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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: July 12, 2022)	Case No.: PSH-22-0115
)	
_____)	

Issued: January 11, 2023

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 granted.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold an access authorization. As part of a security clearance investigation, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he signed and submitted on May 12, 2021. Ex. 7.² In the QNSP, the Individual was asked questions about whether he had engaged in the use or purchase of any illicit or controlled substances within the past seven years. *Id.* at 42. He admitted that he used marijuana and crack cocaine and stated that he had no other instances of illegal use of drugs or controlled substances. *Id.* at 42-43. However, in a June 2021 Enhanced Subject Interview (ESI) with an Office of Personnel Management (OPM) investigator, he admitted that he smoked heroin in 2011-2017 and illegally used Xanax and Percocet in approximately 2015-

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.

² Numerous exhibits offered by DOE contain documents with printed page numbers that are inconsistent with the pagination of the exhibits. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

2018. Ex. 8 at 82. In addition, the Individual also certified in his QNSP that he had not sought any counseling or treatment as a result of his use of a drug or controlled substance. *Id.* at 44. However, he later stated during the ESI that on May 3, 2018, he voluntarily admitted himself to a treatment program (TP) for drug abuse. *Id.* at 76. Also, during the ESI the Individual told the OPM investigator that after he left the TP he did not admit himself for counseling or treatment elsewhere. *Id.* However, during a psychological evaluation conducted by a DOE-contracted psychiatrist (DOE Psychiatrist) on February 7, 2022, he admitted that on approximately May 10, 2018, he traveled to Mexico to meet with a physician for his substance abuse disorder. Ex. 5 of 5.

Regarding his criminal history, during the ESI, the Individual told the OPM investigator that on June 17, 2014, he was arrested and charged with reckless driving, possession of drug paraphernalia for having a marijuana pipe in his vehicle, and false evidence of title or registration. Ex. 8 at 75. He stated that he was convicted of the charges and he completed all terms of his sentence including probation and payment of fines. *Id.* at 75. He further reported that on May 7, 2019, he was arrested and charged with Driving While Intoxicated (DWI) and making an unsafe lane change. *Id.* at 74. He was convicted of the charges and reported that he complied with all court orders of his sentence, and his court case was closed in December 2020. *Id.* at 74. The Individual also told the OPM investigator that on November 17, 2020, he was arrested for unlawful use of a license and speeding because he drove a vehicle other than his usual vehicle which required an interlock device. *Id.* at 78. As a result, he was court ordered to pay a fine under \$300, which he paid. *Id.*

In February 2022, the DOE Psychiatrist conducted a clinical interview (CI) of the Individual. Ex. 5. Following the CI, the DOE Psychiatrist issued a psychological report (Report) in which he opined that the Individual met the Diagnostic and Statistical Manual of Mental Disorders 5th Edition (DSM-5) criteria for a diagnosis of Opioid Use Disorder (OUD), Mild, in sustained remission. *Id.* at 9. The DOE Psychiatrist also opined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.* at 12.

The Local Security Office (LSO) informed the Individual, in a Notification Letter dated April 29, 2022, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline E, Guideline H, and Guideline J of the Adjudicative Guidelines. Ex. 1.

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 review hearing. The LSO submitted nine numbered exhibits (Ex. 1–9) into the record and presented the testimony of the DOE Psychiatrist at the hearing.³ The Individual submitted five exhibits (Ex. A–E) into the record and presented his own testimony.

³ Prior to the hearing, the Individual had expressed an interest in submitting as one of his exhibits a letter that was written by a doctor in Mexico who had provided him with treatment for substance use, however, the letter was written in Spanish. I informed the Individual that if he wanted the letter to be considered as an exhibit, he would need to obtain an English translation prepared by a translator that provided either a notarized affidavit or certification as to the accuracy of the translation. The Individual chose not to submit the letter as an exhibit.

II. NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1 at 1.

Guideline E provides that "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 or sensitive information." Adjudicative Guidelines at ¶ 15. "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." *Id.* In citing Guideline E, the LSO relied upon the Individual's failure to disclose his illegal use of Xanax and Percocet in the QNSP and his subsequent disclosure of his illegal drug use during the ESI. The LSO also relied on the Individual's "failure to provide truthful and candid answers during [the] national security investigative process," referencing the Individual's inconsistent responses in the QNSP, the ESI, and his psychological evaluation regarding whether he had voluntarily sought treatment for his substance abuse disorder.

Guideline H provides that "[i]llegal use of controlled substances can raise questions about a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines ¶ 24. As support for citing Guideline H, the LSO relied upon the DOE Psychiatrist's determination that the Individual met the DSM-5 criteria for OUD, without adequate evidence of rehabilitation or reformation, and the Individual's admissions of illegal drug involvement.

Guideline J provides that "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness." Adjudicative Guidelines at ¶ 30. "By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." *Id.* The LSO cited the Individual's three prior arrests: a June 17, 2014, arrest for reckless driving, possession of drug paraphernalia, and false evidence of title or registration; a May 7, 2019, arrest for DWI and unsafe lane change; and a November 17, 2020, arrest for unlawful use of license and speeding.

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 February 10, 2022, the Individual underwent an evaluation including a clinical interview CI with the DOE Psychiatrist. Ex. 5. During the CI, the Individual reported that he began using illegal drugs at age 12 when he started smoking marijuana. *Id.* at 3. He began using cocaine at age 15, and he began using heroin when he was approximately 16 years old. *Id.* at 4. He admitted that he was “pretty hooked” on heroin. *Id.* Additionally, the Individual told the DOE Psychiatrist that he used nonprescribed benzodiazepines including approximately monthly use of Xanax. *Id.*

During the CI, the Individual also reported to the DOE Psychiatrist that on May 3, 2018, he voluntarily entered the TP for substance abuse. *Id.* He indicated that he entered the TP because he was “fed up” with his heroin habit taking all his money. *Id.* at 2, 4. However, the Individual stated that he only stayed at the TP for “a few hours” before he decided to leave because he decided that the TP would not be helpful and that “meds don’t help any.” *Id.* at 5. The Individual also disclosed during the CI that approximately one week after leaving the TP, he decided to go to Mexico to seek treatment for his substance abuse disorder from a doctor who was a friend of the Individual’s family. *Id.* The Individual did not know what sort of doctor the family friend was nor did he know about the doctor’s qualifications or credentials. *Id.* He stated that the doctor came to his brother’s house where he treated the Individual with intravenous (IV) fluids, which he thinks was a solution of “vitamins, Pedialyte, and medications.” *Id.* The Individual stated that he had withdrawal symptoms during the IV treatment, but the symptoms were tolerable, and the doctor discontinued the IV after one week. *Id.* The Individual stated that after the IV treatment ended, the doctor gave him oral medications over the next two to four weeks, during which time he saw the doctor on a weekly basis and continued to see the doctor occasionally for the next couple of months. *Id.*

The Individual also told the DOE Psychiatrist during the CI that he stopped his illegal drug use in May 2018, and he has had “no slips” and has been able to maintain a life with “no drugs.” *Id.* at 5-6. He also stated that he is not currently participating in any substance abuse counseling or treatment. *Id.* at 6. As part of the psychological evaluation, the DOE Psychiatrist administered a urine drug screen which tested for 11 substances and was negative for all substances tested including amphetamine/methamphetamine, benzodiazepine, cocaine, marijuana, opiates, and oxycodone. *Id.* at 8, 14.

The DOE Psychiatrist issued his Report on February 10, 2022, in which he opined that the Individual met the DSM-5 criteria for OUD, mild, in sustained remission.⁴ *Id.* at 12. The DOE Psychiatrist opined that the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* He based his opinion on a number of concerns including that the Individual “had impulsively left” the TP and “sought unorthodox treatment with a family friend in Mexico” where he “received IV treatment of some sort to treat his withdrawal symptoms.” *Id.* The DOE Psychiatrist searched for the doctor’s name online but noted that he was “unable to determine his education or qualifications.”⁵ *Id.* at 5. Accordingly, the DOE Psychiatrist concluded that this unorthodox treatment was not a sufficient program to treat the Individual’s substance abuse disorder. Ex. 5 at 5; Tr. at 65-67. He also noted that the Individual has had no follow-up treatment, and his two recent alcohol-related legal problems raise concerns about the stability of his rehabilitation from addictive disorders. Ex. 5 at 5. The DOE Psychiatrist recommended that the Individual needs to desire treatment, and he recommended that the Individual attend outpatient treatment of moderate intensity, such as Narcotics Anonymous at least once per week, or individual counseling with a trained substance abuse counselor as regularly as directed by the counselor. *Id.* The DOE Psychiatrist further recommended that any treatment should include “abstinence from all illegal drugs and opiates of any kind . . . and [the] [d]uration of such treatment should be for one year to provide adequate evidence of rehabilitation and reformation.” *Id.*

The record includes five letters of recommendation submitted by the Individual including a letter from his general foreman, who indicated that he has supervised the Individual for the past eight months and finds him very dependable and very respectful of the rules and restrictions at his job site. Ex. B. He also provided a letter from his other current foreman and three superintendents, all of whom provided excellent references and stated that the Individual is honest, respectful, and trustworthy. Exs. A, C, D, and E.

At the hearing, the Individual testified regarding the omissions on his QNSP. He affirmed that when he was preparing his QNSP, he read the questions regarding drug use. Tr. at 55-56. He stated that when he submitted his QNSP, he believed that he had disclosed all the information regarding his prior drug use and previous drug treatment. *Id.* at 14. He asserted that he did not intentionally omit that information from his QNSP. *Id.* at 18. When asked what he told the OPM investigator regarding the discrepant information, the Individual stated that he told the truth and “didn’t leave anything out.” *Id.* at 15-16. He also stated, “I have no reason to lie . . . I mean, if I was trying to lie, I wouldn’t have mentioned it to the investigator.” *Id.* at 14.

⁴ The DOE Psychiatrist also noted in his Report that, while the Individual falls short of meeting full criteria for the diagnosis of Antisocial Personality Disorder (ASPD), he noted the presence of some ASPD traits. Ex. 5 at 2. He noted that the Individual was arrested as a minor at age 12 for fighting with another minor, and the other minor needed medical attention. *Id.* The DOE Psychiatrist also cited to other examples including the Individual’s arrests in 2014, 2019, and 2020, as well as the fact that he previously had three job losses after having arguments with supervisors. *Id.* at 10. The DOE Psychiatrist opined that the Individual’s ASPD traits appear to be diminishing over the past few years as the Individual matures but stated that their presence does worsen the prognosis for his OUD. *Id.* at 10.

⁵ Based on an online search for the doctor’s name, the DOE Psychiatrist found a business in Mexico described as “sale of medicines” (rough translation from Spanish to English as specified in the Report) and a notation stating that the business was “permanently closed.” Ex. 5 at 5.

The Individual attempted to mitigate the security concerns regarding his drug use. He testified that he grew up in an area where he chose the “wrong friends” who all used drugs. Tr. at 27. He stated that he initially chose not to use drugs, but eventually he became curious and started using marijuana, which he smoked for years. *Id.* He then started taking Percocet pills and eventually started using heroin. *Id.* He admitted that he used heroin for eight years. *Id.* at 27-28. The Individual testified that his withdrawal symptoms were horrible, his family hated that he was struggling with drug use, and he got tired of wasting his paycheck on heroin, which motivated him to seek out the TP. *Id.* at 28, 45-46. He stated on the date that he entered the TP, they gave him medication, but the medication did not help him with the withdrawals. *Id.* at 28. He stated that the TP staff ignored him when he asked them for help, so he checked himself out of the TP later that same day. *Id.* at 28.

The Individual also stated that after finishing his IV treatment with the doctor in Mexico, he traveled back and forth from his U.S. residence to Mexico where he received therapy from the doctor. *Id.* at 47. He stated that the therapy sessions were comprised of the doctor discussing with him what led to his drug use, why he decided to stop using drugs, and possible future consequences if the Individual decided to return to drug use. *Id.* The Individual admitted that he did not follow the recommendations of his doctor in Mexico, nor did he comply with the recommendations of the DOE Psychiatrist. Tr. at 24, 37, 48-49. The Individual testified that during his therapy, his doctor in Mexico was aware that the Individual lived in the U.S., and he recommended that the Individual should attend additional treatment in his residential area when he returned home from Mexico. *Id.* at 48-49. The Individual indicated that although he could not recall the exact details of the doctor’s recommendations, he thinks the doctor recommended that he attend “other therapy” and “[something] like AA meetings.” *Id.* at 48-49. He asserted that he trusted the doctor, however, he admitted that he chose not to follow the doctor’s recommendations because it was not mandatory, and he felt confident in himself that he did not need to attend any therapy or similar treatment again. *Id.* at 48-49. He stated that he was “strong enough to do it on [his] own[.]” *Id.* The Individual stated that after he finished his therapy with the doctor in Mexico, he never used drugs again. *Id.* at 26.

The Individual affirmed during the hearing that he did not comply with the DOE Psychiatrist’s recommendations because he did not understand that the recommendations in the Report were made because the DOE Psychiatrist wanted the Individual to follow the recommended treatment. *Id.* at 24, 37. However, he subsequently stated that his reaction after reading the DOE Psychiatrist’s Report was that he “honestly [does not] think [he] need[s] any therapy or anything[.]” *Id.* at 57-58. He rationalized that he has done fine in maintaining his sobriety for almost five years with “no help at all,” aside from his treatment from the doctor in Mexico and his prior attendance at AA as part of his previous DWI. *Id.* at 24, 57.

The Individual testified that he has been sober from drug use since 2018, and he asserted that he intends not use to any type of drug in the future. Tr. at 26, 29. He asserted that he is motivated to stay sober because he now has a family including, a two-year-old son, is expecting a baby girl, and does not want to return to the horrible life associated with his prior drug problem. *Id.*

During the hearing, the Individual was questioned about a report from his state’s Prescription Monitoring Program which reflected that he obtained a prescription for Percocet on July 12, 2022.

(Ex. 9 at 2). The Individual stated that he obtained the prescription from a dentist due to pain he had in his wisdom tooth. *Id.* at 30. The Individual acknowledged that the dentist was located in a different city than his regular dentist. Tr. at 39. He stated that during COVID, his regular dentist was very busy and referred him to this particular dentist. *Id.* at 39-40. The Individual testified that although he filled the opioid prescription in July 2022, he has never taken any of the pills and still has them in their original prescription bottle. *Id.* at 31. He asserted that he has never felt any cravings to take the pills despite having access to them. *Id.* The Individual indicated he was aware of the risks associated with possessing this opiate given his history with narcotics. *Id.* at 42. When asked why he did not take this prescription medication, the Individual asserted that he does not want to take any sort of drug ever again. *Id.* at 43. However, he could not provide a reason for why he has continued to keep all of the opioid pills in his possession. *Id.* When asked what his future intentions are with his bottle of opioid pills, he stated “I’ll probably throw them away.” *Id.* at 45.

Regarding the Individual’s criminal history, the Individual did not contest the LSO’s allegations regarding his three prior arrests, and his testimony regarding those incidents was consistent with the information that he provided to the OPM investigator during the ESI. Tr. at 33-35; Ex. 8 at 74-75. He stated that as a consequence of his 2019 arrest for DWI, he was sentenced to one year of probation, one year of a court-mandated interlock device installed in his vehicle, and AA meetings and community service. *Id.* at 50. He asserted that he complied with all terms of his sentence. *Id.* Regarding his November 17, 2020, arrest, he stated that he was arrested because he drove a vehicle other than his usual vehicle which required an interlock device. *Id.* at 35. He explained that on that date, he had to go to work, but his usual vehicle was having engine problems. *Id.* He stated that it was the last date that he was required to drive a car with an interlock device, and he thought to himself, “[it’s] one day, I should be fine.” *Id.* at 35. Therefore, he chose to drive his newer truck instead of complying with the interlock device requirement. The Individual stated that as a result of that arrest, he had to attend a court date and pay a fine, both of which he completed, and there is no further action pending regarding that arrest. *Id.*

The DOE Psychiatrist testified at the hearing after observing the Individual’s testimony. The DOE Psychiatrist ultimately opined that as of the date of the hearing, he would not change his unfavorable opinion in that there is not adequate evidence of rehabilitation or reformation of the Individual’s OUD. *Id.* at 71. He stated that “rehabilitation” usually means “completion of a rehabilitation program such as a recognized 30-day inpatient program, a six-week intensive outpatient program, or an extended outpatient program through some recognized person, or body, or hospital.” *Id.* at 64. He also testified that based on his experience, “‘reformation’ often means a more thorough going, personally integrated change in their whole life with regard to things that might cause you to go back into substance use disorder.” *Id.* The DOE Psychiatrist explained that rehabilitation and reformation represents “a little higher standard than just a certain period of time going by and not having any proven evidence of substance use problems.” *Id.* at 64-65. The DOE Psychiatrist expressed that he has some suspicion about the Individual’s dentist visit in which he obtained Percocet because Percocet was the Individual’s entry drug into opiates which makes Percocet especially dangerous for the Individual. *Id.* He concluded that it is very risky for the Individual to keep the Percocet pills as OUD is a very difficult disorder to overcome; and, if the Individual was really not going to take them, he would have disposed of them. *Id.* at 70.

The DOE Psychiatrist opined that he was partly skeptical and suspicious of some of the elements of treatment that the Individual received from his doctor in Mexico because it is risky that the doctor gave him intravenous medications at a family member's home. *Id.* at 66. The DOE Psychiatrist was not familiar with this method of substance abuse treatment, and he was unable to assure the quality of the program or the competence of the provider. *Id.* at 65-67. Accordingly, the DOE Psychiatrist concluded that the Individual had not completed a legitimate substance abuse treatment program. *Id.* at 66-67.

V. ANALYSIS

A. Guideline E Considerations

The following conditions could mitigate a security concern under Guideline E:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

Regarding the first mitigating factor, the Individual did not make a prompt, good-faith effort to correct the concealment before he was confronted with the facts, especially regarding the treatment for drug use which he sought with a doctor in Mexico. Not only did he omit this treatment on his

QNSP, but he also omitted it during the ESI. The Individual asserts that he unintentionally omitted his drug treatment on his QNSP and attempted to mitigate this omission by stating that he subsequently told the OPM investigator “everything” and “didn’t leave anything out” during the ESI. However, the facts of the record show otherwise. It was only during his CI with the DOE Psychiatrist, which occurred eight months after the ESI, that he first disclosed that he had sought treatment for his substance abuse problem with a doctor in Mexico. Given that the Individual did not report his prior substance abuse treatment in Mexico until nine months after his QNSP, and after he had the opportunity to disclose but chose not to do so during the ESI, I find that this disclosure is not a prompt, good-faith effort to correct his omission before being confronted with the facts.

The second mitigating factor is irrelevant to this matter because the Individual has not asserted that he was advised by any person to omit his drug use or prior drug treatment on his QNSP or ESI.

Regarding the third mitigating factor, I find that the Individual’s omission is not minor in that it served to conceal significant derogatory information about his prior drug use and the treatment he sought to address it. Moreover, the record contains unresolved inconsistencies and questions which prevent me from finding that it happened under circumstances that it is unlikely to recur. Given the Individual’s prior history with Percocet, I am skeptical that his testimony regarding how he recently obtained it and why he still possesses it is a candid explanation for his behavior. Therefore, the record demonstrates that the Individual may still be exhibiting a lack of candor.

Regarding the fourth mitigating factor, I do not find that the Individual has obtained counseling or taken sufficient positive steps to alleviate the factors that contributed to his lack of candor. While he asserts to have attended counseling with a doctor in Mexico, he did not present evidence to show that it was a legitimate program. He also chose not to follow his doctor’s recommendation to obtain therapy when he returned to his home in the U.S. Moreover, for the reasons stated in the immediately preceding paragraph, I remain concerned that he is continuing to exhibit a lack of candor. Accordingly, I cannot conclude that his behavior is unlikely to recur.

The remaining mitigating factors do not apply to the facts of this case. The fifth mitigating factor does not apply because the LSO did not allege that the Individual’s actions made him vulnerable to exploitation, manipulation, or duress. The sixth mitigating factor is irrelevant to this matter because the Individual has not asserted nor is there any evidence that the LSO’s allegations were unsubstantiated or from a source of questionable reliability. Finally, the seventh mitigating factor is not relevant to this matter because the Guideline E concerns do not revolve around association with persons involved in criminal activities.

B. Guideline H Considerations

The Individual's prior significant use of illegal drugs raises security concerns under Guideline H. Adjudicative Guidelines at ¶ 25(a). 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.

Regarding the first mitigating factor under ¶ 26(a), the Individual testified that he has been abstinent from drug use since 2018. The record does not contain contradictory evidence indicating that the Individual currently continues to illegally use drugs, however, the Individual has engaged in behavior that continues to cast doubt on his judgment and gives me concern that his substance use may recur. Specifically, the Individual has demonstrated a pattern of not complying with substance abuse treatment recommendations. First, he chose to impulsively leave his first treatment program within the first date of treatment. Then, he sought treatment for drug use from a doctor in Mexico, but ultimately chose not to comply with the doctor's recommendations for additional treatment because it was not mandatory, and he believed that he did not need to attend any further therapy or similar treatment. More recently, he asserted that he did not follow the DOE Psychiatrist's recommendations because he was not aware that he was supposed to comply with them, however, he subsequently acknowledged that he does not believe he needs any therapy. Finally, his decision to obtain a prescription for Percocet from a dentist who was not his regular dentist, and then keep the Percocet pills although he asserted that he will not use them, is a concerning indicator given his history of misusing Percocet and diagnosis of OUD. Accordingly, I do not find that the behavior is unlikely to recur or does not cast doubt on the Individual's good judgment.

Regarding the second mitigating factor, I credit the Individual for acknowledging his drug involvement and substance misuse, albeit that some of that disclosure was not initially forthcoming. I also credit the Individual for attempting to seek treatment, albeit that it was an unconventional treatment in Mexico and, due to the record, the DOE Psychiatrist was not able to assure the quality of the program or the competence of the provider. However, the Individual's decision to not comply with his doctor's recommendations undermines his initial actions of seeking treatment. Moreover, the fact that he has not complied with any of the DOE Psychiatrist's recommendations nor, as indicated above, presented sufficient evidence to demonstrate rehabilitation or reformation indicates that he has not provided sufficient evidence of actions to overcome his problem.

The third mitigating factor does not apply because the Individual's substance abuse disorder did not occur after a severe or prolonged illness for which drugs were prescribed.

The fourth mitigating factor does not apply because the Individual has not completed a prescribed drug treatment program.

C. Guideline J Considerations

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

Regarding the first mitigating factor, the Individual's most recent criminal arrest and charge occurred relatively recently in November 2020. Moreover, the evidence of record leads me to conclude that the circumstances under which the criminal behavior occurred is not unusual. The Individual had a history of criminal convictions and knew that he had been on probation for a year because of his 2019 DWI conviction. The Individual had a history of criminal convictions and knew that he was on probation. He also knew that one of the terms of his probation was to drive with a vehicle that has a required interlock device. Nevertheless, he chose to violate the terms of his probation after weighing the risk of getting caught. Without more, this appears to be a routine circumstance with which anybody under probation would have to contend. The evidence therefore does not indicate that his conduct resulted from unusual circumstances such that I can conclude it

is unlikely to recur. Given the relatively recent arrest and the remaining concerns about the Individual's judgment, I cannot find that he has satisfied the conditions of the first mitigating factor.

The second and third mitigating factors do not apply to this matter because the Individual has not asserted that he was pressured or coerced into committing the criminal behavior, and he admitted to all of the Guideline J allegations put forth by the LSO.

Regarding the fourth mitigating factor, I credit the Individual for showing improvement in his most recent work history as evidenced by his letters of recommendation from his recent and current supervisors who hold him in high regard and find him trustworthy. However, he has not presented sufficient evidence to show successful rehabilitation. First, his latest criminal arrest and charge occurred relatively recently in November 2020, as stated in my reasoning above. In addition, by driving without an interlock device, not only did he incur a new arrest and conviction in 2020, but he also violated the terms of his probation from his 2019 DWI conviction. Moreover, he has also not presented any evidence of restitution, subsequent job training or higher education, or constructive community involvement. I find that, on balance, there is insufficient evidence to satisfy the fourth mitigating factor.

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 E, H, and J 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 not 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 not be granted.

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

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