are as follows: Ex. A: Email from the Individual to Dr. Ramana Adapa where the Individual explains that the gummies, she took for sleep contained THC. This email includes a picture of the pouch the gummies were contained in which showed a breakdown of ingredients including THC. Ex. B: The Individual’s August 23, 2023, letter of explanation for her marijuana use sent to the DOE organization where she is employed; Ex. C: A picture of the delta-9-tetrahydrocannabinol (THC) gummy she consumed the night prior to her drug test; Ex. D: A December 4, 2023, letter from the Individual’s psychologist recommending restoration of her security clearance; Ex. E: A Drug and Alcohol Awareness Certificate that the Individual earned; and Ex. F: A diploma attesting to the fact that the Individual has received a Bachelor of Arts degree. The Individual originally designated the exhibits with numbers, but during the hearing, the exhibits were redesignated with letters. Tr. at 9. The Individual, with my approval, submitted after the hearing a summary of her drug test results from April 2023 to December 2023, from drug tests that were administered by the DOE facility. *See id.* at 30. I will designate this exhibit as Ex. G.

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SSC specifically cites Guideline H of the Adjudicative Guidelines. Ex. 1. Guideline H relates to security risks arising from use of illegal drugs. "The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, . . . 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 cited the Individual's positive drug test for marijuana. Ex. 1 at 1; Ex. 4 at 2. Given the Individual's positive drug test for marijuana, I find that the LSO was justified in invoking Guideline H regarding the Individual.

The LSO also invoked the Bond Amendment as a justification for suspending the Individual's security clearance. Ex. 1 at 1. The Bond Amendment states in relevant part "the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict" 50 U.S.C. § 3343(b). Given the Individual's positive drug test for marijuana, the LSO was justified in invoking the Bond Amendment as a rationale justifying the suspension of the Individual's security clearance.

IV. Findings of Fact

On March 13, 2023, the Individual was summoned to undergo a random urine drug test at the DOE facility. Ex. 3 at 1. The test indicated that the Individual's urine contained measurable amounts of marijuana. *Id.*; Ex. 4 at 2 (Drug Test Report). The Individual was subsequently placed on leave. Ex. 4 at 1. In an August 23, 2023, letter to DOE facility officials, the Individual stated that she had run out of the melatonin gummies that she used for sleep the night before the drug test. Ex. 3 at 1; Ex. B at 1-2. Since she was out of her melatonin gummies, she decided to use a sample gummy for sleep that a woman she met at a dinner had given her. Ex. 3 at 1; Ex. B at 2.

On March 21, 2023, the Individual received a phone call from the DOE's facility's physician informing her that she had tested positive for marijuana. Ex. B at 1. She immediately went to her nightstand and discovered that the woman's gummies contained THC.³ Ex. B at 2. The letter recounted that the Individual did not know this gummy contained THC and that the woman had not mentioned that fact to her. Ex. B at 2.

The DOE facility subsequently conducted 16 random drug tests of the Individual for the period of April 2023 to December 2023. Ex. G. Each of these tests reported negative results for the presence of illegal drugs. *Id.*

V. Hearing Testimony

³ THC is a component of marijuana which is responsible for most of the psychoactive effects of marijuana. *See* Drug Enforcement Agency Drug Fact Sheet: Marijuana/Cannabis, https://www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020_0.pdf (last visited January 11, 2024).

At the hearing, the Individual testified that she has been employed at the DOE facility for 22 years and has been subject to approximately 50 random drug tests. Tr. at 28. The March 2023 drug test was the only test that was positive for illegal drugs. *Id.* Since her positive test she has been subject to drug tests approximately every two weeks and none of these tests have come back positive. *Id.* at 29-30. Additionally, as part of the DOE facility's requirements following her positive drug test, she was required to attend a four-hour drug and alcohol awareness class, which she successfully completed. *Id.* at 31, 34; Ex. D. The Individual also testified that she has been meeting with a psychologist regarding issues in her life. *Id.* at 33. While the psychologist did inquire about the Individual's drug use in their first sessions, subsequent sessions have solely focused on other issues in her life. *Id.* at 33-34.

The Individual also testified as to the circumstances that led to her consumption of the THC gummy just before the March 2023 drug test. The Saturday before the drug test, she was hosting a dinner and during the event began to talk with a woman who was the date of one of her husband's friends. *Id.* at 18. During their conversation she mentioned to the woman that she had difficulty sleeping despite taking melatonin tablets and gummies. *Id.* The woman then told her words to the effect that "Oh, well, I have – I have something here that might help you."⁴ *Id.* The Individual accepted the gummies that the woman offered her and later placed them on her nightstand. *Id.* at 18-19. She believed that the gummies contained melatonin. *Id.* at 22.

On the next day, Sunday, she had problems going to sleep. *Id.* at 19. While in bed she did not have her glasses or contact lenses available but began to look for something to take to help her sleep. *Id.* She remembered seeing a container that appeared to have the word "sleepy" printed on the pouch. *Id.* She immediately took one of the gummies and subsequently went to sleep. *Id.* She felt fine going to work the next day when she was selected for the positive drug test. *Id.*

When the DOE facility physician called her a week after the test, she was shocked that she had tested positive for marijuana. *Id.* at 25. After speaking with the DOE facility physician, she began to think about how she could have ingested a marijuana product and went to her nightstand to look at the gummies that the woman had offered her. *Id.* at 26. The label indicated that the gummies contained THC. *Id.* at 26-27. The Individual was informed that she should draft a letter to the DOE facility's human resources department explaining about the circumstances leading to the positive drug test. *Id.* at 28-29; Ex. B. Since the positive drug test, the Individual had only consumed gummies containing melatonin for sleep. *Id.* at 37.

The Individual testified that because of the positive drug test she will be ineligible for a promotion or pay raise for two years and that she fully accepts those sanctions. *Id.* at 39. She has learned from this mistake and believes that this incident has taught her much. *Id.* at 39.

The Individual's Supervisor testified that she has known the Individual since 2017 and interacts with the Individual three to five times a day. *Id.* at 13. She believes that the Individual is an "excellent employee with excellent work habits." *Id.* at 15. She has not observed the Individual ever being under the influence of drugs. *Id.* at 16. She believes that the Individual is "extremely

⁴ The Individual did not know the woman before this conversation and has not had any further interaction with her. *Id.* at 22.

trustworthy, of excellent character” and has a great work ethic. *Id.* at 16. The supervisor would be comfortable with the Individual having access to classified or sensitive information. *Id.* at 16.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual’s inadvertent one-time ingestion of THC does not rise to the level of a security concern under Guideline H. I also find that, given the facts presented at the hearing, the Individual is not a “unlawful user of a controlled substance” or an “addict” for Bond Amendment purposes and thus is not subject its prohibition against holding a security clearance. Therefore, I find that the Individual’s access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

A. Guideline H

The relevant Guideline H mitigating factors in this case include:

- (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;

....

Adjudicative Guidelines at ¶ 26.

In the present case I found the Individual’s testimony concerning the events leading to her one-time ingestion of THC to be convincing. Further the available negative test results from the DOE facility support a conclusion that this was a one-time inadvertent use of THC. In her 22 years of employment there is no evidence before me of illegal drug use other than the March 2023 positive drug test. Consequently, given the circumstances of her use involving a THC gummy for sleep, I find that her use happened under such circumstances that further THC use is unlikely to reoccur. Thus, mitigating factor (a) is applicable in this case.⁵

⁵ I also find, for the reasons stated above, that considerations described in 10 C.F.R. § 710.7(c) tend to mitigate the security concerns in this case. Those considerations include “[t]he nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct” 10 C.F.R. § 710.7(c).

Further, given the Individual's testimony concerning the transient and one-off nature of her interaction with the woman at the dinner and her testimony that she has not spoken to the woman since, I find that the Individual has effectively disassociated herself from the woman that provided her the THC gummies for sleep. I also find that she has established an adequate period of abstinence as demonstrated by her negative drug tests since the March 2023 positive test. *See Ex. G.* Consequently, I find that mitigating factor (b) is also applicable.

Given the applicability of the mitigating factors described above, I find that the Individual has mitigated the Guideline H security concerns.

B. Bond Amendment

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." 50 U.S.C. § 3343(b); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022). DOE defines an "unlawful user of a controlled substance" and an "addict" as follows:

- a. An 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.
- b. An addict of a controlled substance is as defined in 21 U.S.C § 802(1), which is any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare; or is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his or her addiction.

DOE Order 472.2A, Appendix C at ¶ 2 (citing the Bond Amendment).

In determining whether the Bond Amendment would bar the Individual from possessing a security clearance, I must first consider whether the Individual is an "unlawful user of a controlled substance," as defined above. In the case at hand, the Individual used a THC gummy once in March 2023. There is no evidence that the Individual has lost self-control with regard to use of THC or is a current user of THC. The DOE facility's drug testing after March 2023 and the Individual's testimony support these findings. Consequently, I find that under the DOE guidelines contained in DOE Order 472.2A, the Individual is not an "unlawful user" of a controlled substance. Nor is the Individual an "addict" as defined in the DOE guidelines. There is no evidence before me that the Individual has habitually used THC. Given the evidence indicating that the Individual only used THC once, there is no evidence before me indicating that the Individual has lost the power of self-control regarding THC consumption. Accordingly, since the Individual's prior THC use does not cause her to meet the definition of either an "unlawful user" or "addict" of a controlled substance,

I find that the Bond Amendment does not prohibit the Individual's from possessing a security clearance.

VII. Conclusion

After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guidelines H and that the Bond Amendment is not a bar to the Individual possessing a security clearance. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Richard A. Cronin, Jr
Administrative Judge
Office of Hearings and Appeals