

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: September 5, 2024)	Case No.: PSH-24-0188
)	
_____)	

Issued: January 2, 2025

Administrative Judge Decision

Phillip Harmonick, 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 should not be granted access authorization.

I. BACKGROUND

On April 6, 2020, the Individual signed a Questionnaire for National Security Positions (2020 QNSP) in connection with his service in a branch of the U.S. military. Exhibit (Ex.) 8 at 139; *see also* Ex. 9 at 172 (indicating that the Individual's military service began in April 2020).² In response to a question on the 2020 QNSP concerning whether he had used any illegal drugs in the prior seven years, the Individual checked a box marked "No." Ex. 8 at 133. The Individual was subsequently granted a security clearance. Ex. 9 at 191.

On February 4, 2024, the Individual signed and submitted a QNSP (2024 QNSP) as part of the process of seeking DOE access authorization. *Id.* at 196. The Individual disclosed on the 2024 QNSP that he had used marijuana "a few times" from 2018 to 2023, and that he had participated in drug-related treatment after testing positive for marijuana use in connection with his service in a branch of the U.S. military. *Id.* at 186–89. The Individual checked a box marked "No" on the

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.

2024 QNSP in response to a question asking whether he had any additional illegal drug use in the prior seven years to disclose. *Id.* at 187. The Individual also denied having fallen into delinquency on any debts in the prior seven years. *Id.* at 193. During a March 2024 interview with an investigator as part of an investigation of his eligibility for DOE access authorization, the Individual represented that he had engaged in occasional marijuana use from 2018 to 2023 and had not used any other illegal drugs. *Id.* at 202, 204–05.

The local security office (LSO) issued the Individual a letter of interrogatory (LOI). Ex. 5. In his response to the LOI, the Individual admitted that he had used hallucinogenic mushrooms, LSD, and “molly” in 2019 and had intentionally omitted that information on both the 2020 QNSP and the 2024 QNSP. *Id.* at 31–32.

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 nine exhibits (Ex. 1–9). The Individual submitted twenty-five exhibits (Ex. A–Y).³ The Individual testified on his own behalf at the hearing and offered the testimony of a personal friend (Individual’s Friend), his brother (Individual’s Brother), his supervisor, and a former coworker. Transcript of Hearing, OHA Case No. PSH-24-0188 (Tr.) at 3, 12, 26, 43–44, 66–67, 75. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5–6.

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 deliberately provided false information and omitted information he was required to disclose on the QNSPs and in interviews

³ After the initial submission of his exhibits, the Individual submitted two supplements to Exhibit G. This Decision cites to Exhibit G as if those two supplements had been included with the original Exhibit G as a single, consecutively-paginated document.

with investigators concerning his illegal drug use and financial delinquencies. Ex. 1 at 5–6.⁴ The LSO’s allegations that the Individual deliberately omitted information from personnel security questionnaires and provided false or misleading information to an investigator justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

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 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 alleged that the Individual tested positive for marijuana use in connection with his service in a branch of the U.S. military, used marijuana for five years, and used other illegal drugs in 2019. Ex. 1 at 6. The LSO’s allegations that the Individual misused and illegally possessed controlled substances and tested positive for illegal drug use justify its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a)–(c).

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

⁴ The LSO also alleged that the Individual had “violated rules and regulations” when he tested positive for marijuana, was disciplined by a branch of the U.S. military for testing positive for marijuana use, and was required to undergo a mental health evaluation and substance abuse counseling after testing positive for marijuana use. Ex. 1 at 5–6. Testing positive for illegal drug use cannot be cited to support a derogatory whole-person assessment under Guideline E because it presents a discrete security concern under Guideline H. *Compare* Adjudicative Guidelines at ¶ 16(c)–(d) (indicating that conduct may be cited under these paragraphs of Guideline E only if it is not sufficient for an adverse determination under another guideline) *with id.* at ¶ 25(b) (indicating that testing positive for an illegal drug presents security concerns under Guideline H). I find that the Individual’s positive drug tests were improperly asserted by the LSO under Guideline E because they presented security concerns under Guideline H and that the Individual’s discipline and counseling were so inextricably linked to the positive drug tests that they were likewise improperly alleged as presenting security concerns under Guideline E. Accordingly, I will consider these allegations solely under Guideline H.

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 high school in 2015. Tr. at 15–16, 91 (reflecting the testimony of the Individual’s Friend that the Individual began using marijuana in high school and confirmatory testimony from the Individual after the Individual’s Friend’s testimony). According to the Individual, he ceased using marijuana for several years before attending a university (University A) where he resumed marijuana use. *Id.* at 101. In 2018 and 2019, while attending University A, the Individual used marijuana at least monthly. *Id.* at 15 (reflecting the testimony of the Individual’s Friend that he observed the Individual using marijuana approximately one to three times monthly when they attended University A together);⁵ Ex. 5 at 34; Ex. 9 at 204. In 2019, the Individual “experimented with [hallucinogenic] mushrooms, LSD, and molly [sic].” Ex. 5 at 31.

After graduating from University A in December 2019, the Individual moved out of campus lodging. *Id.* The Individual owed an unpaid balance of \$113 to University A for his lodging. Ex. 9 at 228. A notice of the balance was sent to the Individual’s University A address after he had moved out and it was not forwarded to the Individual. Ex. 5 at 31. The unpaid balance was referred to collections in February 2020, and the Individual paid the balance in full in October 2021 after he learned of the delinquency through review of his credit report in connection with an application to rent an apartment. *Id.*; Ex. 9 at 228; Ex. Y (containing correspondence showing that the Individual learned of the debt in October 2021 and paid the balance in full to a collection agency).

The Individual enlisted in a branch of the U.S. military, and on April 6, 2020, he completed the 2020 QNSP in connection with his military service. Ex. 8 at 139. The Individual certified that the contents of the 2020 QNSP were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* However, the Individual falsely denied having used illegal drugs in the prior seven years in the section of the 2020 QNSP related to illegal use of drugs. *Id.* at 133.

⁵ In his testimony the Individual claimed that he used marijuana less frequently and that he was “throw[n] [] off guard” at hearing his friend’s testimony. Tr. at 102–03. I credit the Individual’s Friend’s account of the frequency of the Individual’s marijuana use while attending University A over the Individual’s account for several reasons. First, the Individual has demonstrated a lack of credibility in reporting his illegal drug use in the past and has a motive to provide an account of his drug use that does not conflict with his claims on the 2024 QNSP and LOI to have only used illegal drugs a small number of times at University A, while the Individual’s Friend has no discernible motive to overreport the Individual’s drug use. *See* Ex. 5 at 34 (reflecting the Individual’s response to the LOI in which he claimed to have used marijuana “a handful of times in college”); Ex. 7 at 88 (claiming on the 2024 QNSP that he had “only done [marijuana] a few times”). Moreover, the Individual’s Friend revealed the Individual’s high school drug use in his testimony, which the Individual previously omitted from the 2020 QNSP, interview with the investigator, and LOI. *Compare* Tr. at 15–16 with Ex. 5 at 34; Ex. 8 at 133; Ex. 9 at 204. I find it probable that the Individual’s Friend’s estimate of the Individual’s drug use at University A, like his revelation of the Individual’s high school drug use, is accurate information that the Individual withheld.

In September 2022, the Individual tested positive for marijuana in connection with his military service. Ex. 5 at 24. The Individual was required to undergo a mental health evaluation and complete a twelve-hour substance abuse education class. *Id.* at 37; *see also* Ex. A (documenting the Individual's referral for an evaluation); Ex. C (certifying the Individual's completion of the substance abuse education class). The Individual was placed on a one-year probationary period pursuant to which he was required to undergo monthly drug testing. Ex. 5 at 24, 37. The Individual tested negative for evidence of drug use on each of the monthly drug tests. *Id.*

The Individual enrolled in a second university (University B) and began studying to earn a graduate degree in the spring of 2023. Tr. at 85; Ex. F. As of the date of the hearing, the Individual's cumulative grade point average was 4.0. Ex. F; Tr. at 85 (testifying that he expected to earn an "A" in the final class in the program in which he was enrolled as of the date of the hearing). According to the Individual, his success in his studies demonstrates his improved "discipline, focus[,] and commitment" and his "changed environment." *Id.* Tr. at 85–86.

The Individual tested positive for marijuana use in connection with his military service again in October 2023. Ex. 5 at 25; *see also* Tr. at 50 (testimony from the Individual's military supervisor that the Individual was randomly selected for drug testing the month following completion of his probation). The Individual was required to repeat the mental health evaluation, twelve-hour substance abuse education class, and probationary period he previously completed following his 2022 positive drug test. Ex. 5 at 37; *see also* Ex. D (certifying the Individual's completion of the substance abuse education class); Ex. M (memorializing the Individual's placement on probation). The Individual was also subject to suspension of benefits he received through his military service, including tuition assistance, student loan repayment assistance, and a signing bonus. Ex. 9 at 203.

The Individual moved in with his girlfriend in January 2024. Tr. at 86; *see also* Ex. I at 2 (reflecting the terms of a lease between the Individual and his girlfriend and their landlord). According to the Individual, he made this decision in part due to his recognition of the need for a more controlled environment where he would not be influenced by friends in light of his second failed drug test. Tr. at 86.

On February 4, 2024, the Individual signed and submitted the 2024 QNSP. Ex. 7 at 98. The Individual certified that the contents of the 2024 QNSP were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." *Id.* The Individual disclosed having used marijuana while attending University A and serving in the U.S. military, but represented that he only used marijuana "a few times" while attending University A. *Id.* at 88; *see also* Tr. at 90 (testifying at the hearing that he disclosed marijuana use on the 2024 QNSP because he "want[ed] to get clear with all the facts out there" and "be more truthful and have more integrity"). The Individual also disclosed the positive drug tests and his drug-related treatment on the 2024 QNSP. Ex. 7 at 88–92. However, he denied having used any illegal drugs besides marijuana in the prior seven years. *Id.* at 89; *see also* Tr. at 94–95 (testifying that he intentionally failed to disclose his use of psychedelic drugs because he knew he was going to have "a more thorough investigation process due to [his] two failed [drug tests]" and he believed that disclosing psychedelic drug use would be a "whole different level . . . on top of two failed drug tests"). The Individual also denied having fallen into delinquency on any debts in the prior seven years. Ex. 7 at 95.

An investigator interviewed the Individual under oath on March 26, 2024, as part of the background investigation of the Individual.⁶ Ex. 9 at 202. When asked by the investigator whether he had used any illegal drugs besides marijuana in the prior seven years, the Individual denied having done so. *Id.* at 205. Regarding when he began using marijuana, the Individual falsely represented that “prior to 2018 [he] had not used marijuana.” *Id.* at 204. The Individual also denied having any debts referred to collections, after which he was confronted with a credit report showing that the student housing debt had been referred to collections in 2020. *Id.* at 205, 228. The Individual then acknowledged the debt and represented that he had omitted it from the 2024 QNSP because he believed that he should omit debts he had paid. *Id.* at 205.

On June 25, 2024, the Individual submitted his response to the LOI. Ex. 5 at 41. In his response, the Individual asserted that he could not “provide first and last dates [of his marijuana use] since I cannot remember” and that he “may have used it a handful of times in college . . .” *Id.* at 34. The Individual claimed in his LOI response that he had falsely denied illegal drug use in the prior seven years on the 2020 QNSP because a military “recruiter advised [him] to . . . omit that information . . . [because] it would delay [the Individual’s] enlistment process.” *Id.* at 30; *see also* Tr. at 89 (reiterating at the hearing that he omitted his illegal drug use on the recommendation of military recruiters). The Individual further claimed that he had no “intent . . . to deceive, [and] was simply following the guidance given to [him] . . .” Ex. 5 at 30.

As to the 2024 QNSP, the Individual divulged that he had intentionally omitted his use of hallucinogenic mushrooms, LSD, and “molly.” *Id.* at 31–32. By way of explanation, the Individual indicated that he “was very conflicted about how it would look if I added it the second time” after previously omitting it from the 2020 QNSP. *Id.* at 32. The Individual further claimed that he only used marijuana “a handful of times” while attending University A and that the only two times he had used marijuana since graduating from University A were shortly before the positive military drug tests. *Id.* at 34. Regarding the omission of the student housing debt from the 2024 QNSP, the Individual denied that he had intended to conceal the debt and indicated that he had “forgotten about that bill until [the] investigator asked [him] about it.” *Id.* at 31.

In September 2024, the Individual began meeting with a counselor (Individual’s Counselor) for cognitive behavioral therapy to support his “sober lifestyle and [] maintain appropriate control over impulsive behaviors.” Ex. G at 3 (information from the Individual’s Counselor regarding the Individual’s counseling). The Individual met with the Individual’s Counselor on nine occasions from September 26, 2024, to November 29, 2024. *Id.* at 4. The Individual’s counseling has addressed the Individual’s mentality, how chemical imbalances can affect behavior, and strategies for managing conflict and other stressful situations. Tr. at 105–06. The counseling is not treatment for drug abuse and has not addressed the Individual’s untruthfulness on the QNSPs. *Id.* at 106.

⁶ The investigator also interviewed a military source with knowledge of the Individual’s positive drug tests who provided derogatory information regarding the Individual’s character, military service record, and the circumstances under which he tested positive for marijuana use. Ex. 9 at 215–16. The Individual presented the testimony of his military supervisor and documentary evidence to rebut the allegations made by the source to the investigator. Tr. at 58–61; Ex. N; Ex. O; Ex. R; Ex. S at 2. Considering the significant rebuttal evidence provided by the Individual, and in light of the fact that the LSO did not rely on the allegations of the source in the SSC, I have assigned no weight to the allegations made by the source to the investigator.

On November 18, 2024, the Individual signed a statement wherein he committed to abstain from illegal use of controlled substances and agreed that violation of this commitment “may be used against [him] in . . . [proceedings related to] revocation of [his] security clearance” Ex. L; *see also* Tr. at 30–31 (testimony from the Individual’s Brother that the Individual told him that he intended to abstain from illegal drug use in the future); *but see* Tr. at 38–39 (testimony from the Individual’s Brother that the Individual told him that he intended to abstain from marijuana after his positive drug test in 2022 and that he was surprised when he learned that the Individual had tested positive for marijuana use again in 2023). The Individual’s Friend, Brother, supervisor, and former coworker all testified at the hearing as to the Individual’s reliable and trustworthy character. *Id.* at 20–21, 31, 56, 67, 70.

V. ANALYSIS

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.

The first mitigating condition is irrelevant to the Individual's omission of the student housing debt from the 2024 QNSP because he was confronted with the omission by the investigator. While the Individual eventually disclosed his illegal drug use before being confronted with the facts, these disclosures were not prompt. The Individual disclosed the marijuana use that he omitted from the 2020 QNSP for the first time on the 2024 QNSP, at which time the investigation was almost certain to reveal his marijuana use due to his multiple positive drug tests. While the Individual's other illegal drug use was much less likely to have been discovered, the Individual's delay in disclosing that drug use until his response to the LOI – after having falsely denied having used any illegal drugs besides marijuana in his interview with the investigator – made that disclosure insufficiently prompt to establish the applicability of the mitigating condition. Accordingly, I find the first mitigating condition inapplicable in this case. *Id.* at ¶ 17(a).

While the Individual asserted that he was influenced by military recruiters to omit his illegal drug use on the 2020 QNSP, there is no evidence to corroborate this assertion and, in any case, there is no basis for me to conclude that the recruiters had professional responsibilities for advising or instructing the Individual on completing the 2020 QNSP. Thus, I find the second mitigating condition inapplicable. *Id.* at ¶ 17(b).

Turning to the third mitigating condition, the Individual's omission of the \$113 student housing debt from the 2024 QNSP was a trivial omission, given the relatively small amount of the debt and the fact that the Individual had already paid it in full promptly upon learning about it in 2021, three years before he failed to disclose it as required. I find this error so minor that it is mitigated under the third mitigating condition. *Id.* at ¶ 17(c).

The Individual's omissions and false representations concerning his illegal drug use, however, were not minor. The Individual's multiple positive drug tests due to marijuana use illustrate the significance of his omission of his marijuana use on the 2020 QNSP. Furthermore, the Individual's use of other illegal drugs, which he omitted from both the 2020 QNSP and 2024 QNSP, reflected a willingness to engage in unlawful, risk-taking conduct that was of significant importance to the adjudication of his eligibility for a security clearance. The Individual's provision of inaccurate information related to his illegal drug use was not infrequent and did not occur under unique circumstances because he failed to accurately disclose his illegal drug use on the 2020 QNSP, 2024 QNSP, and during the March 2024 interview with the investigator. Moreover, the revelation at the hearing that the Individual's marijuana use began in high school establishes that he still did not fully disclose the extent of his illegal drug use on the June 2024 LOI, and the inconsistent information provided by the Individual and the Individual's Friend suggests that the Individual continued to minimize the full extent of his marijuana use at the hearing. *See supra* note 5. Accordingly, the Individual's omissions and false representations concerning his illegal drug use are not mitigated under the third mitigating condition. *Id.*

The fourth mitigating condition is inapplicable to the facts of this case because there is no indication that the Individual's counseling relates specifically to illegal drug use or

untruthfulness. *Id.* at ¶ 17(d). The fifth mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the Individual does not contest that he provided false information in the QNSPs or to the investigator. *Id.* at ¶ 17(f). The seventh mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

For the aforementioned reasons, the Individual has mitigated the security concerns related to his omission of the student housing debt from the 2024 QNSP but not his omissions and false statements related to his illegal drug use on the 2020 QNSP and 2024 QNSP and to the investigator. Accordingly, the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

B. 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's illegal drug use occurred repeatedly over a course of years, even after the Individual left University A. Accordingly, the illegal drug use was neither infrequent nor occurred under unique circumstances. The Individual claims that his illegal drug use last occurred over one

year prior to the hearing in October 2023. The Individual has not provided drug testing to corroborate this claim and, in light of his prior untruthfulness regarding his illegal drug use, his testimony alone is insufficient to establish that he has not used illegal drugs since 2023. Even if the Individual had brought forward drug test results to corroborate his testimony, the Individual abstained from marijuana use for one year while on military probation following his first positive drug test only to resume marijuana use the very month that the probation ended, when he was no longer subject to monthly drug testing. In light of the Individual's prior abstinence from illegal drugs for approximately one year during monitoring, a similar period of abstinence would be insufficient to establish mitigation through the passage of time alone. Thus, the first mitigating condition is inapplicable. *Id.* at ¶ 26(a).

The second mitigating condition is inapplicable for numerous reasons. First, as previously noted, the Individual has not established a pattern of abstinence through drug testing or other corroborating evidence. While the Individual claims that his girlfriend, academic studies, and work with the DOE contractor present a structured environment that will prevent him from returning to illegal drug use, I am not convinced that this structure is more likely to act as a deterrent from illegal drug use than that the Individual received through his military service and associated drug testing which failed to prevent him from using marijuana. Moreover, the Individual used marijuana even while successfully carrying out his studies at University B. Additionally, other than the Individual's testimony regarding his changed environment, there is no evidence that he has disassociated from drug using individuals. Finally, although the Individual submitted a signed statement of intent to abstain from illegal drugs, the statement does not meet the standard set in the second mitigating condition because the Individual's signed statement merely acknowledges that future illegal drug use "may be used against [him]" rather than future drug use being grounds for revocation of his access authorization. For these reasons, 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 LSO did not allege that the Individual abused prescription drugs. *Id.* at ¶ 26(c). The fourth mitigating condition is inapplicable because the Individual did not assert that he engaged in formal substance abuse treatment. *Id.* at ¶ 26(d).

For the aforementioned reasons, none of the mitigating conditions is applicable to the facts of this case. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

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 should not be granted access authorization.

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