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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	November 20, 2024	)	Case No.: PSH-24-0029
		)	
		)	

Issued: April 11, 2025

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**Administrative Judge Decision**

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Diane L. Miles, 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 or Eligibility to Hold a Sensitive Position."<sup>1</sup> 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*. (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In October 2022, as part of the security clearance application process, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 8. In the section titled "Illegal Use of Drugs or Drug Activity," the Individual answered "No" when asked whether, in the last seven years, he "illegally used any drugs or controlled substances." *Id.* at 76.<sup>2</sup> In May 2023, the Individual was granted a DOE security clearance in connection with his employment with a DOE contractor. Ex. 6 at 29. In April 2024, the Individual's supervisor notified the LSO that he received a report, from an anonymous source, that the Individual "like[d] to party on the weekends and use illicit drugs." Ex. 5 at 22–23.

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<sup>1</sup> 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.

<sup>2</sup> The DOE's exhibits were combined and submitted in a single, 204-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the DOE's exhibits by reference to the exhibit and page number within the combined workbook regardless of any internal pagination.

In May 2024, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, in which he admitted that he had used marijuana from 1997 until April 2024, and while holding a DOE security clearance. Ex. 7 at 35, 38.

In June 2024, the LSO issued a second LOI, in which the Individual admitted to using cocaine in 2003, “about [two] or three times a year” between 2008 and May 2024, and on two occasions, between March 2024 and May 2024. Ex. 6 at 25–26. The Individual admitted to using marijuana “once every month or two,” since August 1997, and specifically during funerals that occurred in July 2017, September 2021, and January 2022. *Id.* He also admitted that he “sold about a half pound of marijuana in 2001 to help pay bills,” and from 2004 to 2016, he purchased marijuana every one to three months. *Id.* at 26. Lastly, the Individual reported that he did not report his drug use to the DOE because he did not “recall ever hearing of DOE reporting requirement[s].” *Id.* at 29.

Due to unresolved security concerns raised by the Individual’s drug use, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 8–10. In a 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) and Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines. *Id.* at 6–7. The SSC also explained that the Individual was subject to the Bond Amendment, which prohibits him from holding a security clearance. *Id.* at 6.

In November 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). Ex. 2. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual. *See* Transcript of Hearing, OHA Case No. PSH-25-0029 (Tr.). Counsel for the DOE submitted nine exhibits, marked as Exhibits 1 through 9. The Individual did not submit any exhibits.

## **II. The Summary of Security Concerns**

### **A. The Bond Amendment**

The relevant provisions of the Bond Amendment provide that “the head of a [f]ederal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance<sup>3</sup> or an addict.” 50 U.S.C. § 3343(b); Adjudicative Guidelines, Appendix B. In invoking the Bond Amendment, the LSO cited the Individual’s admission, in his June 2024 LOI, that he used cocaine<sup>4</sup> on two occasions between March 2024 and May 2024. Ex. 1 at 6.

### **B. Guideline H (Drug Involvement and Substance Misuse)**

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<sup>3</sup> A “controlled substance” is “a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B” of title 21 U.S.C. § 802(6), 812 (2025); Adjudicative Guidelines at ¶ 24.

<sup>4</sup> Cocaine is a “Schedule II” controlled substance. 21 U.S.C. § 812(b)(2).

Under Guideline H of the Adjudicative Guidelines, 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. Conditions that could raise a security concern under Guideline H include “any substance misuse,” “illegal possession of a controlled substance, including . . . purchase, sale, or distribution,” and “any illegal drug use while granted access to classified information or holding a sensitive position.” *Id.* at ¶ 25(a), (c), (f).

In invoking Guideline H of the Adjudicative Guidelines, the LSO cited the following information:

- A. [In the May 2024 LOI and June 2024 LOI, the Individual] admitted that he used cocaine in 2003, and two or three times a year, from 2008 to May 2024, while specifically admitting that he used cocaine on two occasions between March 2024 and May 2024, which occurred while he was in possession of a DOE security clearance;
- B. [In the May 2024 LOI and June 2024 LOI, the Individual] admitted that he used marijuana<sup>5</sup> once every month or two from August 1997 to January 2022, while specifically admitting that he used marijuana in January 2022, September 2021, and July 2017;
- C. [In the June 2024 LOI, the Individual] admitted that from 2004 to 2016, he purchased marijuana every one to three months; and
- D. [In the June 2024 LOI, the Individual] admitted that in 2001, he bought a half pound of marijuana, which he sold to help pay bills.

Ex. 1 at 6–7.

### **C. Guideline E (Personal Conduct)**

Under Guideline E, “[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations,” and “deliberately providing false or misleading information” to a security official “involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.” *Id.* at ¶ 16(a)–(b).

In invoking Guideline E, the LSO cited the following information:

- A. [In the May 2024 LOI and June 2024 LOI, the Individual] admitted that he used cocaine on two occasions between March 2024 and May 2024, which occurred

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<sup>5</sup> Marijuana is a “Schedule I” controlled substance. 21 U.S.C. § 812(b)(1).

while in possession of a DOE security clearance. In addition, he failed to report his use of cocaine to DOE in accordance with DOE Order 472.2A<sup>6</sup>; and

- B. On October 28, 2022, [the Individual signed a QNSP] certifying that in the last seven years he had not illegally used any drugs or controlled substances. However, in the [May 2024 LOI and June 2024 LOI,] he admitted that he had used marijuana once every month or two from August 1997 to January 2022, while specifically admitting that he used marijuana in January 2022, September 2021, and July 2017. In addition, he admitted that he used cocaine two or three times a year from 2008 to May 2024.

Ex. 1 at 6. Considering the conduct described above, I find the LSO's invocation of the Bond Amendment, and Guidelines E and H of the Adjudicative Guidelines to be justified.

### **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 their 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 and Hearing Testimony**

In the May 2024 and June 2024 LOIs, the Individual reported that he first used marijuana in August 1997, to celebrate the birth of his child. Ex. 6 at 26; Ex. 7 at 35. He typically used the drug during family events, such as funerals, where he would obtain the drug from members of his family. Ex. 6 at 25–26. He reported using marijuana during funerals held in July 2017, September 2021, and January 2022. *Id.* at 25. In 2001, he reportedly bought a half pound of marijuana and

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<sup>6</sup> DOE Order 472.2A requires that individuals holding a DOE access authorization, report, within three working days, "[t]he use of any Federally illegal drug (to include the abuse or misuse of any legal drug), and any drug-or alcohol-related treatment." DOE Order 472.2A at Attachment 5, ¶ 6(e).

resold it “to help pay bills.” *Id.* at 26. From 2004 to 2016, the Individual purchased “7 to 14 grams” of marijuana “every 1 to 3 months.” *Id.* In the June 2024 LOI, he reported that he had not used marijuana since he started working for a DOE contractor. *Id.* at 30. The Individual’s employment with a DOE contractor began in approximately November 2022. Ex. 9 at 154.

In the June 2024 LOI, the Individual reported that he first used cocaine in 2003 and since 2008, he had used the drug two or three times a year, while visiting his family. Ex. 6 at 26. “[A]round the last week of March [2024], or the first week of April [2024],” the Individual used cocaine, twice. *Id.* at 25. The Individual also reported that he last used cocaine during his father’s funeral, in March 2024, during which he obtained the drug from members of his family. *Id.* at 25–26. He knew that it is against the law to use illegal drugs, but he believed that his use of marijuana was “not illegal by state law.” *Id.* at 26. He reported being unaware he was required to report his use of illegal drugs to the DOE. *Id.* at 29.

During the hearing, the Individual testified that he used both marijuana and cocaine to help him cope with the death of loved ones, and in one instance, after a fight with his girlfriend. Tr. at 18. He explained that it was difficult for him to cope with his father’s death, in March 2024. *Id.* at 16–17. At his father’s funeral, he saw members of his family using cocaine, and when they saw him, they offered him the drug. *Id.* at 24. He said he didn’t feel pressure to use the cocaine, but after using the drug, it helped him “forget about” his father’s death. *Id.* at 25. As to the Individual’s use of marijuana, he testified that he sold the drug in 2001 because he thought that buying, then selling, the drug was “a good way to get out of debt.” *Id.* at 27. He recalled receiving a briefing from his LSO about his obligations as a clearance holder, but he claimed the briefing was “[really] quick” and that there was no mention of the use of illegal drugs. *Id.* at 10, 17. He also could not recall the topic of illegal drug use being covered during his annual refresher trainings. *Id.* at 17. He recalled signing a Security Acknowledgement that indicated the use of illegal drugs could result in the loss of his security clearance. *Id.* at 16. He claimed that he did not know he was required to report illegal drug use to the DOE until he read the May 2024 LOI, and that he would have reported his drug use, if he had known he was required to do so. *Id.* at 17–18.

As to the responses he provided on the QNSP about his drug use, the Individual testified that he reported that he had not used illegal drugs during the prior seven years because, at the time he submitted the QNSP, he believed his use of marijuana was legal in his state. Tr. at 15–16. He failed to report his purchases of marijuana on the QNSP for the same reason. *Id.* at 16. When asked when the use of marijuana was legalized in his state, the Individual replied that he was not certain when the drug was legalized in his state. *Id.* at 32, 34. He was not sure if recreational use of marijuana was legal when he submitted the QNSP. *Id.* at 32. He believed medicinal use of marijuana was legal before he submitted the QNSP, but he admitted he did not possess a “medical card” that would have permitted him to legally obtain marijuana for medicinal purposes. *Id.* at 32, 35. He also stated that using, buying, or selling marijuana was not legal in his state in 2001. *Id.* at 27. He claimed he was unaware that marijuana was illegal under federal law, until the hearing. *Id.* at 15; *but see* Ex. 7 at 35–36 (indicating in response to the first LOI that he was aware of federal laws prohibiting illegal drug use and disclosing his marijuana use, which he characterized as “illegal”). The Individual failed to report his use of cocaine on the QNSP because he claimed he did not use cocaine between 2015 and 2022. *Id.* at 15–16. He admitted that he used cocaine while holding a DOE security clearance, most recently in March 2024. *Id.* at 17.

The Individual further testified that since he began using marijuana and cocaine, he had seen medical providers, but he never disclosed his cocaine use to his doctors because his use of the drug wasn't that frequent. Tr. at 35–36. He told one of his doctors about his use of marijuana, 16 years ago, and he claimed the doctor never told him to stop using the drug. *Id.* at 36. He explained that since December 2024, he had made several calls to a hospital to schedule an appointment with a counselor. *Id.* at 19–20. He stated he has had difficulty getting an appointment, even though he calls the hospital every week. *Id.* at 19. He has not contacted any other medical providers to seek counseling. *Id.* at 37. He stated he believes a counselor can help him stop using drugs to deal with loss. *Id.* at 20. Later, he stated he believed he could stop using both drugs “cold turkey,” but it would not hurt to receive counseling. *Id.* at 29. He repeatedly claimed that he had not used marijuana since he began his employment with a DOE contractor. *Id.* at 12, 18. He intends to not use either drug in the future. *Id.* at 20–21. He has not experienced a death in his family since March 2024. *Id.* at 26. As for the family members who provided him with the drugs, he stated he was “absolutely certain” he could stay away from them and avoid using the drugs in the future. *Id.* at 21, 26. He later admitted he had “been around” some of the family members that provided him cocaine since March 2024 or May 2024. *Id.* at 28. He stated that if he is at a family gathering, and his family members are using cocaine, he won't do it. *Id.* at 21.

## **V. Analysis**

### **The Bond Amendment**

The Bond Amendment provides that a federal agency “may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022). The DOE policy implementing the Bond Amendment defines “an unlawful user of a controlled substance” and an “addict” as follows:

- a. An unlawful user of a controlled substance is any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of the controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate the individual is actively engaged in such conduct.
- b. An addict of a controlled substance is as defined in 21 U.S.C § 802(1), which is any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare; or is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his or her addiction.

DOE Order 472.2A, Appendix C at ¶ 2 (citing the Bond Amendment).

I cannot conclude that the Individual is not an “unlawful user” or an “addict” of a controlled substance, as defined by the Bond Amendment and DOE policy. The Individual admitted that he used cocaine, twice, between March 2024 and May 2024. He reported to the LSO in the second LOI that he used the drug two to three times a year since 2008, but he testified that he stopped

using the drug between 2015 and 2022. Because the Individual's account of his history of cocaine use has been inconsistent, I find that he is not a reliable reporter as to his use of cocaine. The Individual admitted that he never disclosed his use of cocaine to his medical providers, and there is no evidence he has sought drug treatment or undergone drug testing that could reliably demonstrate when, if ever, he stopped using cocaine. I do not have evidence upon which to conclude that the Individual is not addicted to cocaine, has lost the power of self-control with reference to cocaine, or that he is not currently using cocaine. Therefore, I find that the Individual is prohibited from holding a security clearance under the Bond Amendment.

## **The Adjudicative Guidelines**

### **A. Guideline H**

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

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

Adjudicative Guidelines at ¶ 26.<sup>7</sup>

As to factor (a), the Individual began using marijuana over 25 years ago, and cocaine over 20 years ago. Although it is not clear whether he has stopped using either drug, he claimed that he had not used marijuana since approximately November 2022, two years before the hearing, and that his use of cocaine ended at some point between March 2024 and May 2024. The Individual did not submit evidence to support that he is not currently using either drug. Even if his use of either drug

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<sup>7</sup> The security concerns raised by the LSO do not involve an allegation that the Individual abused prescription drugs. Therefore, the mitigating factor found at subparagraph (c) is not applicable to this case.

ended between 2022 and 2024, this use would not have ended so long ago, compared to his extensive history of drug use, as to mitigate the security concerns. Furthermore, he testified to purchasing marijuana once in 2001, and every one to three months for 12 years, from 2004 to 2016. In addition to his marijuana use during three funerals (in 2017, 2021, and 2022) he admitted to using the drug every month or two for 25 years, from August 1997 to January 2022. His marijuana use was, therefore, frequent. Similarly, his cocaine use was frequent because it occurred twice in 2024, and two to three times a year, for 16 years, from 2008 to May 2024.

Finally, there is no evidence the Individual's use of either drug occurred under unusual circumstances. There is no evidence he has received advice or treatment from a medical professional related to his use of controlled substances. The Individual testified that he has not experienced the death of a family member since March 2024. In the absence of medical treatment, the Individual has not demonstrated that he can avoid using controlled substances, to cope with the death of a loved one, or for any other purpose, in the future. Therefore, I cannot conclude that the Individual's use of illegal drugs is unlikely to recur, and his prior use continues to cast doubt on his current reliability, trustworthiness, and good judgment. Adjudicative Guidelines at ¶ 26(a).

As to factor (b), the Individual admitted he had used, bought, and sold marijuana since 1997, used cocaine since 2003, and used cocaine while holding a DOE security clearance. But the Individual has only recently taken action to address his drug use. In December 2024, after having been notified that his history of drug use may affect his eligibility to hold a DOE security clearance, the Individual attempted to contact a medical provider at a hospital to obtain counseling on how to cope with someone's death without the use of drugs. Since December 2024, the Individual has limited his outreach to one hospital, and he has not seen a medical provider to address his drug use. Furthermore, as he claimed that his use of both drugs occurred, at times, during family events, such as funerals, and the Individual admitted he had contact with the family members who provided him with cocaine since March 2024 or May 2024, I am unable to conclude that he has avoided the environment where he previously used drugs. Finally, the Individual did not submit a signed statement indicating he intends to abstain from all drug involvement in the future. Therefore, the Individual has not mitigated the security concerns under ¶ 26(b) of the Adjudicative Guidelines.

As to factor (d), as explained above, the Individual has not enrolled in a drug treatment program, so I do not have the opinion of a medical provider as to the Individual's prognosis for avoiding drugs in the future. He testified that over the past 20 years, he has seen medical providers, but he did not disclose his use of cocaine to his medical providers, and he claims his medical providers never told him not to use marijuana. Therefore, because the Individual has not enrolled in, or completed, a drug treatment program, he has not mitigated the security concerns under ¶ 26(d) of the Adjudicative Guidelines.

## **B. Guideline E**

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

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;



- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

As to factor (a), the Individual provided false information about his illegal drug use in the October 2022 QNSP. He did not correct the omission of his drug use from his QNSP until two years later, after his employer received a tip about his drug use, and he was confronted on the topic by the LSO. He also failed to report his use of cocaine, which he claimed ended sometime between March 2024 and May 2024, and which occurred while holding a security clearance, to the DOE, as required by DOE O 472.2A. He did not admit to his cocaine use until he was confronted by the LSO and asked to provide information in his May and June 2024 LOIs. Therefore, the Individual did not make prompt, good-faith efforts to correct his omission and concealment of his drug use, and he has not mitigated the security concerns under ¶ 17(a) of the Adjudicative Guidelines.

As to factor (b), the Individual did not claim, and there is no evidence to suggest, that his omission of his drug use on his QNSP, and failure to report his use of cocaine between March 2024 and May 2024, to the DOE, was caused or contributed to by "legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes." Therefore, I find that mitigating factor ¶ 17(b) is not applicable to this case.

As to factor (c), in the October 2022 QNSP, the Individual lied to the DOE when he reported that he had not used illegal drugs during the previous seven years, knowing he had used cocaine two to three times a year, since 2008, and knowing he had used marijuana, once every month, since 1997, until November 2022. The Individual claimed that he did not disclose his marijuana-related

conduct because he was unaware that it was unlawful. I am not convinced by this argument because the Individual, when questioned about his belief, admitted that he did not know when marijuana was legalized in his state. He also admitted that if the use of marijuana was legal when he submitted the QNSP, it would have been for medicinal purposes only, and his recreational use of marijuana would have been illegal on that basis as well. Moreover, the Individual acknowledged in his response to the First LOI that he had illegally purchased and used marijuana, contradicting his claim at the hearing that he was unaware of the illegality of his actions. As to his failure to disclose his use of cocaine in the QNSP, I am not persuaded by his claim that he was no longer using the drug when he submitted the QNSP. The Individual reported to the LSO that he was using cocaine, two to three times a year, for the past 16 years, from 2008 to May 2024. During the hearing, the Individual claimed that he was not using cocaine from 2015 to 2022. Given the Individual's history of drug use and his inconsistent reporting of his use, I do credit his claim that he was not using the drug within the seven-year period questioned on the QNSP.

He also failed to report his two instances of cocaine use, between March 2024 and May 2024, to the DOE until his response to the second LOI. I do not believe the Individual's claim that the training he received about his obligations as a DOE clearance holder did not include a discussion of the use of illegal drugs and his requirement to report any use to the DOE. The Individual also claimed he could not recall the issue of illegal drug use being covered during his annual refresher trainings. But I find it is more likely that the topic was discussed, and due to his over 20-year history of using illegal drugs, he did not take the DOE's warnings seriously. The Individual's failure to comply with DOE reporting requirements and report his illegal drug use is not a minor offense, and his failure occurred as recently as one year before the hearing. There is no evidence to support that unique circumstances existed that contributed to his failure to disclose his drug use in his QNSP and report it to the DOE, as required by DOE O 472.2A. Therefore, I find that the Individual has not mitigated the security concerns under ¶ 17(c) of the Adjudicative Guidelines.

As for factor (d), the Individual did not acknowledge that he was dishonest in his representations to the DOE related to his use of marijuana and cocaine in his October 2022 QNSP or his failure to disclose his cocaine use as required. As explained in the previous paragraph, I found the Individual's explanations for these failures unconvincing and indicative of a continuing intent to deceive. Finally, as discussed above, the Individual has not obtained counseling to address his use of illegal drugs, or his use of the drugs to cope with the death of loved ones. Therefore, I cannot conclude that the Individual's use of illegal drugs is unlikely to recur, and he has not mitigated the security concerns related to his failure to disclose and report his illegal drug use, under ¶ 17(d) of the Adjudicative Guidelines.

As to the remaining factors, the LSO did not allege any vulnerability related to the Individual's failure to disclose his illegal drug use in the October 2022 QNSP, or his failure to report his drug use between March 2024 and May 2024 to the DOE, or that the Individual was at risk of exploitation, manipulation, or duress. The Individual admitted that he has used marijuana and cocaine during the periods cited by the LSO in his May and June 2024 LOIs. The Individual has not alleged that the information was unsubstantiated or from a source of questionable reliability. Finally, there is no allegation that the security concerns involve the Individual's association with persons involved in criminal activity. Therefore, mitigating factors (e), (f), and (g) are not applicable to this case.

Based on the foregoing analysis, I cannot find that the Individual has mitigated the security concerns raised by the LSO under Guidelines H and E of the Adjudicative Guidelines.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guidelines E and H of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Bond Amendment bars the DOE from granting the Individual a security clearance. I also find that the Individual has not brought forth sufficient evidence to resolve the Guideline E and H concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Diane L. Miles  
Administrative Judge  
Office of Hearings and Appeals