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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: August 30, 2023)	Case No.: PSH-23-0132
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_____)		

Issued: December 4, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 currently employed with a DOE contractor in a position that requires him to hold an access authorization. The Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in January 2020 to obtain his "L" clearance; he submitted a second QNSP in February 2021 to obtain his "Q" clearance. Exhibit (Ex.) 3. The Individual indicated in the 2021 QNSP that he had never "been hospitalized for a mental health condition," despite previously providing information pertaining to a mental health hospitalization on the 2020 QNSP. *Id.* at 36, 136. When asked whether he had "been over 120 days delinquent on any debt" in the last seven years, the Individual indicated "no" on the 2021 QNSP despite previously indicating that he had one delinquent financial account in the 2020 QNSP. *Id.* at 44, 143. When asked whether he had "illegally used any drugs or controlled substances" in the last seven years, the Individual indicated "no" on both the 2020 and 2021 QNSPs. *Id.* at 40, 139.

The Individual did disclose on the 2020 and 2021 QNSPs that he had been charged with "felony credit card fraud/theft" in April 2013 and that he received a suspended sentence of 11 months and

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.

15 days. *Id.* at 37–38, 125. The Individual also disclosed in the 2021 QNSP that he was cited for speeding in December 2018, for which he pled guilty and paid a fine. *Id.* at 38–39, 72.

In March 2021, the Individual underwent an Enhanced Subject Interview (ESI), conducted by an investigator. *Id.* at 53. During the ESI, the Individual answered questions and provided details regarding his mental health, past criminal conduct, and financial state. *Id.* at 55–56. At the behest of the Local Security Office (LSO), the Individual completed, signed, and submitted two Letters of Interrogatory (LOI) in October and November of 2021. Ex. 5; Ex. 6. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in April 2023. Ex. 4. The DOE Psychologist relied on information that he obtained in a clinical interview with the Individual, as well as his review of the Individual’s Personnel Security File, and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). *Id.* at 2–5. In May 2023, the DOE Psychologist issued a report (the Report) containing his assessments and conclusions, which included the determination that the Individual’s “emotional stability can be questionable at times when he experiences relationship stress.” *Id.* at 5.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct), H (Drug Involvement and Substance Misuse), and I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1 at 4–7. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and submitted four exhibits, marked as Exhibits A through D. The DOE Counsel submitted nine exhibits marked as Exhibits 1 through 9 and presented the DOE Psychiatrist as a witness.²

II. Notification Letter

A. Guideline E

Under Guideline E, “[c]onduct involving questionable judgement, 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. Among those conditions set forth in the Adjudicative Guidelines that could

² The DOE Psychologist who conducted the clinical evaluation of the Individual and compiled the Report was not available to provide testimony at the hearing due to ongoing health concerns. Hearing Transcript, OHA Case No. PSH-23-0135 (Tr.) at 11–12. However, a DOE-consultant psychiatrist (DOE Psychiatrist) who examined the Report was made available to testify. Tr. at 189–91, 193.

raise a disqualifying concern is the “[d]eliberate omission, concealment, or falsification of relevant facts from any . . . personal history statement, or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities[.]” and “[c]oncealing or omitting information, concerning relevant facts to an employer, investigator, . . . or other official government representative[.]” *Id.* at ¶ 16(a) and (b).

With regard to these conditions under these Guideline E, the LSO alleged that the Individual failed to report his 2018 mental health hospitalization in the February 2021 QNSP, and further, although the Individual disclosed illicit substance use in his November 2021 LOI, he failed to report the use in the 2020 and 2021 QNSPs. Ex. 1 at 4–5. The LSO also alleged that the Individual failed to disclose three financial accounts that had been past due at least 120 days on his February 2021 QNSP. *Id.* at 5. It was also alleged that the Individual failed to disclose a 2017 citation for “navigating lights/sunrise-sunset” on his 2020 and 2021 QNSPs. *Id.*

Another condition set forth in the Adjudicative Guidelines that could raise a disqualifying concern under Guideline E is “[c]redible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, [or] unwillingness to comply with rules and regulations[.]” *Id.* at ¶ 16(c).

As it pertains to this condition under Guideline E, the LSO alleged that the Individual had been terminated by a previous employer in 2013 after he made two personal purchases on a company credit card and was subsequently criminally charged with credit card fraud/theft and pled guilty to a misdemeanor, resulting in a suspended sentence. Ex. 1 at 5. The LSO also alleged that the Individual was “cited for speeding in December 2018[.]” and that he was cited for and pled guilty to “no navigation lights/sunrise-sunset[.]” in 2017. *Id.*

B. Guideline H

Under Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines, “[i]llegal use of controlled substances . . . 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. Conditions that could raise a concern under Guideline H include “[t]esting positive for an illegal drug[.]” and “[a]ny substance misuse.” *Id.* at ¶ 24(a) and (b).

As a basis for invoking Guideline H, the LSO alleged that hospital records from a 2018 hospitalization indicate that the Individual “tested positive for cannabinoid[.]” and that the Individual admitted that he smokes marijuana on weekends. Ex. 1 at 7. The LSO also alleged that the Individual admitted in his November 2021 LOI that he used marijuana in 2018. *Id.*

C. Guideline I

Under Guideline I, “[c]ertain emotional, mental, and personality conditions can impair one’s judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. “A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” *Id.* Conditions that could raise a security concern and may be disqualifying include “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[,]” “[v]oluntary or involuntary hospitalization[,]” and “[f]ailure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness[.]” *Id.* at ¶ 28(b), (c), and (d).

As a basis for invoking Guideline I, the LSO alleged that the DOE Psychologist indicated in the Report that the Individual’s “emotional stability can be questionable at times when he experiences relationship stress and that he needs ongoing support with his expression of anger.” Ex. 1 at 6. The LSO went on to state that the DOE Psychologist stated in the Report that such stress can cause “suicidal ideations and attention seeking behavior[.]” and recommended that the Individual engage in 12 weeks of weekly one-on-one therapy. *Id.* The LSO also alleged that the Individual received inpatient treatment in 2018 and was diagnosed with Unspecified Mood Disorder. *Id.* at 6–7. Treatment records from 2018 note that the Individual did not comply with his prescribed medication. *Id.* at 7. Lastly, the LSO alleged that in 2008, law enforcement personnel responded to a disturbance involving the Individual, at which time they observed the Individual holding a firearm pointed at his own face. *Id.* The Individual was ultimately disarmed and taken to a hospital for treatment. *Id.*

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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 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 and Hearing Testimony

Regarding the answers that he provided in his 2021 QNSP, the Individual testified that a security officer, who has since retired, called the Individual to his office, retrieved the Individual's QNSP form on a computer, and asked the Individual "a couple of questions" while he completed the Individual's QNSP for him. Tr. at 33–35, 38, 72–74, 78. The Individual stated that he was in the office for approximately 20 minutes. *Id.* at 35–37, 166–67. The Individual also stated that he told the security officer that "nothing [had] changed[]" since completing the 2020 QNSP to obtain his "L" clearance,³ and accordingly, the Individual could not guarantee what the security officer marked when answering the questions. *Id.* at 37–38, 73, 78, 83–84. He testified that the security officer did not give him the opportunity to review the QNSP prior to its submission, and that he does not remember whether he electronically signed the document. *Id.* at 38, 74–76, 167. He also testified that the security officer never specifically asked him about the use of controlled substances or delinquent accounts while he was completing the 2021 QNSP on behalf of the Individual. *Id.* at 41–42.

During the ESI, the investigator asked questions regarding the Individual's 2013 termination and criminal charge for credit card fraud/theft. Ex. 3 at 54–55. Regarding the matter, the Individual indicated that he "used the company credit card for [two] personal purchases against company policy." *Id.* He told the investigator that he committed the act "for no specific reason" and that "he was young and made a poor decision." *Id.* The criminal charges were filed following the Individual's termination. Ex. 3 at 54–55; Tr. at 155. The Individual was convicted of Misdemeanor Credit Card Fraud/Theft in 2014; the Individual was placed on probation, and he was sentenced to 12 months in custody but served 15 days in jail. Ex. 3 at 55; Tr. at 48–49, 115–16; 168–69. The Individual also paid restitution. Ex. 3 at 55; Tr. at 49, 115–16.

The Individual was also confronted by the investigator regarding the charge of no navigating lights/sunrise-sunset in 2017, which was omitted from the 2021 QNSP. Ex. 3 at 59. The Individual indicated that he was charged because he did not have navigation lights on his boat, and that he paid court costs and a fine to resolve the matter. Ex. 3 at 59; Tr. at 45–47, 112–13. He informed the investigator that this information was not provided on the 2021 QNSP "due to inadvertent error." Ex. 3 at 59.

The investigator also confronted the Individual with the fact that he had omitted three delinquent financial accounts from his 2021 QNSP. Ex. 3 at 56–57; Tr. at 72. The first account, which had a balance of \$0, was opened in 2016 and resolved in 2020. Ex. 3 at 56. The Individual paid the account in full, but the account had been past due 120 days. *Id.* The second account, which was also paid off in full and had a balance of \$0, was resolved in 2020 but had been past due 120 days. *Id.* The third account was opened in 2018 and was paid in full in 2020. *Id.* at 57. The Individual told the investigator that he did not list these accounts on his 2021 QNSP due to "inadvertent error." *Id.* at 56–57. At the hearing, he went on to explain that he failed to list these debts on his 2021 QNSP because he had already resolved the debts at the time he completed the QNSP. Tr. at 42–45, 108–110. He could not articulate why he had listed a delinquent account on his 2020 QNSP but failed to do the same on his 2021 QNSP when, as he stated, the information from the 2020 QNSP had transferred to the 2021 QNSP. *Id.* at 108–110.

³ The Individual confirmed that he had completed his 2020 QNSP without any assistance. Tr. at 73, 76–77.

After being confronted, the Individual admitted to the investigator that he had undergone “voluntary health hospitalization” for his mental health in 2018. Ex. 3 at 55, 58; Ex. 7 at 2; Tr. at 31–32. The Individual indicated that his failure to list the hospitalization on the 2021 QNSP was due to “inadvertent error.” Ex. 3 at 55. He told the investigator that he was hospitalized for “feeling depressed” and he “wanted to hurt himself.” *Id.* at 58. The Individual had marked “yes” when answering questions pertaining to hospitalization for a mental health condition on the 2020 QNSP that was completed to obtain his “L” level clearance. Tr. at 31–33, 79–83; Ex. 3 at 136.

The Individual’s medical records obtained from the hospital where he received mental health treatment indicate that the Individual was admitted to a hospital in 2018 for approximately six days after his father called law enforcement because his parents felt the Individual was in danger of harming himself.⁴ Ex. 7 at 2, 6–7, 21, 79; Ex. 6 at 1; Tr. at 125–26. In the October 2021 LOI, the Individual stated that he was admitted because he had “[a]nger issues” which resulted in threats of suicide. Ex. 6 at 4. Although the Individual was transported to the hospital by law enforcement, he ultimately decided to voluntarily submit to treatment. Ex. 7 at 2, 16, 19, 57–59; Tr. at 127–29. The treatment notes indicated that prior to his admission, he was noncompliant with his prescription medication and that he “smokes a little weed on [weekends].” Ex. 7 at 5; Tr. at 94. The Individual testified that he does not “really like taking pills per se” and stated that he discontinued taking his medication only a few months after first being prescribed the medication in 2018, prior to his hospitalization. Tr. at 118–22, 124–25. The Individual stated that he does not remember how he was prescribed the medication but does remember the prescription medication was meant to help him manage his anger. *Id.* at 120–21, 123. The Individual did not seek the assistance or advice of a medical professional when he discontinued the prescription medication. *Id.* at 123–24. The medical records from the Individual’s hospitalization note a diagnosis of ongoing depression, Unspecified Mood (Affective) Disorder, and intermittent explosive disorder, and the discharge notes indicate that the Individual was prescribed medication “for mood stabilization.” Ex. 7 at 6, 7, 12; Tr. at 143. The Individual stated that he took this prescription medication for about six months following his discharge, and never consulted a medical professional when he discontinued taking the medication. Tr. at 146, 149–51, 154.

Regarding his drug use noted in the 2018 medical records, the Individual testified that at the time of his admission into the hospital, he had only “tried” marijuana twice in his life. *Id.* at 40–41, 95–96. In later testimony, the Individual indicated that he first used marijuana in 2006, and that he used the substance between two to five times by the time he was admitted to the hospital in 2018. *Id.* at 96–98. The Individual tested positive for marijuana following a drug test conducted at the hospital. Ex. 7 at 9. In the November 2021 LOI, the Individual stated that he first tried marijuana in October 2018, and that his use consisted of “a hit of it every once in a while on various weekends[.]” Ex. 5 at 1; Tr. at 95. He indicated that he last used marijuana “[t]he weekend before

⁴ The Individual testified that at the time, he was employed by his parents, and he had argued with them earlier in the day. Tr. at 132–33. He decided to remove himself from the argument and write his parents a letter to communicate his feelings. *Id.* at 33. The Individual’s father interrupted the Individual as he was writing the letter, and because the Individual kept firearms in his home, the Individual felt that his father assumed that the Individual was going to harm himself. *Id.* at 133–35. The medical records quote the Individual’s mother as recounting statements the Individual made that suggested suicide. Ex. 7 at 7. The Individual testified that he made those statements “out of anger” and because he was “seeking attention.” Tr. at 136–41, 159. The Individual stopped working for his family following his hospital stay, resulting in improved mental health, and he testified that he no longer suffers from “bouts of rage.” *Id.* at 147–48, 174–75.

[he] went” to the hospital in 2018, and that he does not intend to use marijuana again. Ex. 5 at 1; Tr. at 61, 96, 98. He testified that he has been drug tested by his employer on a monthly basis for the past three years, and further, he has a family, so he wants to “stay out of that scene.” Tr. at 61–62, 98, 105. The Individual testified that he omitted information pertaining to his prior drug use on his 2020 QNSP because he “maybe . . . just [did not] read it right or [he] was . . . just hazy from reading all the questions.” Tr. at 104. He did not recall the security officer asking him about drug use when the 2021 QNSP was being completed. *Id.* at 104–05. He testified that he never purchased marijuana. *Id.* at 169.

In the October 2021 LOI, the Individual stated that his 2018 hospitalization was the only time he had been hospitalized for mental health reasons. Ex. 6 at 4. However, the Individual’s arrest record revealed that in November 2008, law enforcement was dispatched following “a report of a disturbance between” the Individual and his father. Ex. 3 at 75, 86. Law enforcement was told that the Individual had made threats of suicide, and when they arrived on the scene, they observed the Individual holding “a rifle pointed at his face.” *Id.* Accordingly, the Individual was taken to a hospital. *Id.* at 76, 92. The Individual testified that he had a firearm with him because he was “going hunting[,]” and “before [he knew] it, [there was] a cop coming through the field” while he was sitting in the pasture. Tr. at 87–91. He stated that upon being transported to the hospital, he was discharged approximately one hour after his arrival. *Id.* at 57–58, 85.

According to the DOE Psychologist, during the psychological assessment the Individual did not endorse any “significant problems with alcohol or drug abuse or dependence.” Ex. 4 at 2. The DOE Psychologist noted discrepant information regarding the Individual’s past marijuana use, and that the Individual indicated during the psychological assessment that he last used marijuana a month prior to his 2018 psychiatric hospitalization. *Id.* at 3. The Individual told the DOE Psychologist that his past criminal conduct, the credit card fraud/theft, was the result of being “young and dumb.” *Id.* The Individual expressed the same sentiment regarding his 2018 psychiatric hospitalization. *Id.* Addressing the psychiatric hospitalization, the Individual indicated that he owned firearms at the time, and that his father became concerned that he would “do something with [his] guns.” *Id.*

According to the Report, the DOE Psychologist conducted a Personality Assessment Inventory (PAI) on the Individual. Ex. 4 at 3. Based on the results of the PAI, the DOE Psychologist concluded that the Individual “will be quite reluctant to admit to minor faults,” and may “minimize the negative impact that his behavior has on others and on himself.” *Id.* The DOE Psychologist concluded that the Individual’s “emotional stability can be questionable[,]” especially when he “experiences relationship stress.” *Id.* at 5. Accordingly, the Individual needs professional support for his expressions of anger, as “suicidal ideation and attention seeking behavior are often the result of anger turned inward.” *Id.* The DOE Psychologist noted that if the Individual is able to obtain such professional assistance, his prognosis is “favorable.” *Id.* The DOE Psychologist recommended that, to show adequate evidence of rehabilitation or reformation, the Individual should seek 12 “weeks of individual therapy, meeting once a week” and at the discretion of the clinician thereafter. *Id.* The DOE Psychologist also recommended that therapy should focus on “[a]ssertiveness [t]raining within stressful interpersonal relationships.” *Id.*

The Individual testified that following his meeting with the DOE Psychologist, he attempted to contact the DOE Psychologist in July 2023 with the purpose of seeking continued treatment. Tr. at 52–54, 155. As his attempts to make contact were unsuccessful, he ultimately sought treatment with another provider. *Id.* at 54, 155. At the time of the hearing, he had been seeing a therapist for individual sessions for approximately nine weeks and intended to continue receiving therapy. Tr. at 54–55, 62, 64, 162–63; Ex. C. He indicated that his therapist has helped him “address [his] anger” and confirmed that his circumstances have generally improved. Tr. at 63. He testified that “everything got great after 2018[,]” and that absent the DOE Psychologist’s recommendations and observations, he would not have sought therapy. *Id.* at 161–62, 178. The Individual’s current therapist submitted a letter indicating that their weekly sessions primarily focus on “communication and identifying current self-regulation skills.” Ex. D at 1; Ex. C at 1. She also indicated in the letter that the Individual received low scores on his depression and anxiety assessments, that the Individual has improved his ability to handle feelings of frustration, and that he is able to process “feelings of irritation.” Ex. C at 1. In his testimony, the DOE Psychiatrist noted that the Individual was given a diagnosis in 2018, and that “at some point[,] we [do not] really know when[,] those symptoms dissipated or disappeared or if they really have.” *Id.* at 199.

The Individual’s current supervisor submitted a letter on the Individual’s behalf indicating that while he has “no true knowledge of, nor can [he] judge or comment on, anything in [the Individual’s] past[,]” the Individual “has carried himself in a manner indicative of a very responsible individual.” Ex. A at 1. The Individual’s supervisor also spoke favorably regarding the Individual’s work performance and asked that he be returned to work. *Id.*

V. Analysis

A. Guideline E

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline E include:

- (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 specifically concerning security processes. 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.

Id. at ¶ 17.

As an initial matter, in completing both the 2020 and 2021 QNSPs, the Individual was under a direct obligation to disclose truthful and complete information, as evidenced by the directions in the signature block, where the individual affirmed that the “statements on [the] form . . . are true, complete, and correct to the best of [the Individual’s] knowledge and belief.”

The Individual explained the omissions he made on the 2021 QNSP by indicating that he was, in fact, not the person who completed the 2021 QNSP. Rather, as the Individual testified, a security officer completed the 2021 QNSP. This testimony does not explain why information was omitted from the 2020 QNSP. The Individual omitted his drug use from both QNSPs, and could only explain the omission from the 2020 QNSP by stating that he “maybe . . . just [did not] read it right or [he] was . . . just hazy from reading all the questions.” Tr. at 104. Furthermore, the Individual explained that he omitted the 2017 citation for “navigating lights/sunrise-sunset” from the 2020 QNSP due to “inadvertent error.” These explanations do not mitigate the stated concerns pursuant to any of the mitigating factors.

Regarding the omissions on the 2021 QNSP, the Individual maintained throughout his testimony that he was not the person who completed the QNSP, but rather a security officer completed the form in his presence. The security officer was not called as a witness for questioning, and the Individual placed the blame for the omissions made on the 2021 QNSP squarely on security officer’s shoulders. Further, there is no indication that the Individual reviewed the document before signing and submitting it. Allowing another individual to complete a QNSP on one’s behalf without completing a thorough review is not a “unique circumstance” that would mitigate the stated security concerns. In fact, it casts serious doubt on the Individual’s reliability, trustworthiness, and good judgment. As such, I cannot find that the Individual has mitigated the Guideline E security concerns related to his omissions on the QNSP under mitigating factor (c). *Id.* at ¶ 17(c).

Furthermore, because the Individual allowed another person to complete his QNSP on his behalf and failed to review the document before submitting it, he was unable to ascertain whether there were any errors or omissions in the document in need of correction. Additionally, the Individual

omitted some information on the 2021 QNSP that he included on the 2020 QNSP, casting doubt on the veracity of the Individual's testimony that the security officer simply transferred information from one QNSP to the other. As such, I cannot find that the Individual made prompt, good-faith efforts to correct the omissions before being confronted with them.⁵ *Id.* at 17(a).

The Individual's assertion that a security officer completed the 2021 QNSP on his behalf could implicate the application of mitigating factor (b), if the security officer had "professional responsibilities for advising or instructing the individual specifically concerning security processes." However, as this security officer was not offered as a witness by the Individual, I have no information as to what his actual job duties entailed. Additionally, assuming the security officer's duties did entail such responsibilities, the Individual never testified that the security officer provided any advice preventing him from cooperating or providing complete and accurate information. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (b). *Id.* at ¶ 17(b).

Regarding the Guideline E allegations concerning a pattern of rule violations that support a whole person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules or regulations, I cannot conclude that enough time has passed to mitigate the stated concerns pertaining to the 2013 credit card theft/fraud conviction, the 2017 citation for no navigating lights/sunrise-sunset, and the 2018 citation for speeding. While I understand the incidents took place some number of years ago, in the context of the Individual's lack of judgment and omissions in completing the 2020 and 2021 QNSPs, it only seems as though the Individual's pattern of poor judgment has continued into the present, and accordingly, cannot be mitigated by the simple passage of time. I cannot conclude that the Individual has mitigated the stated concerns pursuant to the mitigating factor at (c). *Id.* at ¶ 17(c).

Further, there is no indication before me that the Individual obtained counseling or took other positive steps to correct his behavior, and the LSO never alleged that the Individual was susceptible to duress, vulnerability, exploitation, or manipulation, and accordingly, the mitigating factors at (d) and (e) are not applicable. *Id.* at ¶ 17(d), (e). I also have no indication that the information regarding the Individual's behavior came from an unsubstantiated source with questionable reliability, and as the allegations do not pertain to association with persons involved in criminal activities, the mitigating factors at (f) and (g) are not applicable. *Id.* at ¶ 17(f), (g).

B. Guideline H

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline H include:

⁵ I note that, despite the Individual's testimony to the contrary, the report the investigator compiled following the ESI does not recount a version of events in which another person completed the Individual's 2021 QNSP. Instead, the investigator noted that the Individual explained the omissions were inadvertent. If the Individual in fact completed his own QNSP, he has misrepresented the events in this case during the hearing process, potentially raising additional Guideline E concerns. Furthermore, if the Individual did complete the document himself, the security concerns still would not be mitigated as the Individual failed to correct the omissions before being confronted with the facts. Adjudicative Guidelines at ¶ 17(a).

- (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.

In explaining his past drug use, the Individual contends that he last used any illicit substance in 2018, and that accordingly, his use was so long ago, that it does not cast doubt on his current reliability, trustworthiness, or good judgment. However, the Individual's story regarding his drug use throughout this administrative review process has contained contradictions. Specifically, the Individual first stated that he "tried" marijuana only twice, but then, he stated in later testimony that he had used marijuana between two to five times since 2006. Tr. at 40–41, 95–98. The assertion that he "tried" marijuana twice was also inconsistent with the fact that he stated in the November 2021 LOI that his marijuana use consisted of "a hit of it every once in a while on various weekends[.]" Ex. 5 at 1. Thus, other than the Individual's own contradictory testimony, I have no evidence to support his assertion that he last used an illicit substance in 2018. He stated that he submits to monthly drug tests as a term of his employment, but I have no such test results in the record before me. In fact, the only drug test result in the record is from 2018, which was positive for cannabinoids. The record also contains no corroborating evidence, like witness testimony or a signed statement of intent to abstain, regarding any steps the Individual has taken to establish a pattern of abstinence. Accordingly, the Individual has failed to mitigate the stated concerns pursuant to mitigating factors (a) and (b). *Id.* at ¶ 26(a), (b).

The SSC does not allege that the Individual received and abused prescription drugs, and accordingly, the mitigating factor at (c) is not applicable. *Id.* at ¶ 26(c). Additionally, I have no

information before me indicating that the Individual completed a drug treatment program. Therefore, the mitigating factor at (d) is not applicable in this case. *Id.* at ¶ 26(d).

For the foregoing reasons, I cannot find that the Individual mitigated the Guideline H security concerns.

C. Guideline I

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline I include:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amendable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

In seeking individual therapy, the Individual has made strides “acknowledg[ing] the need for support when he experiences relational stress.” Ex. 4 at 5. As indicated in a letter written by the Individual's therapist, the Individual is seeking treatment “focused on communication and identifying current self-regulation skills.” Ex. C at 1. The Individual's therapist also stated in her letter that the Individual has “show[n] capability to state needs, ability to process feelings of irritation, and has followed through on all clinical recommendations.” Ex. C at 1. Despite these positive steps, I remain troubled by the fact that, when previously being treated for anger management issues and Unspecified Mood (Affective) Disorder, the Individual stopped taking his prescribed medication on two separate occasions without first consulting a medical professional, resulting in his noncompliance with treatment recommendations. In fact, the Individual's hospitalization in 2018 occurred after once such instance of discontinuing prescribed medication. The Individual's willingness to comply with treatment recommendations is an important consideration, especially because, at the time of the hearing, he had not yet completed the recommended 12 weeks of therapy, which the DOE Psychologist indicated was necessary to show adequate evidence of rehabilitation or reformation. The fact that he had not yet completed the

recommended 12 weeks of therapy is only more concerning considering the severity of the mental health episodes that resulted in the Individual's hospitalization, which included alleged threats of suicide and the presence of firearms. Because the Individual has a history of noncompliance with medical treatment, I cannot be reassured that he will comply with current treatment recommendations and that these episodes will not recur.

Additionally, the Individual was diagnosed with ongoing depression, Unspecified Mood (Affective) Disorder, and intermittent explosive disorder in 2018, and while the Individual's therapist indicated in her letter that the Individual's score on the depression assessment was low and provided me with some understanding of the progress he has made in therapy, it remains unclear whether the other diagnoses are still appropriate. As indicated in the record and noted by the DOE Psychiatrist, the Individual suffered through mental health issues and received treatment and diagnoses in 2018, and while the Individual testified that he no longer suffers from the same mental health symptoms, it is unclear when and if the Individual truly improved and whether those previous diagnoses still apply. Tr. at 199. Further, I have no assessment, either from the DOE experts or the Individual's therapist, of the Individual's current prognosis. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to the mitigating factors at (a) and (b). Adjudicative Guidelines at ¶ 29(a), (b).

The record does not contain a recent opinion by a duly qualified mental health professional employed or acceptable to the government indicating that the condition is under control or in remission. Accordingly, the mitigating factor at (c) is not applicable. *Id.* at ¶ 26(c). The record does not demonstrate there is no indication of a current problem or that the past psychological condition was temporary. Therefore, the mitigating factors at (d) and (e) are not applicable. *Id.* at ¶ 26(d), (e).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, H, and I of the Adjudicative Guidelines. After considering all the evidence, both 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 Guideline E, H, and I concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals