

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

December 10, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: July 30, 2008

Case Number: TSO-0658

This Decision concerns the eligibility of XXXXX X. XXX (hereinafter referred to as "the Individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should be granted.

**I. BACKGROUND**

The present proceeding involves a 30-year old Individual who is an applicant for a DOE security clearance. After this Individual obtained his doctorate, he accepted a position at a DOE Research Facility. On September 21, 2006, the Individual's employer submitted a request for a DOE security clearance on the Individual's behalf. DOE Exhibit 5. On March 13, 2007, the Individual signed a DOE Security Acknowledgement as part of the application process. Paragraph 7 of the Security Acknowledgement states: "I understand that . . . my involvement with any illegal drug could result in the loss of my DOE Access Authorization." DOE Exhibit 6. The Individual submitted a Questionnaire for National Security Positions (QNSP) on March 14, 2007. DOE Exhibit 7. In May 2007, while his security clearance application was pending, the Individual used marijuana. DOE Exhibit 9 at 71. On May 31, 2007, the Individual was interviewed by an Office of Personnel Management (OPM) investigator who was assigned to conduct the OPM's background investigation of the Individual. The Individual reported his one-time marijuana use to the OPM investigator. *Id.*

On March 18, 2008, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual.<sup>1</sup> During this PSI, the Individual reiterated that he tried marijuana for the first and only time in May 2007. DOE Exhibit 8 at 12-13. The Individual indicated he had tried marijuana to satisfy his curiosity about it and did not intend to use it again. *Id.* at 18-19, 43.

---

<sup>1</sup> The transcript of the March 18, 2008, PSI appears in the record as Exhibit 8.

The Individual indicated that he understood that marijuana is an illegal drug and that he cannot use it while maintaining a security clearance. *Id.* at 23-24. The Individual questioned whether marijuana should be illegal. *Id.* at 25, 32-33. However, the Individual indicated that he would not use marijuana again, even if it were legal. *Id.* at 33.

During the PSI, the Individual was asked why he used marijuana soon after submitting a QNSP. The Individual responded by stating that he wanted to satisfy his curiosity about marijuana because he expected to receive a clearance and he knew that he could not use marijuana once he had a clearance. *Id.* at 43-44.

During the PSI, the Individual was asked if he associates with people who use illegal drugs. The Individual indicated that some of his acquaintances might use illegal drugs, but do not use illegal drugs in his presence. DOE Exhibit 8 at 26-27. The Individual then indicated that he was aware of three friends who use marijuana. *Id.* at 27-28. One of these three friends lives abroad and the other two friends live in another state. *Id.* at 29. The Individual then added a fourth person to his list of marijuana-using friends: the friend with whom the Individual used marijuana, that friend also lives abroad. *Id.* at 29.

Because the PSI did not resolve the LSO's concerns about the Individual's illegal drug use and reliability, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter specifies two types of derogatory information described in 10 C.F.R. § 710.8(k) and (l).<sup>2</sup>

The Individual filed a Request for a Hearing. The Request for Hearing was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. At the hearing, the LSO presented one witness: a DOE Security Specialist. The Individual presented three character witnesses and one expert witness. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0658 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted three exhibits.

## **II. STANDARD OF REVIEW**

The Hearing Officer'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 or

---

<sup>2</sup> The Notification Letter alleges that the Individual has: (1) "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, . . . etc.). . . ." 10 C.F.R. § 710.8(k); and (2) "[e]ngaged 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." 10 C.F.R. § 710.8(l).

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). I have considered the following factors in rendering this opinion: 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.

### III. ANALYSIS

#### Criterion K

It is undisputed that the Individual has used marijuana on one occasion. He also admits that he has sporadically associated with four individuals whom he believes may still use marijuana. The use of an illegal drug, such as marijuana, raises 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. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at 11 (Guideline H). Accordingly, the LSO properly invoked Criterion K.<sup>3</sup>

I find that security concerns raised under Criterion K by the Individual's one-time use of marijuana and sporadic association with four individuals who use marijuana have been sufficiently mitigated. As an initial matter, I find that the Individual's drug use was an isolated one-time occurrence, which came to the LSO's attention through the Individual's candor with the OPM Investigator.<sup>4</sup> Moreover, this isolated one-time use occurred over a year and a half before the hearing. The evidence in the record, which I discuss in detail below, strongly convinces me that the Individual will not use marijuana ever again and has learned from his mistake.

The Individual sought counseling from his employer's Employee Assistance Program (EAP) in order to address the anxiety arising from this proceeding.<sup>5</sup> The Individual's EAP counselor

---

<sup>3</sup> The LSO has invoked another concern under Criterion K. Specifically the LSO asserts that the Individual's stated belief that marijuana should be legal raises a security concern under Criterion K. However, an individual's personal belief that marijuana should not be illegal does not raise a security concern under Criterion K.

<sup>4</sup> There is absolutely no evidence in the record to the contrary. The record includes a 96 page report of investigation prepared by the OPM. DOE Exhibit 9.

<sup>5</sup> The Individual also submitted a written report of a psychological examination conducted by a clinical psychologist at the Individual's request. The report documents the clinical psychologist's conclusion that the Individual does not

testified on his behalf at the hearing. The EAP counselor had met with the Individual on two occasions. Tr. at 36. The EAP counselor evaluated the Individual in order to determine if he had any substance abuse issues. *Id.* As a result of this evaluation, the EAP counselor determined that the Individual did not have a substance abuse problem. *Id.* at 36-37. The EAP counselor opined that the Individual's illegal drug use was "a one-time event." *Id.* The EAP counselor described the Individual as "incredibly sincere, a bit naïve perhaps." *Id.* The EAP counselor testified that the Individual has resolved to avoid any future illegal drug use. *Id.* at 39. The EAP counselor testified: "I think the consequences of the one attempt have discouraged him from ever trying this again." *Id.* at 40.

The Individuals' supervisor (the Supervisor) since December 2007, testified on his behalf. The Supervisor holds a DOE security clearance. Tr. at 51-52. He interacts with the Individual on a daily basis. *Id.* at 52. The Individual is a very dedicated, focused and responsive professional. *Id.* at 53. The Individual is called upon to make difficult decisions on a daily basis. *Id.* at 53-54. The Individual refuses to "cut corners" on safety, even though he is faced with time pressures and deadlines. *Id.* at 54. Shortly after the Individual was interviewed by the OPM investigator, the Individual called the Supervisor to inform him of his drug use. *Id.* at 55. The Supervisor testified that the Individual was upset during this conversation. *Id.* The Supervisor asked the Individual how often he had used marijuana and the Individual responded that he had only used marijuana on one occasion. *Id.* The Supervisor testified that he trusts the Individual and believes the Individual's assertion that he only used marijuana on one occasion. *Id.* at 56. The Supervisor testified, that based upon his experience with the Individual, he believes the Individual's marijuana use is an anomaly. *Id.* at 59. The Supervisor testified that the Individual regrets his marijuana use and has learned his lesson from the incident. *Id.* at 59-60.

A co-worker of the Individual testified on his behalf. The co-worker has worked with the Individual since February 2007. Tr. at 62-63. The co-worker has become good friends with the Individual and frequently socializes with the Individual outside of the workplace. *Id.* at 63-64. The co-worker occupies an office adjacent to that of the Individual and has daily contact with him. *Id.* The co-worker described the Individual as a "very upstanding and straight-laced kind of person" and "a very honest and good person." *Id.* at 63-64. The co-worker testified that the Individual's hobbies included running, biking, hiking and camping. *Id.* at 64. The Individual told the co-worker that he had tried marijuana after he applied for his clearance and then informed the OPM investigator that he had done so. *Id.* at 65. The co-worker testified that he was "very surprised" to learn that the Individual had tried marijuana and that "it seemed kind of incongruous." *Id.* The co-worker described the Individual as "extremely remorseful." *Id.* The Individual told the co-worker he would not use marijuana again. *Id.* at 65-66. The co-worker testified that the Individual "is a very honest person, very open" and therefore trusts that Individual will not use marijuana in the future. *Id.* at 66.

A long-time friend (the friend) testified on the Individual's behalf. The friend testified that he has known the Individual since 1987. Tr. at 73. He testified that the Individual's hobbies included running and outdoor sports. *Id.* at 75. The Individual ran marathons. He attended the

---

have (and is not at risk of having) any substance abuse disorders.

same college as the Individual and for several years, they were roommates. *Id.* at 75, 77. He described the Individual as “very focused on his education.” *Id.* at 76. He never saw the Individual use marijuana. *Id.* at 76-77, 82. The Individual informed the friend about his marijuana use recently. *Id.* at 78. The friend said he was “a little shocked” to learn that the Individual had used marijuana. *Id.* The friend testified that he thought that the Individual would always do “the right thing.” *Id.* at 79. He generally makes sound decisions and exercises good judgment. *Id.* at 81.

The Individual testified that he had avoided drugs and alcohol in high school where he was involved in many extra-curricular activities, sports and a Christian musical group. *Id.* at 86-87. The Individual did not use drugs in college either. *Id.* at 88. The Individual testified that he tried marijuana out of curiosity. *Tr.* at 105-106. A friend of his cousin was in town for several weeks and his cousin had suggested that they meet. He met this person on two occasions. He subsequently invited this person (and two of her acquaintances) to his apartment for dinner. *Id.* at 90. At his apartment, the friend offered to use marijuana with him. He accepted her offer. *Id.* He had previously discussed marijuana with this person: he had informed her that he had never used marijuana, but was somewhat curious about it. *Id.* at 91-92. He was surprised when this person brought marijuana to his apartment. *Id.* at 92. He no longer has contact with the person who shared marijuana with him. *Id.* at 96.

The Individual recognizes he made a mistake when he used marijuana. *Id.* at 111. He testified that he would never use marijuana again. *Id.* at 112, 114. He testified that, as a result of going through the administrative review process, he has a better understanding of what is expected of him if he were to be a DOE security clearance holder. *Id.* at 11-112. He characterized his marijuana use as an “aberration.” *Id.* at 111, 116.

The Individual has also resolved the security concerns arising from his sporadic association with four individuals whom the Individual believes use marijuana. The Individual testified that he no longer has contact with the individual with whom he used marijuana, since that individual returned to Germany. *Tr.* at 95-96. The Individual testified that another of the four individuals lives in Europe. He has only sporadic contact with that person and does not know if she continues to use marijuana. *Id.* at 97-98. The other two individuals are a married couple who live in a different state. *Id.* at 97. The Individual has only sporadic email contact with this couple. *Id.* at 97, 102. I am of the opinion that the Individual’s sporadic long-distance contact with three individuals, who may or may not currently use marijuana, does not present a risk to national security or the common defense.

Guideline H of The Adjudicative Guidelines sets forth conditions that could mitigate security concerns raised by illegal drug use. The Individual has shown that the conditions set forth at ¶ 26(a) and at ¶ 26(b) of Guideline H have been met in the present case. The Individual’s illegal drug use was so infrequent as to be unlikely to recur, and the Individual has demonstrated a clear intent not to abuse any drugs in the further by an appropriate period of abstinence. Accordingly, I find that the security concerns raised by the LSO under Criterion K have been resolved.

### **Criterion L**

The Individual's use of marijuana less than two months after he submitted the QNSP and signed a DOE Security Acknowledgement raises concerns about his judgment, reliability and trustworthiness. The Individual was clearly on notice that using marijuana could cost him his security clearance when he experimented with marijuana. Such behavior raises doubts about the Individual's understanding of, and ability to manage, the responsibilities inherent in maintaining a DOE security clearance. However, I find that the Individual has resolved these doubts.

In order to mitigate the doubts about his judgment, reliability and trustworthiness raised by his marijuana use, the Individual needed to show that he now understands the responsibility and the level of commitment necessary to maintain a DOE security clearance and is able to meet those responsibilities and maintain that commitment in the future. The testimony provided at the hearing convinced me that the Individual has resolved these doubts in his favor.

The Individual testified that he did not fully appreciate the significance and responsibility of maintaining a DOE security clearance. Tr. at 117. The Individual testified that he had learned from the experience. *Id.* at 116. The Individual testified that he intends to comply with all aspects of the security program in the future. *Id.* at 114-116. The Individual realizes that his judgment lapsed when he used marijuana. *Id.* at 115.

The evidence in the record clearly shows that the Individual's violation of the law was an aberration. The OPM investigation did not reveal any criminal record for the Individual. An individual who had been a close friend of the Individual for twenty years testified that he never observed the Individual using illegal drugs. Tr. at 73, 81-82. A friend and colleague testified that the Individual is a good worker and "a very honest and good person" and follows the rules established by the DOE facility at which they are employed "to a tee." *Id.* at 64, 66-67. The Individual's supervisor testified that the Individual exhibits sound judgment in the workplace and scrupulously obeys safety regulations, even when doing so creates extra work for himself. *Id.* at 53-54.

The manner in which the Individual conducted himself during the present proceeding convinced me that the Individual possesses the judgment to maintain a security clearance and can be relied upon and trusted in the future. Accordingly, I find that the doubts raised under Criterion L by the LSO have been resolved in the Individual's favor.

### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria K and L. However, as detailed in this Decision, I find that the Individual has mitigated the security concerns raised under both Criterion K and Criterion L. In the end, I find that the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's

access authorization should be granted. The Department of Energy 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  
Hearing Officer  
Office of Hearings and Appeals

Date: December 10, 2008