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**United States Department of Energy
Office of Hearings and Appeals**

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| In the Matter of: | Personnel Security Hearing) | |
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| Filing Date: | February 1, 2024) | Case No.: PSH-24-0040 |
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Issued: April 8, 2024

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 in a position that requires him to hold a security clearance. The Individual certified and submitted an Electronic Questionnaire for National Security Positions (QNSP) in September 2019 and was granted a security clearance in November 2019. Exhibit (Ex.) 5 at 83, 137. He certified and submitted another QNSP in March 2023. *Id.* at 52. In both his QNSP forms, he certified that in the last seven years he had not illegally used any drugs or controlled substances. *Id.* at 45–46, 131. He also underwent an Enhanced Subject Interview (ESI) in June 2023. The Local Security Office (LSO) later determined that the Individual had omitted information in both his QNSPs and during his ESI regarding his use of marijuana. The LSO subsequently issued a Letter of Interrogatory (LOI) to the Individual in August 2023 asking about his marijuana use. Ex. 5.

Because the LSO was unable to resolve the security issues arising from his marijuana use and his lack of candor about this use, it informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a

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.

security clearance. Ex. 2 at 1–3. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline H (Drug Involvement and Substance Abuse), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.* at 4–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1 at 1. 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. At the hearing, the LSO submitted five numbered exhibits (Exs. 1–5) into the record, and the Individual submitted nineteen lettered exhibits (Exs. A–S).² The Individual presented the testimony of six witnesses, including himself. *See* Hearing Transcript, OHA Case No. PSH-24-0040 (hereinafter cited as “Tr.”). The LSO did not call any witnesses to testify.

II. Notification Letter and 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. 2 at 4–6.

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. “Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* The SSC cited the Individual’s failure to disclose his marijuana use on his 2019 and 2023 QNSPs, in light of his later admission in his August 2023, LOI response, that he used marijuana with friends beginning in January 2018 until March 2020. Ex. 2 at 4–5. The SSC also cited that the Individual failed to disclose his marijuana use during his June 2023 ESI. *Id.* at 5. The above allegations justify the LSO’s invocation of Guideline E.

Guideline H provides that “the illegal 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. The SSC cited that the Individual has a history of illegal use and possession of controlled substances based on his admission during the August 2023 LOI response that he used marijuana occasionally during high school and while on breaks from college. Ex. 5 at 6. The SSC also alleged that the Individual used an illegal drug while holding a sensitive position and while granted access to classified information. Ex. 2 at 5. The SSC cited that the Individual’s secret level clearance was favorably adjudicated by the Department of Defense (DOD) in November 2019, but in his August 2023, LOI

² The internal pagination of numerous exhibits offered by the Individual and by the LSO does not correspond to the number of pages included in the exhibits. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

response, he disclosed that he had used marijuana as late as March 2020. Ex. 2 at 5–6; Ex. 4 at 1. The above allegations justify the LSO’s invocation of Guideline H.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC alleged that the Individual’s marijuana usage was illegal at both the state and federal levels. *Id.* at 6. The above allegation justifies the LSO’s invocation of Guideline J.

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. *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

After submitting his September 2019, QNSP, wherein he did not disclose any illegal drug use, the Individual was granted a clearance by the DOD in November 2019. Ex. 5 at 83, 131, 137. In November 2022, he graduated from Officer Development School (ODS) in the military. Ex. L at 15. He later secured employment at a DOE facility and completed another QNSP in March 2023, and therein did not report any prior illegal drug use. Ex. 5 at 45–46, 52. In June 2023, the Individual underwent an ESI with the DCSA investigator, during which he denied any illegal drug use. *Id.* at 59–61. As part of the Individual’s investigation, the DCSA investigator interviewed a source in July 2023, and during the interview, the source told the DCSA investigator that he and the Individual had smoked marijuana “four or five times in 2018 or 2019.” *Id.* at 75.

In August 2023, the LSO sent the Individual an LOI to inquire about his omissions regarding this prior drug use in his QNSPs and during the ESI. Ex. 4 at 6–7. In his LOI response, the Individual stated that he first used marijuana in January 2018 with friends during high school. *Id.* at 1. He

stated that thereafter, he only used marijuana occasionally when he returned home while on breaks from college, and his total marijuana use occurred less than ten times in total. *Id.* The Individual stated that his last use of marijuana was in March 2020, when he decided to stop using it to pursue a career in the military. *Id.* He further stated that he failed to list his marijuana use in his QNSPs because he “had forgotten that marijuana was illegal federally, [a]dditionally it had been a long time since [he] last used marijuana and [he] used it so infrequently that it did not occur to [him] to include it on the form.” Ex. 4 at 1. The Individual also stated that he failed to disclose his marijuana use during his June 2023 ESI because his use had been “extremely infrequent[,]” it occurred “a long time ago,” and he “forgot that it was applicable and the DCSA investigator did not specifically name it.” *Id.* at 1–2.

After the Individual’s security clearance was suspended on November 14, 2023, a military investigating officer interviewed the Individual on November 20, 2023, and later followed up by phone on December 6, 2023. Ex. 1 at 4–8; Ex. 3 (Suspension Letter). During his interview, the Individual told the investigating officer that he first used marijuana in approximately May 2018 during his last semester of high school and stated that his last use was either “spring break or early summer” in approximately “May 2019.” *Id.* at 4. He stated that he used marijuana with the same group of friends and used it approximately five times in total. *Id.* He further stated that marijuana was the only drug he has used. *Id.* He told the investigating officer that he failed to disclose his marijuana use in his 2019 QNSP because he “did not realize marijuana was considered a ‘drug or controlled substance’ and met that definition.” *Id.* at 5.

He further told the investigating officer that in his August 2023 LOI response, he had erroneously stated his last marijuana use was in March 2020 because he was given approximately three days to submit his response, which was unexpected, and he had not thought about his marijuana use “in years.” *Id.* at 7. The Individual told the investigating officer that he had begun drafting an amendment of LOI response to submit to the LSO to correct the timeline. *Id.* The Individual further told the investigating officer that he learned that marijuana was federally illegal while he was in ODS, during a training when he was informed that use of marijuana or cannabidiol (CBD) products was prohibited in the military. *Id.* at 6–7. He stated that he did not disclose his marijuana use in his 2023 QNSP because he focused on the term “controlled substance” and did not think his “limited use in high school and during college met this requirement.” *Id.* at 6. He also told the investigating officer that he did not report his prior drug use to the DCSA investigator because “they just said the same words that are on the [QNSP form]” and he did not think marijuana applied to the question. *Id.* He stated that once he received the LOI “inquiring specifically about his marijuana use, he was open and honest” and stated he was not trying to hide his marijuana use, but “just did not think [he] was required to disclose [it] previously.” *Id.*

The record includes the military investigating officer’s report dated December 7, 2023, which contains findings of fact, opinions, and recommendations regarding the allegations investigated during the “preliminary inquiry.” Ex. A at 1–5. One of the opinions stated, “based on [his] interview . . . and briefly judging [the Individual’s] character, [the military investigator] do[es] not have sufficient reason to believe that he was knowingly untruthful or malicious during his security investigation process.” Ex. A at 3–4. The investigating officer further opined that the Individual had a “significant amount of naivete regarding knowledge of marijuana and laws surrounding it.” *Id.* at 4. He concluded that “although it is hard to understand that a college-educated adult could

not understand that marijuana is a federally illegal drug and its use should be disclosed,” he found the Individual “extremely open and forthright during th[e] investigation and appeared genuinely ignorant on the topic of marijuana use.” *Id.* The investigating officer also concluded that all of the Individual’s marijuana use “was conducted pre-service and therefore the Uniform Code of Military Justice (UCMJ) Article 112a-Wrongful use, possession, etc., of controlled substances, does not apply.”³ *Id.* His recommendations stated that he “[did] not recommend substantiating the allegation of Art[icle] 107-False official statements” nor did he recommend substantiating the allegation of Article 112a. *Id.* at 5. He further recommended “significant counseling with [the Individual] by senior leadership on the importance of attention to detail when reviewing and signing paperwork. He needs to learn to take responsibility for anything he signs his name to.” Ex. A at 5.

On December 20, 2023, the Individual submitted an amendment to his August 2023, LOI response (LOI Amendment). Ex. B. Therein, he stated that he had made mistakes in his prior LOI response due to having a limited time to respond, and he stated that he had provided correct dates of his drug usage during his military command interview on November 29, 2023. *Id.* at 1. He also amended his response regarding the 2019 QNSP allegations by stating that he did not disclose his marijuana use at that time because he was unaware that marijuana was federally illegal or illegal in his state. *Id.* He stated in the LOI Amendment that although he knew there was news surrounding the legality of marijuana, he did not follow that topic. *Id.* He stated when reading the QNSP question, that he did not realize that marijuana met the definition of “drugs or controlled substances.” *Id.* at 2. He also partially amended his response regarding his failure to disclose his use in the 2023 QNSP by reiterating the same reasons as in his prior LOI response, and by explaining that he was aware that marijuana was federally illegal but was “still unaware that it met the definition of drug or controlled substances.” *Id.*

On January 26, 2024, the Deputy Director of the DOE facility where he worked issued the Individual a Nonpunitive Letter of Caution (NPLOC).⁴ Ex. D. The letter stated, in relevant part, “I am not persuaded that you lacked basic knowledge about one of the most common drugs in the United States. Your statements made to investigators demonstrated a lack of truthfulness, substandard judgment, and poor attention [to] detail.” *Id.* at 1. The letter further noted the expectation that as a military officer in his particular program, the Individual is expected to maintain the “highest level of integrity” and noted the program’s “bedrock principle” of “maintaining a questioning attitude.” *Id.* at 1. The letter stated that if the Individual “did not

³ In his findings of fact, the military investigator also cited the Individual’s four urinalysis (UA) drug tests taken at the DOE facility on December 6, 2022; May 30, 2023; August 29, 2023; and November 29, 2023, stating that all of the Individual’s test results were negative. Ex. A at 2–3. The investigating officer also stated the Individual had reported undergoing a UA in Fall 2019 and a UA in July 2022, both with the Military Entrance Processing Station (MEPS) and had passed all drug tests without report of any positive tests. *Id.* at 2–3.

⁴ The record also includes a January 8, 2024, Final Endorsement form signed by the military commanding officer at the DOE facility regarding the investigating officer’s report. Ex. C. In it, the commanding officer approved the findings and recommendations of the investigating officer with one exception. *Id.* The commanding officer found that the two allegations of Article 107 of the UCMJ involving the Individual’s 2023 QNSP denial of controlled substance use, and his 2023 in-person denial of controlled substance use that he made to the DCSA investigator were “substantiated.” *Id.* The Final Endorsement form further stated that the Individual “will receive counseling on truthfulness and integrity as a [military] officer and attention to detail.” *Id.*

understand the question or the status of marijuana,” he was expected to “ask for clarification to ensure [he is] answering questions with complete accuracy.” *Id.*

V. Hearing Testimony

The Individual’s supervisor testified that she has known the Individual since November 2022, when she began supervising him, and she stated she worked with him daily through November 2023, until his clearance was suspended. Tr. at 18–19. She stated that the Individual has very strong work performance and quickly demonstrated good, consistent judgment in his job, so much so that his management team trusted and relied on him to be the key point of contact on a multibillion dollar set of projects which are not the usual type of operations at the facility. *Id.* at 21–22. The supervisor testified that since the time she has known the Individual, she has not had any suspicions or concerns that he was using illegal drugs. *Id.* at 55.

The supervisor testified about her favorable observations of the Individual’s honesty. *Id.* at 27, 32. She stated she has observed daily that he demonstrates that he takes responsibility and ownership of his work including if he makes a mistake showing poor performance, so that he looks for lessons learned and has no ego about it and is willing to share that information with everyone. *Id.* at 27. The supervisor also testified that she has observed that he properly handles classified information, is very conscious about it, and has also helped others properly secure and monitor classified information. *Id.* at 24.

The supervisor testified that since the Individual’s clearance has been suspended, she has held meetings with him every two weeks. *Id.* at 23. In addition to checking in with him regarding his current work situation and how he is doing mentally, she has also counseled him regarding the behavior that gave rise to the security concerns, and regarding the proper way to handle security clearance questions. *Id.* at 23, 43, 51. The supervisor, who has a security clearance, stated that she believes the Individual can be trusted with handling classified information and she would like him to return to his position under her supervision. *Id.* at 39, 52.

The Individual’s family friend and mentor testified that he met the Individual during the Individual’s freshman year of high school. *Id.* at 66. The mentor stated that after he moved to another duty station, he kept in touch with the Individual and the Individual’s family, who have visited him yearly. *Id.* at 65.

The mentor testified that he learned about the security concerns when the Individual asked him to be a character reference for him. *Id.* at 71. He testified that the Individual was very candid and did not try to represent that he had done nothing wrong. *Id.* at 71. He also testified that he has never seen or had suspicion to believe that the Individual was under the influence of an illegal drug during the time he has known him. *Id.* at 89. He stated the Individual told him that he had failed to disclose his prior marijuana use on both his 2019 and 2023 QNSPs. *Id.* The mentor stated the Individual also told him that he and his friends were interviewed as part of the security clearance process, during which another friend reported the Individual’s past marijuana use. *Id.* at 81–82.

The mentor indicated the Individual told him he made an error in the dates of his drug usage in the LOI response. *Id.* at 81–83.

The mentor testified that, despite his knowledge of the security concerns, he still finds the Individual to be trustworthy and honest. *Id.* at 88. He explained that he believes the Individual made a mistake and did not try to intentionally deceive the government. *Id.* He stated that based on what he knows and has observed about the Individual, he has never seen the Individual do anything similar such as actively trying to hide information about himself or try to deceive anyone. *Id.* at 88–89.

The Individual's parents testified on his behalf. Both parents stated they became aware of the security concerns regarding the Individual's marijuana use when the Individual told them his security clearance was suspended. *Id.* at 105, 134. The mother testified that the Individual told her that he had not disclosed his marijuana use on his QNSPs or to the DCSA investigator because he did not think it was a controlled substance. *Id.* at 136. Both parents testified that they believe the Individual is trustworthy. *Id.* at 102, 127. The mother stated that the Individual had demonstrably shown her that he is reliable and trustworthy since high school when he helped with her special needs daughter, and showed he could be trusted to use her credit card and car to run errands without any problems. *Id.* at 122, 127, 131.

The Individual's wife testified that she met the Individual in the fall of 2018 in college, and they got married in October 2023. *Id.* at 147–48. She stated during the time she knew him in college to present, she never saw him use marijuana or other drug or controlled substance. *Id.* at 150–51, 155. The wife testified that the Individual first told her about the matters underlying the security concerns in August 2023. *Id.* at 152, 167. She testified that the Individual told her that he had used marijuana in the past and had misunderstood a question on the QNSP forms so he did not disclose it because he did not realize marijuana was controlled substance. *Id.* at 151, 157. The wife testified that he is honest and has always told her the truth, even when it came to discussing difficult and uncomfortable topics. *Id.* at 149. She stated he has shown her on multiple occasions that he is reliable and possesses good judgment. *Id.* at 169, 171.

The Individual testified that he had used marijuana between spring 2018 until summer 2019. *Id.* at 188. He stated he used it “a handful or approximately five [times] with close friends at friends’ houses.” *Id.* at 188. He stated that during his usage, he was between eighteen and nineteen years old, and he never purchased marijuana because it was always a friend who would pass it to him when he was at a friend's house. *Id.* at 189–90. He stated that while he was in college, he realized that he wanted to join a special program in the military. *Id.* at 177. He then learned that the military “didn’t allow any marijuana usage and did drug tests and so [he] flat-out stopped [using marijuana]” around the time he decided to seriously consider joining the military. *Id.* at 216.

The Individual testified that in his 2019 QNSP, he answered “no” to the question regarding use of a drug or controlled substance because had a “misunderstanding of what the question was trying to ask” in that he did not realize that “marijuana applied [to the QNSP question] as a drug or controlled substance at that time.” *Id.* at 186. He stated that at the time, he did not know that he was supposed to disclose his marijuana use. *Id.* When questioned about his statement in his LOI Amendment that, regarding his 2019 QNSP, he was unaware that marijuana was illegal at either

the federal or state level, he testified that at that time, he was vaguely aware of the controversy surrounding marijuana laws but did not follow the news about it. *Id.* at 214. He also stated that when he used marijuana with his friends, he was young and was focusing on wanting to be part of the group, so he did not question the legality of it. *Id.* at 214–15.

The Individual testified that he attended ODS from October through November 2022. *Id.* at 238; Ex. L at 15 (ODS graduation certificate dated November 18, 2022). He testified that during ODS he received a presentation which stated the military’s view on marijuana, specifically that was illegal, that the military did drug tests, and that marijuana use was not allowed in the military. *Id.* at 187, 239. When asked why he did not disclose his marijuana use in his March 2023, QNSP, he admitted that because he had already attended ODS, he knew marijuana was “illegal federally,” but he asserted that he did not know it was classified as a drug or controlled substance. *Id.* at 187. He explained, “I thought [that] drugs or controlled substances was talking about cocaine and heroin and stuff like that, and I really just didn’t know that marijuana was included.” *Id.* He stated he answered “No” for that question on the 2023 QNSP because he did not know that marijuana was applicable and that the question was also referring to marijuana. *Id.* He said he did not think to ask anyone for clarification because he thought he knew what a drug or controlled substance was. *Id.* at 241.

The Individual stated that during his June 2023 DCSA interview, the DCSA investigator read aloud each question on the QNSP, which he answered. *Id.* at 191, 226. He stated that when she read the question regarding whether in the last seven years he had consumed a drug or controlled substance, he said “no” because at the time, he was sure that marijuana did not meet the definition of a drug or controlled substance. *Id.* at 191, 226. The Individual testified that if the DCSA investigator had asked specifically about marijuana, he would have answered differently. *Id.* at 226. He admitted that it is not appropriate to place the burden on the DCSA investigator to go through all of the potential drugs or controlled substances that they might have potential concerns about with him. *Id.* at 226–27.

Regarding his LOI response and subsequent LOI Amendment, the Individual testified when preparing his August 2023 LOI response, he was worried that his security clearance was in jeopardy because of his mistake in not disclosing his prior marijuana use, so he “was just trying to fully disclose and be as honest as [he] could.” *Id.* at 193. As such, he stated he wrote the dates that he believed fully encompassed the timeline of his marijuana use. *Id.* at 194. He testified that he only had five days to respond so he did not have a lot of time to check or confirm with friends to obtain the exact dates of his prior marijuana use and felt rushed to meet the LOI deadline. *Id.* at 192, 94. He stated he answered the LOI as well as he could with his available information as of the deadline. *Id.* at 207. He stated that during his subsequent command investigation with the military investigating officer, he had more time to obtain the correct dates of his marijuana usage and fully disclosed and provided the correct dates of his marijuana use to the investigating officer. *Id.* at 196–97. Consistent with what he told the military investigating officer, he followed through and submitted an LOI Amendment to provide the correct dates of his marijuana usage. *Id.* at 197; Ex. B at 1.

The Individual testified that, in the LOI Amendment, he sought to explain that he erroneously reported March 2020 as his last date of marijuana usage in his LOI response because he had based

his reference point of his drug use on the time period when he began actively pursuing joining the military, including his military interview process. *Id.* at 209. He testified that he had remembered he stopped using marijuana when he began seriously focusing on applying to join the military. *Id.* at 209. He stated that since his interview with the special military program was extended and he had reengaged with his recruiter in 2020, he had based his timeline of reported use on that information. *Id.* at 179, 209. However, he stated he wrote the wrong date on his LOI response because he had forgotten that he had filled out the initial military paperwork in 2019. *Id.* at 209. The Individual stated that he mistakenly thought that the LOI was the first step in the security investigation process, and he erroneously believed that the DOE would follow up and interview him so that he could have time to verify the dates and adjust them if he discovered they were wrong. *Id.* at 194–95. He also testified that in his LOI Amendment, its primary purpose was correcting his dates of marijuana use, although he also wanted to ensure that all the verbiage in his LOI response was correct. *Id.* at 210–11. Accordingly, he amended a couple of other items such as in his LOI Amendment, he stated that he was not aware at the time he completed his 2019 QNSP that marijuana was illegal at the federal or state level. *Id.* at 212, Ex. B at 2.

In support of his assertions that he provided the corrects dates of his marijuana usage to the investigating officer and in his LOI Amendment, the Individual provided a letter dated February 20, 2024, from the source that had previously reported the Individual's drug use to the DCSA investigator. Ex. I. In the letter, the source stated that he met the Individual in Fall 2014 and is his friend and former classmate. *Id.* The source stated that he and the Individual used marijuana together occasionally "as they navigated the transition from high school to college." *Id.* He stated that his recollection is that they used marijuana together approximately five nights between early 2018 and the summer of 2019. *Id.* He stated that "all such occasions were at a friend's house . . . [and] there was never any sign or danger of frequent or abusive use of the substance." *Id.*

The Individual testified that he last used illegal drugs in the summer of 2019. Tr. at 248. He stated that he has been drug tested multiple times in the military, including during ODS, and at the DOE facility. *Id.* at 193–94. He submitted drug tests results for December 6, 2022; May 30, 2023; August 29, 2023; and November 29, 2023, all of which were negative. Ex. A at 2–3, 33. He also submitted a military ADMITS record dated January 31, 2024. Ex. J. He testified that an ADMITS record lists any positive drug test results in the military and since his ADMITS record states "no data found," it reflects that he has had no positive drug tests. Tr. at 237; Ex. J. Regarding his association with the friends that he previously used marijuana with, he referred to the letter by the source discussed above. *Id.* at 251–252; Ex. I. He testified that he last observed his friends use illegal drugs around summer 2020, and since that date, he has not spent time with any friends who use drugs while in his presence. *Id.* at 247. He stated that he does not keep in regular contact with the source who is his friend whom he previously used marijuana with, although he sees him approximately once every three or four months. *Id.* at 246.

The Individual testified that he made a mistake in that he should have disclosed his marijuana use on the QNSPs and to the DCSA investigator, and he admitted that "without more knowledge [he] should have at least questioned it and asked someone about it." *Id.* at 242. He apologized for his actions. *Id.* at 201. He gave assurances that going forward, whenever he is asked any questions regarding security clearance issues, he will "be as open as possible" and if he is confused or has questions about anything, he will ask people and make sure to answer as honestly as possible. *Id.*

at 243–44. He stated that the “largest thing that [he] has learned from this experience is pushing that questioning attitude,” and making sure to answer questions as fully as possible and including as much information as possible” going forward. *Id.* at 242–43. He stated that he would “bring up topics that even if [he] doesn’t think that they apply[,] at least put them on the form and . . . let the investigators decide” whether the information brings up a potential security concern. *Id.* at 243. The Individual also provided an example when he had to self-report derogatory information regarding an error that made at his job. *Id.* at 244–45. He also provided a personal example of discussions he has had with his wife on difficult topics, and stated he has learned the importance of acknowledging and learning how to address and correct his mistakes. *Id.* at 245.

The Individual submitted additional exhibits including a letter of reference from his current second-line supervisor dated February 20, 2024. Ex. G; Tr. at 235. In that letter, the second-line supervisor stated she has supervised the Individual since November 2023, and since that time he has added significant value to multiple projects. Ex. G. She stated that she has witnessed his commitment, trustworthiness, and integrity, and stated that he quickly addresses or resolves issues whenever he sees a problem. *Id.* The Individual also submitted his Fitness Report which is a yearly performance evaluation signed on May 31, 2023. Ex. L at 17–18. The Fitness Report stated he was a “high performing” officer and “excellent technical expert,” and he testified that the signing official is the same Deputy Director who issued him the NPLOC. Ex. L at 18; Tr. at 252–53. He also submitted a copy of a 2022 published article on a scientific topic which he coauthored, and his college transcript reflecting a 4.0 grade point average. Ex. M; Ex. F at 3. Additionally, he submitted a character reference from a longtime friend who has known him for ten years, and who stated he finds the Individual is a “person of exceptional character, honesty, and integrity.” Ex. H.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security. After due deliberation, I have determined that although the Individual has mitigated the security concerns cited by the LSO under Guideline H and Guideline J, he has not mitigated the security concerns cited by the LSO under Guideline E. Therefore, I find that the Individual’s access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

A. Guideline E

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.

Adjudicative Guidelines at ¶ 17.

Regarding the first mitigating factor, the Individual's lack of candor is centered on his failure to provide truthful and candid answers in his September 2019 and March 2023 QNSPs, and during his June 2023 ESI concerning his prior use of marijuana. The Individual's efforts to correct the omissions were not prompt because he did not disclose his previous drug use until August 2023, in his LOI response, which is nearly four years after his 2019 QNSP omission and only approximately six months prior to the hearing. Moreover, instead of self-reporting his omissions, he chose not to do so until he was confronted with the facts in the August 2023 LOI. Thus, I find that the Individual has not mitigated the concern under the first mitigating factor. *Id.* at ¶ 17(a).

The second mitigating factor is not applicable because the Individual did not indicate that his omissions were caused or contributed to by advice of counsel or any other person with professional responsibilities for advising him with respect to security processes. *Id.* at ¶ 17(b).

Regarding the third mitigating factor, I cannot find that the concerns are mitigated by the relative seriousness of the Individual's offense, the passage of time, the frequency of his conduct, or the circumstances of his conduct. In making this finding, I have considered, but am not convinced, by the Individual's explanation that he did not disclose his marijuana use due to his misinterpretation of the question regarding drug use and his belief that marijuana was not a drug or controlled

substance that needed to be disclosed on the QNSP. Regarding his 2019 QNSP, he testified that he had stopped using marijuana in approximately May 2019, when he realized that he wanted to pursue a military career, because he had learned that the military did not allow marijuana usage. However, given that this information was significant enough to cause him to stop using marijuana, and he had stopped using it just four months prior to completing his September 2019 QNSP, it is questionable, at best, that he would not know that he needed to report his prior drug use in his 2019 QNSP.

I am also particularly concerned about the Individual's more recent failures to disclose his prior marijuana use in his March 2023 QNSP, and during his June 2023 ESI. Given his admission that he learned during ODS in 2022 that marijuana was federally illegal, I find it implausible that the Individual "did not know that marijuana met the definition of drug or controlled substance" when he subsequently completed his March 2023 QNSP, and later underwent his ESI. Tr. at 187. Even assuming, arguendo, that he lacked this knowledge after graduating from ODS, the fact that he made no attempts to obtain clarification when completing his 2023 QNSP and undergoing his DCSA interview casts further doubt on his judgment. Moreover, the fact that he did not disclose his prior marijuana use on multiple occasions when asked about it also casts doubt regarding his current reliability to disclose complete and truthful information when called upon to do so in security clearance matters.

Further, I note that the record reflects that the Individual is highly educated, intelligent, and has demonstrated excellent work performance in a position which emphasizes the principle of having a "questioning attitude." Ex. D at 1 ("bedrock principle . . . is maintaining a questioning attitude"). Given his background, I find his explanation that it did not occur to him to ask questions to seek clarity regarding this question on his 2023 QNSP, or during the ESI, lacks credibility and provides substantial doubt that his trustworthiness or good judgment have been resolved at this time. I have considered the evidence of the Individual's trustworthiness as attested to by his witnesses, and the character references in the record. However, I find that this evidence is outweighed by the Individual's problematic explanations which do not resolve my current concerns. Moreover, the recency of the Individual's conduct concerning his misleading answers when asked about illegal drug use adds to my concern that Individual's behavior is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. Thus, I find that the Individual has not mitigated the concern under the third mitigating factor. *Id.* at ¶ 17(c).

Regarding fourth mitigating factor, I note that the Individual has acknowledged that he made a mistake in that he should have disclosed his prior marijuana use on his QNPS and at the ESI and should have asked for clarification if he truly did not understand the question or the classification of marijuana. I credit the Individual for his recent efforts of meeting with his supervisor after his clearance was suspended to learn how he can improve upon his decision-making regarding the need to disclose any requested information completely and truthfully. However, as his security clearance was suspended just three months prior to the hearing, I find that the Individual's recent efforts are insufficient for me to conclude, at this time, that the behavior at issue is unlikely to recur.

Regarding the fifth mitigating factor, the record indicates that the Individual has told the significant people in his life about the security concerns, including his family, and his employer is aware of

the security concerns. Consequently, the fifth mitigating factor does not apply. *Id.* at ¶ 17(e). The sixth mitigating factor, ¶ 17(f), is inapplicable because the information alleged by the LSO came from a source that reported it to the DCSA investigator, and the Individual agreed with the source's reported information, which reflects that the information was not from a source of questionable reliability. *Id.* at ¶ 17(f).

Regarding the seventh mitigating factor, there is little information in the record indicating that the Individual regularly associates with persons involved in criminal conduct. As described above, the Individual's lack of candor regarding reporting his prior drug use *does* cast doubt as to the Individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Therefore, I find that the seventh mitigating factor is not applicable in this case. *Id.* at ¶ 17(g).

For the reasons stated above, I find that the Individual has not resolved the Guideline E concerns.

B. Guideline H

In relevant part, conditions that can mitigate security concerns based on drug involvement and substance misuse include that "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" Adjudicative Guidelines at ¶ 26(a). In addition to the Adjudicative Guidelines, I have also been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c), including "the age and maturity of the individual at the time of the conduct."

With regard to the SSC's allegations that the Individual "consumed an illegal drug while holding a sensitive position and while granted access to classified information," I conclude that the Individual has submitted sufficient evidence to resolve this allegation. Ex. 2 at 5. The record shows the DOD favorably adjudicated the Individual's secret level clearance in November 2019. The Individual's LOI Amendment states that he last used marijuana on "either spring break or early summer of his freshman year of college, around May 2019," which is consistent with the date he provided during his interview with the military investigating officer. Ex. B at 1; Ex. 1 at 4. I find that the Individual's credibility regarding this issue is bolstered by the fact that his corrected dates of use were corroborated by the same source who had initially reported the Individual's marijuana use to the DCSA investigator. I find additional support from the four negative drug test results submitted by the Individual and his statements referenced in the investigating officer's report that he also underwent drug tests in Fall 2019 and July 2022 through MEPS and had passed all drug tests without report of any positive tests. Since I conclude that the Individual's last use of marijuana occurred in approximately May 2019, and the Individual's security clearance was not favorably adjudicated by the DOD until November 2019, I conclude that the Individual has presented sufficient evidence for me to find that he did not consume marijuana while holding a security clearance. Therefore, I find that the security concern under Guideline H regarding this allegation has been resolved.

Regarding the other SSC allegation that the Individual has a history of illegal use and possession of controlled substances, I find that the Individual has mitigated this concern pursuant to mitigating

factor at Adjudicative Guidelines at ¶ 26(a). I conclude that the admitted drug use happened sufficiently long ago and under such circumstances that it is unlikely to recur. The Individual testified that he last used marijuana around May 2019. I find his testimony to be credible on the issue of his previous marijuana use, notwithstanding the credibility issues I found in the Guideline E considerations outlined in the previous section above. His testimony regarding his dates of prior drug use was corroborated by the source that reported his prior drug use to the DCSA investigator, and the Individual's dates of his prior use he provided to the military investigating officer were also corroborated by the source in his letter. Moreover, the Individual's assertions of abstinence were further supported by copies of his negative drug tests. The Individual's LOI response stated he used marijuana less than ten times. However, as he explained, he subsequently had more time to obtain more accurate information on usage and dates, such that I find accurate and persuasive his statements that he used marijuana approximately five times as stated in the military investigating officer's report, the LOI Amendment, and his hearing testimony. Additionally, in considering whether the Individual's marijuana use is unlikely to recur, I have also considered the factors listed in 10 C.F.R. § 710.7(c), and thereby note that the Individual's prior marijuana use occurred at a relatively young age when he was in high school and in his first year of college. I find that the passage of time and the circumstances of his past marijuana use leads me to conclude that the Individual's past marijuana use is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. Accordingly, I find that the Individual has resolved the Guideline H security concerns.

C. Guideline J

Under Guideline J, conditions that can mitigate security concerns based on criminal activity include, in relevant part, that "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." Adjudicative Guidelines at ¶ 32(a).

The Guideline J concerns are based on the Individual's prior drug use. The Individual acknowledges that he used marijuana approximately five times between spring 2018 until summer 2019, while in high school and on breaks from college with friends. As discussed above, the Individual provided credible testimony that he has not used any illegal drugs since approximately May 2019. His statements were corroborated by another source upon which the LSO based its allegation. Moreover, the Individual's assertions of abstinence were supported by objective evidence of negative test results. Although this case involves marijuana use, and not alcohol use, some indirect guidance can be found from prior OHA precedent in cases that contain allegations of security concerns involving alcohol use and associated criminal activity based on the same allegations. In such cases, OHA has found, "Once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated." *Personnel Security Decision*, OHA Case No. PSH-22-0085 at 8 (2022); *Personnel Security Decision*, OHA Case No. PSH-13-0062 at 7 (2013). Here, the Individual has successfully abstained from illegal drug use for almost five years. There are no other allegations of criminal activity in this case, and there is no evidence or indication that he has consumed marijuana since he stated he has stopped using it. The only allegation under Guideline J was in connection with his prior marijuana use, and as discussed above, I find that the Individual

has mitigated the Guideline H security concerns. Consequently, I find that the Individual is unlikely to engage in criminal activity for the foreseeable future. Accordingly, I find that the Individual has resolved the Guideline J security concerns.

VII. Conclusion

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 brought forth sufficient evidence to resolve the Guideline H and J security concerns. However, I conclude that the Individual has not put forth sufficient evidence to resolve the Guideline E security concerns set forth in the SSC. Accordingly, I have determined 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.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals