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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: September 10, 2013) Case No.: PSH-13-0105
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Issued: January 10, 2014

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the 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, I conclude that the DOE should not restore the Individual’s access authorization.

I. BACKGROUND

The Individual is a contractor employee at a Department of Energy (DOE) facility and obtained a security clearance in 1984. Exhibit (Ex.) 14 at 3, 8. In August 2012, the Individual reported to his employer that he was seeking treatment at a facility (2012 Treatment Facility) for prescription opioid dependence.² Ex. 4 at 4. The DOE facility’s Local Security Office (LSO) subsequently conducted a personnel security interview (PSI) with the Individual in May 2013 (May 2013 PSI). Ex. 4. In July 2013, the LSO suspended the Individual’s security clearance. Ex. 2. In August 2013, the Individual received a detailed notification letter (Notification Letter) from the DOE facility’s Manager outlining the specific derogatory information, described under 10 C.F.R.

¹ 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 be referred to in this Decision as access authorization or a security clearance.

² An opioid is morphine-like medication. In this Decision, we will use the word “narcotic” synonymously with the term opioid.

§ 710.8 (f) and (k) (Criterion F and K, respectively), which he relied upon in making the decision to suspend the Individual's security clearance. Ex. 3.

The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer to present evidence to resolve these doubts. Ex. 1. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director appointed me as the Hearing Officer. The DOE introduced 19 exhibits (Exs. 1-19) into the record of this proceeding. The Individual introduced nine exhibits (Exs. A-I) and presented the testimony of seven witnesses in addition to his own testimony.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites Criteria F and K of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex. 1.³ The Individual does not dispute the factual accuracy of the Criteria F and K derogatory information described in the Notification Letter and I set forth my factual findings below.

A. Criterion F

In November 1987, the Individual underwent a PSI (November 1987 PSI) in response to the discovery of marijuana in a vehicle belonging to his then-employer in October 1987. Ex. 19. During this PSI, the Individual stated that he had no knowledge regarding the marijuana. Ex. 19 at 2. He also stated that he had never used any illegal drug. Ex. 19 at 9. The Individual subsequently denied using illegal drugs during the prior five years in two Questionnaire for Sensitive Position forms (QSPs) he submitted in October 1988 (October 1988 QSP) and April 1994 (April 1994 QSP). Ex. 18 at 7; Ex. 16 at 8. In two QNSPs, submitted in August 2003 and February 2004 (August 2003 QNSP and February 2004 QNSP, respectively), the Individual denied ever having used illegal drugs while possessing a DOE security clearance (Question No. 24(b)).⁴ Ex. 15 at 8; Ex. 14 at 8.

³ Criterion F describes derogatory information suggesting that an individual may have "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . . " Criterion K refers to information indicating that an individual has "[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, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k).

⁴ Question No. 24(b) on both QNSPs asks: "[h]ave you illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting the public safety?"

In 2006, the Individual reported to the LSO that he had sought treatment at two facilities for prescription narcotics and alcohol dependence.⁵ The LSO reviewed medical records from the Individual's 2006 Treatment Facilities. Ex. 9; Ex. 10. These records indicated that the Individual reported to the 2006 Treatment Facilities that he first used methamphetamine at the age of 27 or 28 and that he snorted methamphetamine for five or six months and then stopped using the drug. Ex. 9 at 2-3.

The LSO conducted another PSI with the Individual in November 2006 (November 2006 PSI). Ex. 8. During this interview, the Individual admitted that he had first used marijuana as a teenager and that he smoked it "on and off" approximately once every two months. Ex. 8 at 19. The Individual also admitted that, during the period 1983 to October 1989 - while holding a security clearance - he had used marijuana. Ex. 8 at 20-21. During the 1985-1986 period, the Individual had used "crank" (methamphetamine) a "couple of times" a month for three or four months. Ex. 8 at 22-24. When asked why he had lied about using illegal drugs during the November 1987 PSI, the Individual stated that he was "intimidated" and afraid of getting into trouble. Ex. 8 at 43-44. The November 2006 PSI admissions were contradictory with the responses the Individual gave regarding his illegal drug use in the October 1988 and April 1994 QSPs, and August 2003 QNSP and February 2004 QNSP. During the interview, the Individual, when again asked about the marijuana found in a company vehicle in 1987 reported that the marijuana belonged to his supervisor. Ex. 8 at 55. This answer differed from the response he had provided in the November 1987 PSI regarding the incident.

During the May 2013 PSI, the Individual admitted that when he was 18 or 19 years old he had snorted cocaine once or twice and had used methamphetamines during that period. Ex. 4 at 50-52. The Individual also admitted to using hashish once or twice while a teenager. Ex. 4 at 50-51. This response was at odds with the November 1987 PSI and the QSPs and QNSPs detailed above. However, on admission to the 2012 Treatment Facility, the Individual denied that he had used cocaine when asked at the 2012 Treatment Facility. Ex. 3 at 5; Ex. 4 at 50-52.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See 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), Guideline E.* As indicated above, the Individual provided false answers to the LSO during the November 1987 PSI, the October 1998 and April 1994 QSPs, and the August 2003 and February 2004 QNSPs. Consequently, I find that the LSO had ample grounds to invoke Criterion F.

B. Criterion K

In August 2006, the LSO obtained medical records from the 2006 Treatment Facilities. These records indicated that the Individual sought treatment for alcohol and prescription opioid

⁵ During 2006, the Individual was forced to leave his initial treatment facility early when his insurance carrier determined that it would not cover him for the entire recommended period of treatment. Upon discharge from the first treatment facility, the Individual sought to complete his treatment at another treatment facility. These treatment facilities are hereinafter referred to collectively as the "2006 Treatment Facilities."

dependence. Ex. 9 at 4; Ex. 11 at 1. During the November 2006 PSI, the Individual admitted to prior marijuana and methamphetamine use. The Individual also stated that he sought treatment because of his excessive use of prescription opioids and alcohol. Ex. 8 at 4. The Individual recounted that, in 2002, he had injured his back and a physician prescribed hydrocodone tablets for pain. Ex. 8 at 25-26. His physician initially prescribed 30 hydrocodone tablets per month that the Individual could take on an "as needed" basis. The physician subsequently increased the prescription to 60 tablets a month. Ex. 8 at 26. The Individual began to take the tablets on a daily basis. The Individual reported that, six months prior to entering the 2006 Treatment Facilities, he was abusing hydrocodone and eventually started to consume up to 120 hydrocodone tablets per month. Ex. 8 at 28. He would obtain additional hydrocodone tablets by reporting that his original prescription had been lost, stolen, or damaged. Ex. 8 at 28. During the subsequent November 2006 PSI, the Individual stated his intention never to use prescription narcotics again.

In June 2011, the Individual was referred by an orthopedic physician to a pain management physician (Pain Management Physician). Ex. I. By October 2011, the Pain Management Physician noticed that the Individual was requesting an excessive amount of narcotic medication for his diagnosed shoulder and back conditions. Ex. I at 2. The Pain Management Physician performed a drug test on the Individual in January 2012 that was positive for morphine, a prescription narcotic medication not prescribed to the Individual. Ex. I at 3. A subsequent June 2012 drug test indicated that the Individual had used marijuana and morphine. At their discussion of the drug screen results, the Individual denied to the Pain Management Physician that he had used marijuana or morphine. Ex. I at 4. The Pain Management Physician informed the Individual that he was no longer willing to treat the Individual unless the Individual entered into a drug treatment program. Ex. I at 4.

In August 2012, the Individual sought inpatient treatment for his prescription narcotic problem at the 2012 Treatment Facility. Ex. 6. At the time of his admission, the Individual was taking 10 to 12 tablets of hydrocodone a day and would "snort" hydrocodone tablets while at work. Ex. 4 at 7-8. According to the 2012 Treatment Facility records, when the Individual ran out of hydrocodone, he would ask others for medication by claiming that his back was painful. These records also noted that the Individual completed the 28-day of inpatient treatment program. Ex. 6 at 2.

During the May 2013 PSI, the Individual stated that, three or four years prior, he had again started to abuse prescription narcotic medication. Ex. 4 at 4. The Individual began to take twice the recommended prescribed dosage of hydrocodone and would obtain additional hydrocodone tablets by going to multiple pharmacies. Ex. 4 at 30. The Individual also stated during the interview that he had smoked marijuana while on a recent camping trip. During the trip, another camper offered him a pipe containing marijuana and he smoked from the pipe. Ex. 4 at 13, 16. After the trip, the Individual ingested a tablet that he thought was hydrocodone but instead turned out to be morphine. Ex. 4 at 13. The Individual admitted, during the PSI, that he denied the validity of the Pain Management Physician's test results because admitting to such use would be embarrassing because his wife and a nurse were present. Ex. 4 at 18. The Individual stated at the PSI that when he was 18 or 19 years old he had snorted cocaine once or twice and had used methamphetamines during this time. Ex. 4 at 52. The Individual also admitted to using hashish during teenage years. Ex. 4 at 51.

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment. *See 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*), Guideline H. Given the Individual's own admission regarding his misuse of prescription narcotic drugs and his treatment for prescription narcotic dependence, the LSO had abundant grounds to invoke Criterion K.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the Individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the Individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the Individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the Individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

A. Criterion K

The Individual asserts that he is rehabilitated from his prescription narcotic dependence. With his rehabilitation, the Individual argues that all of the Criterion K concerns are now resolved.⁶

⁶ Because some of the Individual's arguments regarding his mitigation of the Criterion F concerns depend on his alleged rehabilitation from his prescription drug dependence problem, we will consider the Criterion K concerns first.

The Individual's spouse (Spouse) of 36 years testified as to her belief that her husband had an addiction problem and that he sought treatment at the 2012 Treatment Facility in July 2012. Tr. at 14. At that time, she believed that the Individual was under the "control" of the prescription drugs. Tr. at 15. The Spouse testified that the Individual attended the treatment program for four weeks and that she intermittently participated in various activities at the facility. Tr. at 16. After his stay at the 2012 Treatment Facility, the Individual changed – he became more communicative with her and asked for forgiveness for his actions and the pain they had caused her. Tr. at 16. The Individual is open about his addiction and answered all of her questions about his addiction. Tr. at 17. The Spouse and the Individual have now made it a point to talk to ensure that he can express anything that is bothering him. Tr. at 17. The Spouse believes that the Individual has done everything he can do to ensure that he is completely honest, truthful and transparent. Tr. at 23.

The Spouse also testified that the Individual initially used prescription narcotics to treat the chronic stenosis in his neck and back along with his migraine headaches. Tr. at 18. The Individual now uses daily stretching exercises to reduce his pain and rests when he feels pain. Tr. at 18. After returning from the 2012 Treatment Facility, the Individual decided to visit the Pain Management Physician and ask him if he would treat the Individual without the use of narcotics. The Pain Management Physician has placed the Individual on a new non-narcotic prescription medication for his pain. Tr. at 18-19. The Individual also uses two non-narcotic over-the-counter medications for pain. Tr. 18-19.

Since the Individual's return from the 2012 Treatment Facility, the Individual has been participating in a church-based 12-step program similar to Alcoholics Anonymous. Tr. at 19, 23. As a result, the Individual developed a relationship with a "higher-power" and has grown spiritually. Tr. at 19. The Spouse and the Individual now both pray together. Additionally, the Individual now reaches out to others for help and has grown tremendously in his relationships. If necessary, the Individual will make amends to others that he has hurt in the past. Tr. at 19.

The Individual testified that after his treatment in 2006, he developed an abscessed tooth and the treating dentist prescribed medication consisting of a prescription medication combining codeine and acetaminophen (Tylenol #3). Tr. at 180. The Individual's misuse of prescription narcotic medication began again after that treatment. Tr. at 180. Nonetheless, the Individual has not consumed alcohol after his 2006 treatment program. Tr. at 185. The Individual's last use of alcohol occurred in May 2006. Tr. at 185.

The Individual believes that his first attempt at treatment in 2006 was not fully effective because he was required to change treatment facilities only after 16 days of treatment and only saw a counselor three times. Tr. at 179. As a result, he did not believe he received the full effect of treatment. Additionally, unlike the treatment facilities he attended in 2006, the 2012 Treatment Facility dealt with the personal issues in his life. Tr. at 179. Part of his treatment with the Pain Management Physician consists of drug testing. Tr. at 79. The Individual's Pain Management Physician confirmed the Individual's testimony and testified that since returning to treatment in 2012, the Individual has passed three drug tests. Further, the Pain Management Physician's examination of the State Board of Pharmacy records indicates that the Individual has not received any prescriptions for prescription narcotic medication since entering treatment in 2012. Tr. at 79.

The Individual asserted that, during his treatment in July 2012 for prescription narcotic addiction, he examined the past events in his life in order to deal with his unresolved issues. Tr. at 175. After completing the treatment program, the Individual began to participate in his church's 12-step

program. Tr. at 175. Before he entered the 2012 Treatment Facility, the Individual believes that he was taking so many prescription narcotics that he did not really “know who he was.” Tr. at 176. If something went wrong in his life, his answer was to take another pill to feel better about it. Tr. at 176. After completing the treatment program, he now knows how to deal with life’s issues without taking a pill. Tr. at 176.

The Individual’s 12-step sponsor (Sponsor) and, until recently a church official, testified that he speaks with the Individual approximately twice a week. Tr. at 52. Before the Individual went to the treatment facility in 2012, the Sponsor liked the Individual but believed that the Individual was secretive. Tr. at 55. However, the Individual is no longer secretive and is extremely open. The Sponsor has been inspired by the Individual’s willingness to ask others for help when he needs it and by how much the Individual has opened up his life to others. Tr. at 55-56. The Sponsor also believes that the Individual’s relationship with his wife is much better since his treatment in 2012. Tr. at 67.

The Individual’s counselor from the 2012 Treatment Facility (Counselor) testified as to the Individual’s treatment for prescription drug dependence. Tr. at 103-08. The Counselor testified that the Individual’s relapse into prescription narcotic dependence after his treatment in the 2006 Treatment Facilities was triggered by a prescription for narcotics the Individual received for a dental problem. Tr. at 112. The Individual entered into the residential treatment program and completed the 28-day program. Tr. at 103-09; *see* Exs. A-C. Because the Individual’s addiction was related to his chronic pain, the 2012 Treatment Facility had the Individual examined by a physician who discovered several cysts in the Individual’s back. The physician removed the cysts and the Individual’s chronic pain level significantly decreased. Tr. at 113. During the recovery from this procedure, the Individual used only non-narcotic over-the-counter pain medicines. Tr. at 113.

The treatment program consisted of daily individual and cognitive behavioral group therapy along with other forms of therapy. Tr. at 105-06. During their counseling sessions, the Counselor determined that the Individual’s traumatic childhood played a role in the development of his addiction and that the therapy sessions helped the Individual to process these traumas. Consequently, the Individual is able to connect with a spiritual sense of purpose and meaning for his life. Tr. at 111. As the Individual resolves his “unfinished business” and becomes whole, he no longer needs to self medicate in order to deal with his problems. Tr. at 111. The 2012 Treatment Facility counselors also worked with the Individual in developing assertive communication to help with his relationship with his wife. Tr. at 125. Overall, the Individual changed during his treatment from an anxious person with a flat affect to one who was motivated and ready to “get back to life.” Tr. at 115-16.

The Counselor opined that the Individual had a low probability of relapse. Tr. at 128. The Individual’s environment at home and at work is a substance-free area and the Individual has social support. Tr. at 128. The Counselor testified that the Individual’s involvement with a 12-step recovery group at his church and his willingness to participate in urinalysis testing programs were also facts supporting her conclusion as to his risk of relapse. Tr. at 128. In making this assessment, the Counselor considered the Individual’s prior relapse after the 2006 treatment program. In this regard, she found it a positive factor that the Individual was able to remain sober from alcohol despite his relapse in using prescription narcotics. Tr. at 129.

The facility's Employee Assistance Counselor (EAP Counselor) testified that in 2006 he worked with the Individual after his return from the 2006 Treatment Facilities. Tr. at 93. At that time, the EAP Counselor testified that he monitored the Individual pursuant to a two-year agreement that permitted the facility to take random drug and alcohol tests to monitor the Individual's compliance with his follow-up treatment plan. Tr. at 93. During this period, from July 2006 through August 2008, the tests were negative for alcohol or illegal drug use. Tr. at 95. After the expiration of the agreement, the EAP Counselor did not have any further contact with the Individual. Tr. at 98.

In August 2012, the Individual informed the EAP Counselor he had relapsed with regard to prescription narcotics and had recently returned from completing a treatment program. The Individual asked the EAP Counselor for assistance. Tr. at 95-96. The EAP Counselor and the Individual began to meet on a regular weekly basis. Tr. at 96. During these sessions, they review the Individual's week and how his program is working. Tr. at 96. As for the treatment programs the Individual attended in 2006 and 2012, the EAP Counselor opined that the Individual's treatment in 2006 was not a "full-fledged treatment" because of the insurance problem and subsequent requirement that he be transferred to another program covered by his insurance. Tr. at 98. Further, the EAP Counselor testified that Individual responded significantly more favorably to the treatment approach used by the 2012 Treatment Facility than the approaches used in the 2006 Treatment Facilities. Tr. at 98. Because of the 2012 Treatment Facility's program, the EAP Counselor noted a marked improvement in the Individual's ability to identify the triggers that prompted him to use prescription medications. The Individual is now able to identify other solutions for his issues. Tr. at 98.

The EAP Counselor believes that the Individual as of the date of the hearing, has a low probability of relapse. Tr. at 159. The factors that support this assessment are: the Individual has begun to address his childhood trauma; the Individual's history of good work performance; the Individual's excellent support system; and the work that the Individual has done with the EAP Counselor in identifying triggers for his prior misuse of prescription narcotics. Tr. at 159.

After reviewing the evidence, I find that the Individual has mitigated the concerns raised by the Criterion K information alleged in the Notification Letter. In additions to the factors listed in section 710.7(c), the *Adjudicative Guidelines*, among other potentially mitigating factors, list the following mitigating factors:

- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;
- (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, Guideline H ¶ 26 (c), (d).

The Counselor and the EAP Counselor have provided persuasive evidence regarding the state of the Individual's rehabilitation from his prescription narcotic dependence and their opinion that

there is a low probability of the Individual resuming the improper use of prescription narcotics. The Individual has successfully completed the 2012 treatment program and has provided testimonial and documentary evidence confirming that he has not used prescription narcotics since completing the program in the middle of 2012. Further, there are important differences from his partially unsuccessful treatment program in 2006. The Individual first attempt at treatment in 2006 was interrupted mid-way because of health insurance problems and I conclude that, even though he transferred to another treatment facility to finish a complete treatment program, the quality of that program could not equal his 2012 treatment program. Further, the 2012 Treatment Facility's program, as evidenced by the testimony of the Counselor and the EAP Counselor, made a deeper impression with the Individual. The Individual has also presented convincing evidence from his Sponsor, Spouse, and the Pain Management Physician regarding the quality of his support system and the length of his abstinence from prescription narcotic medication. I also find that the Individual's use of prescription narcotics resulted from a prolonged and chronic back disorder beginning in 2001 in which prescription narcotics were prescribed and that his abuse of these drugs has ended. *See Ex. 9 at 1.* Thus, I find that the mitigating factors listed in the *Adjudicative Guidelines*, ¶ 26 (c) and (d) are applicable in this case. Considering all of the evidence presented before me, I find that the Individual has successfully resolved the Criterion K concerns raised by the Notification Letter

B. Criterion F

The Individual believes that the Criterion F concerns raised by his failure to report accurately his prior drug use history resulted, in part, from his prescription opioid dependence. Further, the Individual argues that, given his successful rehabilitation from that disorder and the length of time that has elapsed since the majority of the misrepresentations, the Criterion F concerns have been resolved.

In his testimony the Individual stated that he believes that, in part, he provided some of his false answers out of fear that he was going to "get into trouble." Tr. at 188. He also believes that some of his false answers noted in the Notification Letter were a product of his prescription narcotic dependence. Tr. at 188. As to the incorrect answers he gave in the August 2003 and February 2004 QNSPs, the Individual testified that he found the wording of the question at issue confusing since he believed the question asked if he had used marijuana while a law enforcement officer, prosecutor or courtroom official, while in a position directly and immediately affecting the public safety, *and* held a security clearance. Tr. at 187.

The Counselor and the EAP Counselor testified that the failure of the Individual to report accurately the extent of his illegal drug use was a product of his addiction to prescription narcotics. Tr. at 142, 167. The EAP Counselor explained that lying is a major symptom of practicing addicts. This failure to relate the truth is related to the fact that addicts generally have poor memories and that the effect of the ingested drugs causes changes in the medullary system of the brain which causes them to fail to process information properly. Tr. at 149. However, once a person is in recovery, the person becomes less likely to lie because of their better insight into themselves. Tr. at 143. Overall, people that have been through treatment for substance misuse are less likely to lie than the general population. Tr. at 143-44. The EAP Counselor opined that the Individual's traumatic childhood experiences could also create in a person a tendency to lie. Tr. at 166. This tendency can be reversed

if a person explores their inaccurate core beliefs in therapy and makes the realization that there are better ways of interpreting life events and dealing with issues. Tr. at 168.

It is beyond dispute that the Individual has failed to provide accurate answers regarding a number of inquiries regarding his past illegal use of drugs on multiple occasions over a 26-year period regarding his past illegal drug use. In this respect, the Individual failed to provide accurate information in the 1987 PSI, the October 1998 and April 1994 QSPs, and the August 2003 and February 2004 QNSPs. Further, the Individual failed to reveal that he had used hashish or cocaine until the May 2013 PSI. Under OHA precedent, relevant factors to consider in making a determination regarding falsification include whether the individual came forward voluntarily to admit the falsifications, the length of time since the falsification, how long the falsehood was maintained, whether a pattern of falsification is evident, and the length of time since the individual revealed or corrected the falsification. *See, e.g., Personnel Security Hearing, Case No. TSO-1105 (2011).*

The Adjudicative Guidelines also suggest a number of mitigating factors than might resolve concerns associated with falsification. The two factors with the most relevance in the present case are:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) 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;

Adjudicative Guidelines, Guideline E ¶ 17 (c), (d).

I do not find that the Individual's misrepresentations in the November 1987 PSI and the October 1988 April 1994 QSPs were a product of the Individual's substance abuse problems. There is insufficient evidence for me to conclude that the Individual was suffering from substance dependence during the period that he made those misrepresentations. As for his falsification in the November 1987 PSI where he denied hashish use, I find that this likely was a deliberate falsification and that the Individual did not reveal his prior use of hashish until the May 2013 PSI.

With regard to the Individual's apparent falsification in his response denying his use of cocaine to the 2012 Treatment Facility, I find that this may represent an honest failure to remember given that his cocaine use occurred some 30 years in the past. However, at a time much closer to the time of his use of cocaine, the November 1987 PSI, the Individual denied cocaine use. Consequently, I find that the Individual, during the November 1987 PSI, deliberately provided a false answer regarding his past cocaine use during the November 1987 PSI and did not formally reveal his prior use until the May 2013 PSI. *See Tr. at 188.*

As for the misrepresentations in the August 2003 and February 2004 QNSPs, I find that they were not a product of the Individual's addiction to prescription narcotics and alcohol

dependence. In this regard, the only definitive evidence as to the beginning of Individual's condition is found in the 2006 Treatment Facility records that indicate that the Individual was diagnosed as suffering from prescription opioid dependence. Additionally, I am not convinced that his answers resulted from misunderstanding the question. My review of the printed question reveals that each of the employment positions specified in Question 24(d) are set apart with a semi-colon – thus indicating that the question asked if he had used illegal drugs while holding certain positions *or* while holding a security clearance. Given this, the Individual's interpretation that the question asked if he used illegal drugs while employed as a law enforcement officer, prosecutor, or courtroom official while possessing a security clearance and while in a position directly and immediately affecting the public safety seems implausible. Further, the Individual's then recent history of falsification weighs heavily against finding the Individual's explanation credible.

In reviewing the evidence before me, I find that the Individual has engaged in a lengthy pattern of deceiving LSO officials as to the extent of his drug use. The Individual failed to reveal completely the extent of his use of illegal and prescription narcotic drugs for a period of approximately 26 years (extending from the November 1987 PSI through the May 2013 PSI). Further, I cannot find that the Individual's cooperation in providing accurate answers during the November 2006 and May 2013 PSIs constitute a voluntary admission of his past falsehoods. *See Personnel Security Hearing*, Case No. TSO-0677 (2008), *slip op.* at 6. A significant number of the falsifications I believe were made in an attempt to avoid the consequences of his actions and were not the product of his dependence on prescription narcotics. *See Tr.* at 188. Additionally, the Individual did not seek on his own initiative to remedy his falsifications. I find that these factors outweigh any mitigation provided by the Individual's recent rehabilitation from prescription narcotic use or the individual age of some of the falsifications. *See* Adjudicative Guidelines, Guideline E ¶ 17 (c), (d) (mitigating factors for age of falsification and counselling). Consequently, I conclude that the Individual, at this time, has failed to resolve all of the Criterion F concerns raised by the information contained in the Notification Letter.

V. CONCLUSION

While I find that the Individual has resolved the Criterion K concerns at issue in this case, I must also find that the Individual has not resolved the DOE's security concerns under Criterion F. Therefore, the Individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. According, I find that the DOE should not restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: January 10, 2014

