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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: December 17, 2021)	Case No.:	PSH-22-0048
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_____)		

Issued: April 29, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, 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 not be restored.

I. BACKGROUND

The Individual is employed by the DOE in a position that requires him to maintain a security clearance. As a result of a background investigation, the LSO uncovered derogatory information indicating that the Individual had not provided accurate information in three prior Questionnaires for National Security Positions (QNSP) forms concerning his prior use of marijuana or the circumstances concerning an automobile accident where the Individual had been intoxicated. *See* Exhibit (Ex.) 2.

As a result of a further investigation concerning the above incidents, the local security office (LSO) issued the Individual a letter (Notification Letter) in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under

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.

Guidelines E (Personal Conduct) and H (Drug Involvement) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted seven exhibits (Ex. 1–7). The Individual submitted 34 exhibits (A–HH). The Individual testified on his own behalf and offered the testimony of a supervisor (the “Supervisor”). Hearing Transcript (Tr.) at 57.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

In the Notification Letter, the LSO cited Guidelines E (Personal Conduct) and H (Drug Involvement) as the basis for its determination that derogatory information concerning the Individual raised questions as to his eligibility to possess an access authorization. Ex. 2.

Guideline E provides that “[c]onduct 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 or sensitive information.” Adjudicative Guidelines at ¶15. Conditions that could raise a security concern include “[c]redible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations[.]” *Id.* at ¶16(d). Examples of concerning behavior includes “[a] pattern of dishonesty or rule violations[.]” *Id.*

In the Notification Letter, the LSO cited, among other derogatory information, the Individual’s failure to disclose in 2016, 2020 and 2021 QNSPs that he had used marijuana within the seven years prior to the dates of the QNSPs. Additionally, in a June 2020 personnel security interview (PSI) pursuant to his application with a federal law enforcement agency and later, in an August 2021 response to a Letter of Interrogatory (LOI) issued by the LSO, the Individual admitted that he did not disclose his prior marijuana use in a 2016 QNSP because he thought it would damage his chance for employment. Ex. 8 at 41; Ex. 13 at 1. The LSO also cited the Individual’s failure to disclose that a traffic accident reported in a 2016 QNSP and a 2020 QNSP resulted from his operation of a vehicle while impaired by alcohol. Ex. 9 at 286. The above information justifies the LSO’s invocation of Guideline E.

Guideline H states that “[t]he illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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 the present case, the Individual admitted in the June 2020 PSI and in an interview with a Defense Counterintelligence Security Agency (DCSA) interviewer, pursuant to his application for a position at a DOE, that he used marijuana five or fewer times during the period 2011 to 2015. Ex. 8 at 41; Ex. 10 at 63. The Individual also confirmed his use of marijuana in July 2021 and August

2021 responses to LOIs issued by the LSO. Ex. 12 at 3; Ex. 13 at 2. The Individual's admission of marijuana use 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 Dep't 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), cert. denied, 499 U.S. 905 (1991) (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

The Individual was employed by a federal agency (Agency A) in a position that requires him to hold a security clearance. In 2016, pursuant to obtaining a security clearance, the Individual completed a Questionnaire for National Security Positions (2016 QNSP) in which he denied using illegal drugs in the prior seven years. Exhibit (Ex.) 5 at 37. In the 2016 QNSP, the Individual reported that he had been involved in a June 2015 automobile accident involving property damage for which the local police subsequently issued him four citations by mail. Ex. 5 at 34-35. Additionally, the Individual answered "no" to the question "[I]n the last seven (7) years has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?" Ex. 5 at 37-38. The Individual was granted a security clearance by Agency A in 2017. Ex. 10 at 84.

In 2020, the Individual sought employment with a federal law enforcement agency which required that he maintain a security clearance. In a QNSP (2020 QNSP) submitted pursuant to his application, the Individual again denied using illegal drugs within the prior seven years or being involved in an alcohol-related incident that required law enforcement intervention. Ex. 6 at 18-19. Later in the June 2020 PSI, the Individual stated that he had used marijuana on fewer than six occasions from April 2012 to April 2014. Ex. 8 at 39. Subsequently, the Individual was asked to undergo a polygraph examination with the federal law enforcement agency. Immediately prior to taking the polygraph examination, the Individual revealed that the automobile accident he reported

in the 2020 QNSP had, in fact, been an alcohol-related and that he left the scene of the accident with a friend because he had been intoxicated. Ex. 9 at 286. The Individual further elaborated that when he was contacted by local police, he denied that he had been intoxicated. Ex. 9 at 286.

The Individual was not employed by the federal law enforcement agency and subsequently was hired by DOE in a position that required that he maintain his security clearance. In a QNSP submitted in 2021 (2021 QNSP), the Individual denied having used illegal drugs in the prior seven years. Ex. 7 at 46. However, in the 2021 QNSP, he admitted to having been involved in a 2015 traffic accident while intoxicated and having denied being intoxicated to local police. Ex. 7 at 44. In a subsequent interview with a DCSA interviewer, the Individual confirmed that he had used marijuana on fewer than five occasions marijuana during the period 2011 to 2015. Ex. 10 at 63. The Individual also confirmed that he had been intoxicated prior to his reported traffic accident. Ex. 10 at 62-63.

Given the apparently misleading answers provided in his prior QNSPs, the LSO sent the Individual two Letters of Interrogatory. In his response dated July 2021 (July Response) to the first LOI, the Individual responded to questions regarding his alcohol use, and when asked why he had not been truthful in his responses in the prior QNSPs, he responded, "When the [police] asked me if I consumed alcohol prior to the accident, I was thinking if I tell the [police] yes, I will get a DUI and probably ruin any chances I have of getting a job in the future." Ex. 12 at 15. He also stated in the July Response that he had most recently used marijuana sometime during the Fall 2012 to Spring 2013 timeframe. Ex. 12 at 16. In explaining his differing answers in the QNSPs regarding marijuana usage, the Individual stated in the July Response that his negative answer in the 2016 QNSP was an oversight, and he believed that the question only asked about illegal drug usage during the prior three years. Ex. 12 at 16. He noted that he did not have a "follow-up discussion to go over each question." Ex. 12 at 16. Regarding the 2020 and 2021 QNSPs, he believed that it had been longer than seven years since he had used marijuana and thus his negative response to the question regarding illegal drug use in the period 7 seven years was accurate. Ex. 12 at 16. He also asserted in the July Response that his 2020 QNSP response regarding his prior illegal drug use was another "oversight" that was "cleared up in a follow-up discussion." Ex. 12 at 16.

In a subsequent LOI, the Individual was again asked about why he had failed to provide accurate information regarding his illegal drug use and asked if he had been concerned that providing truthful responses would have an adverse effect on his employment or security clearance application. Ex. 13 at 1. In his August 2021 Response, the Individual stated that he believed providing a truthful response concerning his marijuana usage would have had an adverse impact on his chances of obtaining employment with the federal agency in 2016. Ex. 13 at 4. As for his specific response to the 2020 QNSP question regarding illegal drug use, the Individual asserted that he had used the information from the 2016 QNSP, and since he had not used illegal drugs since the time he completed the 2016 QNSP, he left the negative illegal drug use the same as his response in the 2016 QNSP. Ex. 13 at 4. He also acknowledged that he should have responded "yes" to the question about illegal drug use in the 2020 QNSP. Ex. 13 at 4. His answer to the illegal drug use question in the 2021 QNSP was based upon his belief that it had been longer than seven years since his last use of marijuana. Ex. 13 at 4. The Individual noted that in the case of 2020 and 2021 QNSPs, he had follow-up discussions with officials to whom he acknowledged his oversight. Ex. 13 at 4.

At the hearing, the Individual testified that he was age 19 when he completed the 2016 QNSP and that his understanding was to complete the questions in the QNSP by following the instructions on the form. Tr. at 17. He did not receive any guidance filling out this QNSP. Tr. at 17-18. He testified that he understood that he was required to be truthful in the 2016, 2020 and 2021 QNSPs. Tr. at 18. The Individual confirmed the facts surrounding his reported traffic accident which resulted in him receiving four citations in the mail. Tr. at 20. He testified that he answered “no” to a question in the 2016 QNSP asking if he had ever been charged with an offense involving alcohol or drugs. The Individual asserted that he provided this answer because the citations themselves “did not involve alcohol or drugs.” Tr. at 20. The Individual also testified that he did not report his marijuana use in the 2016 QNSP because “my thought process was I didn’t want something that I did a few times in college [to] hold me back from receiving a job from the federal government.” Tr. at 21. He asserted that his marijuana use was limited to a few occasions at social gatherings with friends. Tr. at 21.

In 2020, the Individual sought to apply for a position at a federal law enforcement agency and submitted the 2020 QNSP pursuant to his application. Tr. at 23-24. In the 2020 QNSP, the Individual again answered “no” to the question whether he had been charged with an offense involving alcohol or drugs for the same reason he had answered “no” in the 2016 QNSP. Tr. at 24. As to why he did not report his marijuana use when asked in the 2020 QNSP, the Individual again testified “because I didn't want something that I did a few times in college to hold me back from working with the [federal law enforcement agency].” Tr. at 25.

The Individual stated that during the June 2020 PSI conducted by the federal law enforcement agency, he revealed that he had used marijuana. Tr. at 25-26. He testified that he made this disclosure since it was “the first time that I was asked directly if I ever used marijuana” Tr. at 26. When asked about when he had used marijuana and the extent of his use, the Individual could not remember the details of his use so he “just tried to give as generous of [sic] answers that I could at the time.” Tr. at 27.

The Individual also testified that, as part of the process prior to taking a polygraph examination, the Individual discussed with an agent of the federal law enforcement agency the circumstances surrounding his June 2015 automobile accident. Tr. at 28. He further testified that he was very embarrassed about the incident since it happened at “one of the low points of [his] life” and that it had occurred while he had been consuming alcohol. Tr. at 28. He went on to explain “I felt that I had to come clean about that and get that thing -- get it off my chest just because it was kind of weighing on me that I wasn't truthful about that and it felt -- it felt good to finally get it off my chest and get the truth out there about what happened.” Tr. at 28.

The Individual was eventually hired by the DOE in January 2021.² Tr. at 31. The Individual testified that he answered “yes” to the question in the 2021 QNSP regarding whether his traffic citations involved drugs or alcohol. Tr. at 31. After his interaction with the federal law enforcement agency, he wanted to avoid any issues related to not disclosing the role alcohol had in the accident. Tr. at 31. When asked in the 2021 QNSP whether he had used illegal drugs in the prior 7 years, the Individual testified that he answered “no” since he believed that it had been longer than seven years since his last use of marijuana. Tr. 32.

² The Individual sought employment because of budget cuts at Agency A. Tr. at 29.

The Individual testified that in February 2021, he was interviewed by a DCSA interviewer as part of the process to obtain a DOE security clearance. The DCSA interviewer's report indicated that the Individual had told the interviewer that he had used marijuana during the time 2011 to 2015 while at parties and that he had used marijuana on fewer than five occasions. Tr. at 33. The Individual testified that he does not remember providing the interviewer a 2015 ending date for marijuana use. Tr. at 33. The Individual speculated that he may have provided the 2015 end date in reference to the dates he attended and played football for his university. Tr. at 33-34.

The Individual testified that he was subsequently sent the first LOI which asked about his use of drugs and alcohol. Tr. at 34-35. The Individual asserted that he answered these questions to the best of his knowledge. Tr. at 35. The Individual recounted that, because there had been inconsistencies in his responses regarding illegal drug use, he was sent a second LOI. Tr. at 35. The Individual then sought assistance from colleagues, friends, and family to help him respond to the second LOI. Tr. at 35. His intention in answering the second LOI's questions was to be as truthful as possible and to admit he had made mistakes in prior responses. Tr. at 36.

The Supervisor testified that he had worked with the Individual while he was employed at Agency A. Tr. at 57. He further testified as to the Individual's outstanding work performance, honesty, and his growth as a professional. Tr. at 56-57, 59-60. 66. The Supervisor confirmed that the Individual's motivation to leaving Agency A was an impending 70 percent budget cut in funding. Tr. at 62. The Supervisor stated that he would gladly rehire the Individual and believed the Individual would be an asset to any organization for which he would be employed. Tr. at 63; *see* Ex. M (Supervisor's character reference attesting to Individual's integrity and superior workplace performance). The record also contains 11 character reference letters attesting to the Individual's excellent work, performance, and character along with seven official personnel performance evaluations from Agency A documenting the Individual's excellent workplace performance. Exs. D-N (character references); Exs. O-W (performance reviews).

V. ANALYSIS

As stated above, the security concerns at issue in this case center around Guidelines E (Personal Conduct) and H (Drug Involvement).

A. Guideline E

The Adjudicative Guidelines list the following potentially relevant factors that can mitigate Guideline E security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

....

- (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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
 - (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

Adjudicatory Guidelines at ¶17.

After reviewing the record and the testimony presented in this case, I cannot find that the Individual has completely resolved the security concerns raised by his lack of candor regarding the circumstances surrounding his automobile accident or his use of marijuana. The Individual asserts that each of the mitigating factors enumerated above are applicable to him and, as such, indicate that the Guideline E security concerns raised by his lack of candor have been resolved. I find these arguments unavailing.

I cannot find, regarding paragraph 17(a), that the Individual has made prompt, good faith efforts to correct the omission of his marijuana use or the fact that alcohol was involved in his June 2015 accident. It was not until the June 2020 PSI that the Individual disclosed his marijuana use. This is almost four years after first failing to report his marijuana use in the 2016 PSI and three years after having been granted a security clearance. I also cannot find, pursuant to paragraph 17(c) that the Individual's omissions are of such a nature that they do not cast doubt as to the Individual's reliability, trustworthiness, or good judgment. Although there is evidence of the Individual's trustworthiness as attested to by his Supervisor's testimony and the character references in the record, I find that this is outweighed by the fact that the Individual continued to hide these facts while in possession of a security clearance granted to him in 2017 by Agency A. It is implausible that, as a security clearance holder, the Individual would not have been aware of the need for candor regarding security inquiries. Further, the Individual's varying answers regarding why he denied his illegal drug involvement – failure to understand the question, mistaking the period of use being asked about, and fear that disclosure would result in failure to be employed or gain a clearance – provide little assurance that doubts as to the Individual's trustworthiness have been completely resolved.

I also cannot find that the mitigating factor in paragraph 17(d) is applicable in this case. Given the Individual's omissions, there is no evidence that the Individual has undertaken any counselling, if any such counselling exists. Arguably, the Individual has taken a positive step in revealing his omissions; however, it is not apparent to me as to how this action would rehabilitate the Individual's internal decision-making process that led to his deliberate decision to omit potentially unfavorable facts to gain employment or obtain a security clearance. Consequently, I find that the mitigating factor in paragraph 17(d) is inapplicable in this case.

With the Individual's belated disclosures to the LSO, it is arguable that the Individual has taken a step to reduce his vulnerability to exploitation, manipulation, or duress as described in paragraph

17(e). However, this mitigating factor is outweighed by the relative recency of the Individual's omissions, the Individual's decision to omit information on a number of separate occasions, and the fact that he continued the omissions while possessing a security clearance.³ As referenced earlier, the Individual has provided several somewhat varying explanations regarding his omission of his illegal drug use.

The Individual testified as to his confusion regarding some of the QNSP questions and his uncertainty and lack of attention regarding the questions' scope. I find these explanations insufficient to mitigate the security concerns raised by the Individual's deliberate decision to omit information. At the very least, the lack of attention and care paid to completing the QNSPs during the application process is noteworthy due to the very nature of the documents the Individual was completing. OHA has emphasized the need for accuracy and full disclosure as follows:

A QNSP is an important tool in establishing whether an individual is fit to hold a security clearance, and accordingly, an applicant is held to a higher standard when completing such a form. Any individual "seeking a security clearance should be well aware of the need for complete, honest and candid answers to DOE questions. Therefore[,] when completing a QNSP such an individual should err on the side of providing too much rather than too little information.

Personnel Security Hearing, OHA Case No. PSH-21-0009, *slip op.* at 8 (2021) (quoting *Personnel Security Hearing*, OHA Case No. TSO-0023 at 30-31 (2003)).

In sum, I find that the Individual has not resolved the Guideline E security concerns raised by the information in the SSC.

B. Guideline H

The Adjudicatory Guidelines list the following factors that can mitigate Guideline H concerns:

(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;

³ In making this determination I have also considered the factors enumerated in 10 C.F.R. § 710.7(c). Section 710.7(c) states, in relevant part:

In resolving these [Adjudicative Guideline concerns], all DOE officials involved in the decision-making process shall consider: The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R § 710.7(c).

(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.

Adjudicatory Guidelines at ¶26.

An examination of the record and testimony in this case does not reveal any further use of marijuana since 2015 at the latest. Consequently, I find that the mitigation factor described in paragraph 26(a) is applicable in this case. I further find the Individual's testimony relatively consistent regarding the number of times he used marijuana. As such, I find that the Individual's use of marijuana was limited and occurred at a relatively early age while attending college. Weighing the available information, I find that the Individual has mitigated the Guideline H security concerns arising solely from his use of marijuana.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and H of the Adjudicative Guidelines. After considering all 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 Guideline H security concerns set forth in the Notification Letter. However, I also find that the Individual has failed to present sufficient evidence to resolve the Guideline E security concerns. Accordingly, I have determined that the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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