

“Tr.”). The Individual submitted four exhibits (Ex. A–D). The LSO submitted twelve exhibits (Ex. 1–12).

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as the basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 4 at 4. “The illegal use of controlled substances, to include the misuse of prescription . . . drugs . . . can raise questions about an individual’s reliability and trustworthiness, . . . because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. The SSC cited the Individual’s positive drug screen dated August 2023. Ex. 4 at 4. The above allegation justifies the LSO’s invocation of Guideline H.

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 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. 10 C.F.R. § 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

On August 21, 2023, the Individual was randomly selected for a workplace drug test. Ex. 11 at 3. On August 29, 2023, DOE was notified that the Individual’s test was positive for marijuana. Ex. 4 at 4; *see* Ex. 11 at 3 (positive drug test result). As a result of his positive test, the Individual’s contractor employer placed him on an unpaid administrative suspension pending an investigation of his positive drug test. Ex. 11, Attachment. The Individual returned to work from the unpaid suspension on approximately September 12, 2023, after he complied with terms laid out in a Last Chance Agreement

by the contractor, including undergoing an assessment by the Employee Assistance Program (EAP).² Ex. B at 16–18, 23. The EAP Counselor verified that as of September 8, 2023, the Individual had completed a plan that the EAP Counselor and the Individual had established to address the concerns related to the Individual’s EAP referral. *Id.* The Individual also agreed (1) to submit to “periodic unannounced witnessed Chemical Screenings for a period up to (12) months”; (2) to complete a re-training on workplace substance abuse policies; and (3) that he understood that further misconduct would result in discharge from the contractor. *Id.* at 17. The Individual provided copies of each of his four previous random drug screenings from his time employed with the contractor. *Id.* at 4–9. These tests date back to 2014 and were all negative for all drug use. *Id.* The Individual also provided the results of a drug test that the Individual underwent on September 12, 2023, when he returned to work after he was initially suspended. *Id.* at 15. The result of that test was negative for any drug use. *Id.* at 14.

The Individual also submitted therapy notes from his treating therapist (Therapist), who is a licensed professional clinical counselor that he began seeing as a result of his positive test result. Ex. A. The Therapist’s notes reflect that the Individual has been attending therapy with initial weekly attendance, and subsequently, the Therapist recommended decreased frequency of every two weeks, until September 25, 2023, when the Therapist then recommended one session per month because of the Individual’s good progress in therapy. *Id.* at 1–8. The Therapist’s treatment notes reflect that the Individual has regularly attended therapy, except for the winter holidays, and he attended his most recent therapy session approximately three weeks prior to the hearing. *Id.* at 1-10. The Therapist’s notes state that the Individual would be considered low risk for drug abuse. *Id.* at 1. The notes also state that the Therapist has continually given the Individual a good prognosis and that sessions include discussions of various stressors in the Individual’s life and how he is coping with them. *Id.* at 1, 3, 5, 7, 9. In addition to the notes, the Individual’s Therapist submitted a letter from the Therapist stating that that Individual had been diagnosed with Adjustment Disorder with Anxiety and that it was his belief that the Individual is committed to not using banned substances. Ex. C. The Therapist’s notes reflect that the Individual has been attending therapy with initial weekly attendance, followed by reassessment from the Therapist who subsequently recommended decreased frequency of every two weeks, until September 25, 2023, when the Therapist then recommended one session per month. The Therapist’s treatment notes reflect that the Individual has regularly attended therapy, except for the winter holidays, and he attended his most recent therapy session approximately three weeks prior to the hearing. The Therapist’s notes reflect that the Individual has been attending therapy with initial weekly attendance, followed by reassessment from the Therapist who subsequently recommended decreased frequency of every two weeks, until September 25, 2023, when the Therapist then recommended one session per month. The Therapist’s treatment notes reflect that the Individual has regularly attended therapy, except for the winter holidays, and he attended his most recent therapy session approximately three weeks prior to the hearing.

At the hearing, the Individual’s girlfriend testified that she has known the Individual since they were in college “in the early 2000s,” and they have been in a relationship for a little over a year. Tr. at 15–16. They have been living together since April 2023. *Id.* at 16–17, 39. She stated that to her

² The Last Chance Agreement included additional requirements such as submitting to “periodic unannounced Chemical Screenings for . . . up to [twelve] 12 months,” participating in the employer’s “Workplace Substance Abuse Program Policy,” and being placed on notice that “[a]ny further misconduct of any kind will result in your disciplinary discharge from the Company.” Ex. B at 17.

knowledge, there are currently no marijuana, tetrahydrocannabinol (THC), or cannabidiol (CBD) products in their home. *Id.* at 23. The girlfriend testified that she and the Individual flew to a different state for a trip in order to see a concert in August 2023. *Id.* at 25–26. She stated that both she and the Individual were somewhat anxious about flying generally and also somewhat anxious due to the COVID-19 virus. *Id.* at 27. The girlfriend testified that she found out that the Individual had taken a CBD product prior to their trip because he told her about it after he had failed his random drug test. *Id.* at 34. She stated that the Individual told her he had taken CBD gummies for anxiety, but that he was not aware that they could cause him to fail a drug test. *Id.* at 34–35. It was her understanding that the Individual ate the CBD gummies before this trip and that was the only time he had used any CBD or marijuana product. *Id.* at 27, 34. The girlfriend further testified that when the Individual found out he had tested positive he was “surprised” because she did not “think he was aware that having [CBD] would cause that to happen.” *Id.* at 28. She also testified that she is aware that he has been attending therapy sessions since his August 2023 positive drug test. *Id.* at 29. She stated the Individual has told her that he finds his therapy to be helpful, and that he and his Therapist have discussed issues that he needed to address including his divorce and his children. *Id.* at 30, 36. The girlfriend testified that the Individual has since told her that he does not plan to use CBD products in the future because he now knows it could cause him to fail a drug test. *Id.* at 37. She asserted that she finds him to be honest, trustworthy, and reliable. *Id.* at 32.

The Individual’s supervisor testified that he has known the Individual professionally for approximately eight years. Tr. at 44–45. For about five years during that time period, including for the last two years until the Individual’s clearance was suspended two months prior to the hearing, the supervisor was the Individual’s direct manager and saw the Individual almost every workday. *Id.* at 44–45, 73–74, 80. The supervisor said that during the times he was supervising the Individual, he never had any reason to believe that the Individual was under the influence of any drugs, and he was never aware of any disciplinary action taken against the Individual. *Id.* at 76–77. The supervisor stated that he has given the Individual a couple of safety awards in recognition of his additional efforts to promote and ensure safety in the workplace. *Id.* at 50. He also stated that he finds the Individual to be honest and trustworthy and that he would trust him to protect sensitive or classified information. *Id.* at 70–71.

The Individual testified that he had worked for the contractor since approximately 2005 and that he had a security clearance since around 2007. *Id.* at 85. He testified that he had taken annual employee training which included substance abuse training that discussed the illegal use of drugs, including marijuana. *Id.* at 93. He stated that he believed the training mentioned that CBD may contain THC. *Id.* The Individual explained that the CBD gummies he had consumed were left in his home by a past partner. *Id.* at 98–99. He testified that he no longer has contact with the past partner who left the CBD gummies at his home. Tr. at 151–52. The Individual stated that he recalled that the packaging for the gummies stated “CBD,” but it did not list THC on the package. *Id.* at 102. He stated that he first consumed a CBD gummy around the time of a stressful court proceeding where he had learned from his children’s guardian ad litem (GAL) that a non-relative, his ex-wife’s partner, who was trying to get visitation of his children had abused them. *Id.* at 99, 141. He stated that this first use of CBD gummies occurred approximately a little over one week prior to his August 14, 2023, trip out of state to see a concert. *Id.* at 99. He testified that he consumed the CBD gummy to calm his anxiety because after he returned home from the court hearing, it was hard for him to function since discovering his children had been abused. *Id.* at 100. He then stated that approximately one or two days after the court proceeding, he also took CBD gummies. *Id.* at 142. He explained that he was experiencing “a lot of

anxiety” related to the court related paperwork he had to complete because of the dispute between him and his ex-wife and her partner who sought visitation with his children. *Id.* at 142–43. The Individual testified that subsequently, about one week later, he consumed another gummy while he was at the airport on August 14, 2023, immediately before they got on the airplane. *Id.* at 94, 142. He testified that he consumed the CBD gummy at the airport because he was experiencing anxiety, including social anxiety from being around large crowds of people while also worried about the COVID-19 virus when traveling. *Id.* at 144–45. He explained that he took the gummies to help with the anxiety he had been feeling around these events because he knew his previous partner had used the gummies to treat anxiety. *Id.* at 100–01. The Individual testified that to his knowledge, before consuming these gummies he had never taken any other CBD, THC, or marijuana products. *Id.* at 102. He further testified that at the time he took the gummies, he did not see any mention of THC on the packaging, so he believed that they would not cause a positive drug test and would be safe for him to take. *Id.* at 104. He did not realize that his consumption of the CBD gummies would cause any problems until he learned that his random drug test had come back positive. *Id.* at 104–05. When he learned about the positive test, he told the contractor’s labor relations team that he believed the two things that could have cause the positive test were the gummies he had consumed or second-hand marijuana smoke from the concert he had attended. *Id.* at 105, 107.

After his positive test, the Individual agreed to use the contractor’s EAP, and he met with an EAP Counselor to commence EAP services. *Id.* at 108, 133. He testified that he met with the EAP Counselor two or three times and discussed his use of the CBD gummies and his exposure to the second-hand marijuana smoke at the concert he attended. *Id.* at 134. Subsequently, the EAP Counselor referred him to his current treating Therapist and discussed how therapy would be part of the best course of action that could allow him to return to work for his employer. *Id.* at 109, 134. The EAP required the Individual to see a therapist until the therapist determined he was not at risk for drug abuse. *Id.* at 114. The EAP Counselor sent a letter to the contractor on September 8, 2023, stating that the Individual had successfully completed the plan related to the concerns raised by the contractor in referring the Individual to the EAP. *Id.* at 117; Ex. B at 18. The Individual testified that he had his first therapy session on September 7, 2023, and he has continued to see his Therapist regularly through the date of the hearing, except for the recent winter holidays, and he has his next appointment already scheduled. Tr. at 117–18, 125. The Individual stated that he discussed his positive drug test with his treating Therapist, but the main focus of the therapy was the “underlying basis for why [the Individual] w[as] stressed, anxious, et cetera.” *Id.* at 118–19. He explained that after approximately his third session with his Therapist, it was determined that he was not at risk for drug abuse, so their sessions thereafter involved discussing the causes of the Individual’s anxiety. *Id.* at 114, 118. In support of his testimony, the Individual submitted his Therapist’s treatment notes from September 7, 2023, through January 5, 2024. Ex. A. The Therapist’s treatment notes from September 8, 2023, stated “that the Individual was at low risk for drug abuse.” *Id.* at 3. The Individual testified that he and his therapist have talked through some of the Individual’s past issues and they have spent “quite a bit” of time discussing strategies and coping methods that the Individual can use to deal with his anxiety. Tr. at 146–47. The Individual provided examples of specific coping strategies that he uses to address anxious situations, including the situation with his ex-wife regarding the court proceedings. *Id.* at 145–46. He testified that his anxiety issues have also slowly dissolved as his life circumstances are getting easier to manage because the court proceedings are ending soon, and he indicated he has a good support system including his girlfriend, his brother, and his father. *Id.* at 147, 152. His testimony was supported by his Therapist’s treatment notes which state that as discussed in therapy sessions, the GAL, the Individual, and even the ex-wife have all agreed to not recommend that the ex-wife’s

partner should have court ordered visitation with the children. EX. A at 7. He testified that he plans to continue seeing the Therapist for as long as his Therapist agrees to provide treatment, regardless of the outcome with his clearance. *Id.* at 125, 150–51. The Therapist’s treatment notes reflect the Individual has a diagnosis of “adjustment disorder with anxiety” and consistently state that his prognosis is “good.” Ex. A at 3, 5, 7, 9.

The Individual testified that he has not consumed any CBD, THC, or marijuana since he last consumed the gummies. *Id.* at 121. He asserted that he is abstinent from drug use including any use of CBD or marijuana, and stated he will continue to maintain abstinence. *Id.* at 150. The Individual also testified that his Therapist asks him at each of his therapy sessions whether he is continuing to abstain, and they also have discussions about issues related to maintaining abstinence. *Id.* at 149–50. His Therapist’s treatment notes state that his treatment plan includes continued tracking of THC abstinence, and state he is in full compliance. Ex. A at 7, 9. The Individual stated he threw away the CBD gummies, and he only has his prescription medication for Attention Deficient Hyperactivity Disorder (ADHD) in his home. *Id.* at 122. He testified that he is sure there are no other products in his house that contain marijuana, CBD, THC, or any other illegal drugs. *Id.* at 122. He stated that he has also complied with the requirements, as stated in his Last Chance Agreement, to participate in re-training on his workplace substance abuse policy, which he has completed through computer-based training. *Id.* at 126.

V. Analysis

Conditions that could mitigate security concerns under Guideline H 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;
 - (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.

Mitigating factor (a) applies to the Individual's consumption of CBD gummies that resulted in his positive drug test on August 21, 2023. I find that the Individual has put forth sufficient evidence to demonstrate that his use of CBD gummies occurred under such circumstances that it is unlikely to recur. The Individual testified that his use of CBD gummies occurred three times within slightly over a week's time span, with his last use being on August 14, 2023. He testified that he had consumed the CBD gummies due to anxiety which was initially triggered by an unusual and upsetting event of discovering during a court proceeding that his children had been abused by his ex-wife's partner. He subsequently used the CBD gummies to cope with his anxiety related to the child visitation dispute he was having with his ex-wife and her partner, and the anxiety experienced at the airport while he waited for his flight. The Individual has since taken actions to prevent the recurrence of CBD use. Significantly, he has been attending therapy for the past four months to cope with the anxiety that caused him to try the CBD in the first place and testified that he intends to continue with that treatment. He provided examples of how his therapy sessions were helping him to find new and better coping mechanisms for his anxiety. The fact that his Therapist determined that he has a good prognosis and is at low risk for drug abuse leads me to conclude that the Individual is sufficiently addressing his anxiety such that he is unlikely to use CBD in the future. Moreover, the fact that the Therapist discusses the Individual's abstinence at each therapy session also serves as a means of support and accountability that makes the Individual's past CBD use less likely to recur. Additionally, the Individual testified and provided supporting evidence from his Therapist's treatment notes reflecting that the child visitation dispute that caused him the anxiety which triggered his initial CBD use is being resolved. Therefore, the circumstances that triggered the Individual's anxiety in August 2023 are no longer present, and even if he experiences future incidents that cause anxiety, he has sufficiently developed and is using effective coping skills that he continues to work on in therapy, such that his CBD use is unlikely to recur.

Additionally, because the Individual's testimony is supported by and consistent with the evidence of record, I find him to be credible, and therefore believe his assertions of and commitment to abstinence. As discussed above, his assertions regarding his success in using better coping methods to address his anxiety is supported by his Therapist's treatment notes. Further, the Individual testified that to his knowledge, before consuming these gummies he had never taken any other CBD, THC, or marijuana products. His testimony is supported by the fact that the Individual has been employed with the contractor for approximately nineteen years and provided evidence of a number of random drug screenings in the past, all of which reflect negative test results. Also, his supervisor confirmed that to his knowledge, the Individual has never previously had any issues with illegal substance use. The Individual testified that he no longer has any CBD products in his house, has no illegal drugs in his house and asserts he has no plans to purchase or use any CBD or marijuana products in the future. Given his testimony that he is no longer in contact with the ex-partner who purchased the CBD gummies, I find he has effectively disassociated himself from the person who gave him access to the CBD product. Moreover, his credibility regarding his commitment to abstinence is bolstered by his Therapist's determination that the Individual is at low risk for drug abuse, and has a positive prognosis in therapy. Finally, while the Individual testified that he believed that the CBD gummies did not contain THC because of the packaging label which he read, I find that given his new understanding that CBD products can contain THC even when the packaging labels do not expressly state so, the consumption occurred under such circumstances that it is unlikely to recur. *Id.* at ¶ 26(a).

For the forgoing reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline H.

VI. Conclusion

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines H of the Adjudicative Guidelines. After considering all of 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 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 be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals