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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing

Filing Date: August 9, 2024

Case No.: PSH-24-0175

Issued: December 17, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

I. BACKGROUND

In 2017, the Individual signed and submitted a Questionnaire for National Security Positions (2017 QNSP) as part of seeking access authorization. Exhibit (Ex.) 11 at 185.² The Individual disclosed on the 2017 QNSP that he had used marijuana from 1996 until 2016, and had used methylenedioxymethamphetamine (MDMA), cocaine, hallucinogenic mushrooms, lysergic acid diethylamide (LSD), and various narcotic pharmaceutical drugs for which he did not have a prescription for varying periods and at varying frequencies during that period. *Id.* at 174–79. A background investigation of the Individual also established that he was denied employment in approximately 2003 after testing positive for marijuana. Ex. 12 at 338. In December 2018, the Individual was granted access authorization. Ex. 10 at 136.

On December 4, 2023, the Individual signed and submitted a QNSP (2023 QNSP) as part of a routine reinvestigation of his eligibility for access authorization. *Id.* at 141. The Individual

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

disclosed on the 2023 QNSP that he had begun illegally using synthetic opioids (fentanyl) in 2019 and had used them “50+” times while possessing access authorization.³ *Id.* at 132–34. The Individual additionally disclosed that he received inpatient treatment as a result of his fentanyl misuse and subsequently entered treatment with a therapist. *Id.* at 130, 134–35. In a February 9, 2024, response to a letter of interrogatory (LOI) issued to him by the local security office (LSO), the Individual admitted that he had tested positive for synthetic opioids when he was admitted to treatment in 2022. Ex. 6 at 29. On March 7, 2024, the Individual was evaluated by a DOE-contracted psychologist (DOE Psychologist). Ex. 8 at 52.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and H of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted twelve exhibits (Ex. 1–12). The Individual submitted seven exhibits (Ex. A–G).⁴ The Individual testified on his own behalf and offered the testimony of his wife, his father, his supervisor, and a member of a men’s group in which the Individual participates (Group Member). Hearing Transcript, OHA Case No. PSH-24-0175 (Tr.) at 3, 11, 55, 73, 93, 110.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as one basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC alleged that the Individual illegally purchased and used synthetic opioids while possessing a DOE security clearance and failed to report his drug use as required. Ex. 1 at 5. The LSO’s allegations that the Individual deliberately concealed his illegal drug use from his employer and security officials justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b).

³ This Decision will refer to the substance used by the Individual beginning in 2019 as fentanyl. While the Individual may have used other synthetic opioids, the record does not specifically reference any other synthetic opioids that the Individual used, and he referred exclusively to fentanyl in his hearing testimony concerning his illegal drug use.

⁴ The Individual submitted his exhibits as a single PDF file. This Decision cites to the pages in the file in the order in which they appear as if they were consecutively paginated.

The LSO cited Guideline H (Drug Involvement and Substance Misuse) as the other basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5–6.

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, 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 the Individual's admitted drug use from 1996 to 2016, positive drug tests, and use of synthetic opioids while possessing a DOE security clearance. Ex. 1 at 5–6. The LSO's allegations that the Individual misused and illegally possessed controlled substances, tested positive for illegal drugs, and engaged in illegal drug use while granted access to classified information or holding a sensitive position, justify its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a)–(c), (f).

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 of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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

The Individual began using marijuana in 1996. Ex. 11 at 174. The Individual subsequently began using MDMA, cocaine, hallucinogenic mushrooms, LSD, and various narcotic pharmaceutical drugs for which he did not have a prescription. *Id.* at 174–76. In approximately 2003, the Individual was denied a job to which he had applied after testing positive for marijuana. Ex. 12 at 338. By 2004, the Individual was using marijuana on a daily basis. Ex. 11 at 174. In 2014, the Individual and his first wife divorced, in part because of the Individual's drug use. *Id.* at 163, 176 (reflecting

information the Individual provided on the 2017 QNSP, including that his prescription drug misuse “was a major catalyst in [his] divorce”).

In 2017, the Individual was hired by a DOE contractor. *Id.* at 158. In May 2017, the Individual submitted the 2017 QNSP as part of seeking access authorization. *Id.* at 185. The Individual disclosed his illegal drug use on the 2017 QNSP and claimed that he had discontinued all illegal drug use in 2016 or earlier. *Id.* at 174–76 (providing varying years in which he claimed to have discontinued using different illegal drugs). The Individual represented that he had “cleaned up through [his] religious affiliation and relationship with God,” he “no longer [had] a desire to treat [his] body in a manner that [went] against [his] religious beliefs,” and his religious practice had “provide[d him] with healthier ways of dealing with [his] emotions” *Id.* at 28–29.

In December 2018, the Individual was granted access authorization. Ex. 10 at 136. In February 2019, the Individual began illegally using synthetic opioids, such as fentanyl. *Id.* at 132; *see also* Tr. at 164 (testifying at the hearing that he did not “have a good answer” as to why he chose to resume illegal drug use). The LSO issued the Individual two LOIs, and in his responses the Individual indicated that he chose to use fentanyl to obtain “pleasurable feelings” Ex. 6 at 29; Ex. 7 at 35. During his interview with the DOE Psychologist, the Individual elaborated that he had chosen to use fentanyl because friends had told him that “it felt good” and “does not show up on a standard drug screen.” Ex. 8 at 54; *see also* Tr. at 123–24 (testimony from the Individual confirming that he chose to use fentanyl because he was told that it “would not show up on a drug test” and that he understood that a positive drug test could cause him to “lose [his] clearance and therefore [his] job”). The frequency of the Individual’s use of fentanyl increased until he was using it daily and would experience withdrawal symptoms when he did not do so. Ex. 6 at 29; Ex. 8 at 54; Ex. 10 at 132.

At the hearing, the Individual testified that he knew that he was required to disclose illegal drug use at the time he was using fentanyl. Tr. at 170. He attributed his decision not to do so to “the preservation that an addict has. Like you’re trying to keep your secrets and trying to . . . keep feeding that monkey brain [sic].” *Id.*

The Individual met his current wife in January 2020. *Id.* at 13 (reflecting the testimony of the Individual’s wife at the hearing). Approximately one month later, the Individual revealed to her that he was illegally using fentanyl and told her that he was “actively trying to quit” *Id.* at 15. The Individual’s wife told him that she would only continue to see him if he was “actively quitting” fentanyl use. *Id.* In August 2021, at which time she believed the Individual to have been “clean,” she accepted his proposal of marriage. *Id.* at 17. However, the Individual subsequently relapsed. *Id.* at 141–42. After several unsuccessful attempts at ceasing his use of fentanyl, the Individual “detoxed” in December 2021 and experienced “horrible withdrawal symptoms.” *Id.* at 142. The Individual’s wife believed that this effort was successful. *Id.* at 18, 42, 142. However, the Individual felt too sick to work and secretly resumed using fentanyl. *Id.* at 142.

In approximately March 2022, at which time the Individual and his wife remained engaged to be married, the Individual’s wife discovered his fentanyl in their home while he was on a trip, told him that she would not marry him unless he pursued treatment, and revealed the Individual’s drug use to his parents. Ex. 8 at 54, 56; Tr. at 62, 69 (testimony of the Individual’s father that the

Individual's wife revealed the Individual's drug use to him in March 2022 and that he was "shocked" to learn of the Individual's drug use); Tr. at 142 (reflecting the Individual's testimony concerning the circumstances of his wife's discovery of the drugs). The Individual's father subsequently spoke to the Individual and convinced him to enter treatment. Tr. at 63.

The Individual was admitted to an inpatient detox program for drug-related treatment on March 20, 2022. Ex. 12 at 261. The Individual tested positive for synthetic opioids at intake to the inpatient treatment program. Ex. 6 at 30. The Individual reported to his supervisor that he was attending "rehab" but did not disclose that it was for drug addiction. Tr. at 83, 87 (testimony from the Individual's supervisor that the Individual contacted him to arrange for leave to attend alcohol-related "rehab"); *see also* Tr. at 19–20 (reflecting the testimony of the Individual's wife that she brought the Individual's computer to the inpatient treatment facility at the request of the facility's clinicians to allow the Individual to "contact work about his absence" because the Individual was "hyperfixated on work" and it was interfering with his treatment); *but see* Tr. at 115 (reflecting testimony from the Individual that he told his supervisor that he was attending substance abuse treatment but did not specifically state the substance for which he was seeking treatment).

The Individual was discharged from the inpatient program on April 28, 2022. Ex. 12 at 261. Following his discharge from the inpatient program, the Individual enrolled in individual treatment with a therapist (First Therapist). Ex. 8 at 55; Ex. 10 at 135. The Individual met with the First Therapist on an at least monthly basis from June 2022 until March 2023 when the First Therapist transitioned to a different practice. Ex. 8 at 55. The Individual then transferred to a different therapist (Second Therapist) with whom he began meeting in June 2023. *Id.* As of the date of the hearing, the Individual was continuing to meet monthly with the Second Therapist and was focused on addressing feelings related to the death of the Individual's mother when he was a child which the Individual believes contributed to his illegal drug use. Tr. at 135–37. A letter from the Second Therapist submitted by the Individual at the hearing states that the Individual had "been compliant with his treatment" and "demonstrated a genuine commitment to [] sobriety." Ex. D at 19.

The Individual attended Narcotics Anonymous (NA) from approximately May 2022 to November 2023. Tr. at 147, 183; *see also* Ex. B at 11 (photo of coins the Individual received through his NA participation); Tr. at 24 (testimony from the Individual's wife that she attended Nar-Anon support group meetings); Ex. B at 10 (Individual's wife's Nar-Anon token and reading material). The Individual decided to discontinue attending NA because he "was starting to kind of grow out of it . . . [and could] only hear the same story so many times." Tr. at 156. The Individual began attending a faith-based men's group in November 2022. Tr. at 94 (testimony of the Group Member confirming the period of the Individual's attendance). Members of the men's group engage in various practices to support their faith and each other. *Id.* at 95, 156–57. The Individual is an active participant in the men's group and has shared his illegal drug use and expressed contrition for having used illegal drugs. *Id.* at 96, 102.

The Individual and his wife married in October 2023. Ex. 8 at 56; Ex. A at 5–7. Also in October 2023, the Individual began attending a university in order to earn a bachelor's degree. Ex. F at 25 (showing the Individual's university transcript). The Individual was still attending the university as of the date of the hearing and had a grade point average of 4.0. *Id.*; Tr. at 128. According to the

Individual, his drug use had interfered with his studies in the past and he sees earning a bachelor's degree as a chance to "show [himself] that [he] could do it." Tr. at 128.

On December 4, 2023, the Individual signed and submitted the 2023 QNSP. Ex. 10 at 141. The Individual disclosed his use of fentanyl and treatment.⁵ *Id.* at 130, 132–36. In a January 10, 2024, response to an LOI, the Individual claimed to have reported his "use, hospitalization, and treatment" to "[p]ersonnel security" in March 2022.⁶ Ex. 7 at 46.

On March 7, 2024, the Individual met with the DOE Psychologist for a psychological evaluation. Ex. 8 at 52. The DOE Psychologist subsequently issued a report of the evaluation (Report) in which he opined that the Individual met sufficient criteria for a diagnosis of Opioid Use Disorder, Severe, in Sustained Remission, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*.⁷ *Id.* at 59.

The Individual underwent drug tests on August 22, 2024, October 11, 2024, and November 15, 2024, each of which was negative for evidence of illegal drug use, including fentanyl. Ex. C at 13–17. According to the Individual, he no longer experiences cravings to use illegal drugs and so much time has passed since he last experienced a craving that he cannot recall the last occasion on which he did. Tr. at 163. The Individual testified that he had previously obtained fentanyl from a drug dealer to whom he was introduced by friends, and that he no longer is in contact with the friends or the drug dealer. *Id.* at 178–79. The Individual testified that his wife is "critical to [his] recovery" and that he is unlikely to relapse into illegal drug use because he is in a "very different . . . place in [his] life" from 2019 when "beyond [his] job [he] didn't have much to lose." *Id.* at 164–65.

The Individual's wife observed that the Individual was often tired and passive when he was using fentanyl but is now more proactive and social. *Id.* at 24–25. The Individual also volunteers for his church in several capacities. *Id.* at 150–51; *see also id.* at 31–32 (confirming testimony from the Individual's wife as to the Individual's volunteerism). The Individual's wife will not tolerate any future drug use from the Individual. *Id.* at 36. She testified that she believed that she had learned enough of the Individual's "mannerisms [and] behaviors" since his prior illegal drug use that she

⁵ In the 2023 QNSP, the Individual inaccurately reported that he had ceased using synthetic opioids and entered treatment in March 2021. Ex. 10 at 130, 132. In response to an LOI from the LSO, before being confronted with evidence as to the discrepant dates, the Individual clarified that he had entered treatment in March 2022 and represented that the dates he provided in the 2023 QNSP were typographical errors. Ex. 7 at 35.

⁶ According to the Individual, he "called personnel security" and "reported [him]self" while he was in the inpatient treatment facility. Tr. at 146. I find it highly improbable that the LSO would have failed to investigate this information if the Individual had properly reported it as he claimed. Furthermore, the Individual's supervisor testified that he was sure that the Individual told him on multiple occasions that he had received alcohol-related treatment. *Id.* at 83, 86. The Individual's supervisor, who appeared as a witness on behalf of the Individual, had no discernable motive to provide inaccurate information. In light of the Individual's supervisor's lack of motivation to provide inaccurate information, and his certainty as to the Individual having told him that his treatment was related to alcohol, I credit the Individual's supervisor's testimony over the Individual's. Considering the Individual's deceptiveness to his supervisor about the nature of his treatment and the lack of records of the Individual reporting his treatment to the LSO, I find it most probable that the Individual's claim to have timely reported his treatment to the LSO is not true.

⁷ The SSC did not cite the DOE Psychologist's diagnosis of the Individual with Opioid Use Disorder as a security concern. Ex. 1 at 5–6.

would recognize if the Individual had returned to using drugs. *Id.* at 41. If she discovered that he was using drugs, she would confront him and share his relapse with his parents. *Id.* at 49.

The Individual's father testified that the Individual has been more open and affectionate since undergoing treatment and that their relationship had improved immensely. *Id.* at 65. The Individual's father believes that the risk of losing his marriage will motivate the Individual to abstain from illegal drug use. *Id.* at 66.

The Individual is regarded as honest and reliable by his colleagues and family. *Id.* at 37–38 (testimony of the Individual's wife that she finds him honest and reliable); *id.* at 66 (testimony of the Individual's father that he never questioned the Individual's integrity when the Individual worked at a family business); *id.* at 77 (testimony from the Individual's supervisor that the Individual is a reliable employee); Ex. G at 26–27 (letters from a colleague of the Individual and a faith leader stating that the Individual is honest and reliable).

V. ANALYSIS

A. Guideline H

Conditions that may mitigate security concerns under Guideline H include:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Id. at ¶ 26.

The Individual engaged in significant illegal drug use from 1996 to 2016 before abstaining from illegal drugs for several years only to relapse in 2019 when he began illegally using fentanyl. The Individual ultimately used fentanyl daily for several years until March 2022. In light of the Individual's daily illegal drug use and prior relapse following several years of abstinence from illegal drugs, his illegal drug use was neither infrequent nor long enough in the past to demonstrate the applicability of the first mitigating condition. The Individual also indicated that he had no particular reason for relapsing in 2019 and so his fentanyl use did not occur under unusual circumstances. Therefore, I find the first mitigating condition inapplicable. *Id.* at ¶ 26(a).

The Individual has acknowledged his drug involvement, undergone treatment, and adopted a new lifestyle which does not involve associating with drug users or drug dealers. However, as described above, the Individual's abstinence from illegal drugs is not a sufficient pattern in of itself to convince me that he will not return to illegal drug use in the future in light of his previous return to illegal drug use after an approximately three-year period of abstinence. Additionally, the Individual did not provide the signed statement of intent referenced in the mitigating condition. Accordingly, I find the second mitigating condition inapplicable. *Id.* at ¶ 26(b).

The third mitigating condition is irrelevant to the facts of this case because the Individual does not claim that he was prescribed fentanyl or other synthetic opioids. *Id.* at ¶ 26(c).

The Individual completed the inpatient treatment program and subsequently attended NA meetings for over one year. There is no indication that he has relapsed since that time, the DOE Psychologist opined that the Individual's Opioid Use Disorder was in sustained remission, and the Second Therapist provided a positive opinion as to the Individual's recovery. Accordingly, I find the fourth mitigating condition applicable. *Id.* at ¶ 26(d).

Although the Individual has established the applicability of one of the mitigating conditions, I nevertheless find that he has not satisfactorily resolved the security concerns asserted by the LSO under Guideline H. In applying the Adjudicative Guidelines, I am to consider:

The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). Nearly all of these considerations weigh against the Individual. The Individual's use of fentanyl on a daily basis while possessing access authorization, despite knowing that doing so violated his obligations to DOE, represented extremely serious and frequent misconduct in which the Individual knowingly participated. The Individual's selection of fentanyl because he believed that he could use it without detection through drug testing compounds the seriousness of his conduct. Yet further, the testimony of the Individual's supervisor casts serious doubt on the extent to which the Individual's employer is aware of his drug use and suggests that he could be exposed to pressure or coercion through the threat of revealing this information to his

colleagues. The Individual was in his mid-thirties when he began using fentanyl, and thus youth and immaturity did not contribute to his conduct. *See* Ex. 11 at 151 (indicating the Individual's birthdate).

The Individual's perception that he "didn't have much to lose" in 2019 when he began using fentanyl, despite possessing access authorization, establishing years of abstinence from illegal drugs, and having claimed on the 2017 QNSP that his religious practice would help him to continue to abstain, suggests that his religious practice and obligations as a clearance holder are insufficiently weighty to the Individual to prevent him from indulging in illegal drug use. The Individual's testimony indicates that his relationship with his wife is central to his motivation to abstain from drugs. While the Individual may be genuinely motivated to refrain from illegal drug use to preserve his marriage, it is hard to believe that the Individual will maintain this motivation if the relationship dissolves in the future in light of his prior conduct. Considering the Individual's conscious decision to use fentanyl because he believed that he could do so without being detected and to prioritize risky self-gratification over his obligations to DOE as a clearance holder, I cannot conclude that the Individual's marriage and his stated motivations to preserve it are a sufficient basis upon which to make a national security decision. Accordingly, I find that the LSO's concerns under Guideline H are not resolved.

B. 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.

It is undisputed that the Individual intentionally failed to disclose his illegal drug use while possessing access authorization as required for several years. I do not credit the Individual's claim to have timely disclosed his inpatient drug treatment as required, but even if I did, the Individual's disclosure would have come far too late after he began illegally using fentanyl for it to be prompt. Thus, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is irrelevant to the facts of this case because the Individual does not claim that his failure to promptly disclose his fentanyl use was based on the advice of counsel or another representative. *Id.* at ¶ 17(b).

The Individual's failure to disclose his illegal drug use while possessing a security clearance was extremely serious and persisted for years, and thus cannot be said to have been minor or infrequent. Considering the seriousness and persistence of the conduct, the passage of time alone – whether since the Individual's claimed disclosure at the time of his inpatient treatment or his submission of the 2023 QNSP – does not mitigate the security concerns.

The Individual claims that he has resolved the illegal drug use and thus he will not engage in deceptiveness in the future because he is no longer under the influence of addiction. As explained above, I do not find that the Individual has resolved the concerns related to his illegal drug use. However, even if he had, I would still find the third mitigating condition inapplicable. As explained above, I do not credit the Individual's claim that he promptly disclosed his inpatient treatment as required. *Supra* note 6. Rather, I believe it likely that the Individual delayed disclosing this information until he submitted the 2023 QNSP when a background investigation almost certainly would have revealed the Individual's claims to his employer that he received alcohol-related treatment. Thus, I find it likely that the Individual's deceptive behavior persisted until December 2023, by which time he had been abstinent from illegal drugs for approximately 20 months. As the Individual's deceptiveness persisted long after the cloud of addiction had cleared, doubt remains as to whether he will disclose derogatory information in the future, whether or not related to illegal drug use, if he perceives that he can delay or avoid detection. Thus, I find the third mitigating condition inapplicable. Adjudicative Guidelines at ¶ 17(c).

For the aforementioned reasons, I am not convinced that the Individual's deceptiveness was solely attributable to addiction. Accordingly, I am not convinced that his drug-related treatment is sufficient to establish that he will be truthful in the future if he is required to disclose derogatory information. Thus, the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d).

The LSO did not specifically allege that the Individual's untruthfulness created a heightened risk of exploitation, manipulation, or duress. Thus, the fifth mitigating condition is irrelevant to the facts of this case. *Id.* at ¶ 17(e). The sixth mitigating condition is likewise irrelevant because the Individual does not dispute the LSO's allegations. *Id.* at ¶ 17(f). The seventh mitigating condition is also irrelevant because the LSO did not allege that the Individual associated with persons involved in criminal activities. *Id.* at ¶ 17(g).

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and H of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns. 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals