



The LSO 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 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E of the Adjudicative Guidelines. Ex. 1 at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. 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 four exhibits (Ex. A–D). The Individual testified on his own behalf. Transcript of Hearing, OHA Case No. PSH-25-0049 (Tr.) at 9.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the 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 deliberately provided false information concerning his illegal substance use on a February 27, 2024, QNSP; during a January 2020, polygraph examination; on a January 13, 2020, QNSP for another federal agency; and on a June 20, 2019, QNSP.<sup>3</sup> Ex. 1 at 5. The LSO’s allegations that the Individual deliberately omitted information from a personnel security questionnaire and provided false information during investigations to determine national security eligibility justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

## **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

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<sup>3</sup> The SSC also mentions a during a January 21, 2020, Personnel Security Interview and a January 21, 2020, Illegal Drug History Disclosure. Ex. 1 at 5. Neither of those documents appear in the record.

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 smoked marijuana in 2016. Tr. at 19. The Individual submitted a June 2019 QNSP in connection with an internship at a DOE facility. *Id.* at 10, 54; Ex. 8. In the June 2019 QNSP, he concealed his 2016 marijuana use. Ex. 8 at 112 (answering “No” when asked if he had in the last seven years illegally used any drugs or controlled substances). Then, only one month after being granted the clearance, the Individual smoked marijuana again in October 2019. Tr. at 19, 21. He claimed that in both the 2016 and 2019 marijuana incidents he was with a group of friends that would pass around cigars, one of which was filled with marijuana. *Id.* at 27–29. The Individual claimed that once he realized that the cigar contained marijuana, he did not inhale the smoke. *Id.* at 21–22, 44. He was terminated from the internship in January 2020 for not “submit[ting] enough hours on [his] timesheet . . . .” *Id.* at 13.

Soon thereafter, also in January 2020, the Individual applied for a position at another federal agency that required him to complete a second QNSP on January 13, 2020. Ex. 7; Tr. at 30. The Individual concealed both his 2016 and 2019 marijuana uses. Ex. 7 at 83 (answering “No” when asked if he had illegally used any drugs or controlled substances within the last seven years). This position also required a polygraph investigation. Ex. 7; Tr. at 30. He was not hired for that position and asserted that it was because he lied during the polygraph examination<sup>4</sup> regarding his prior use of marijuana. Tr. at 32. He testified that he was questioned about drug use and initially denied it during a polygraph examination. *Id.* at 31. The Individual claimed that when the polygrapher asked after administering a second polygraph examination if he wanted to admit to any drug use, he said yes and admitted that he “accidentally smoked marijuana” in 2016. *Id.* The Individual could not recall if he informed the polygrapher of his 2019 use but presumed that he did. *Id.*

Finally, on February 27, 2024, the Individual completed a QNSP for his current position at the DOE. Ex. 6. Yet again and despite having failed a prior polygraph about his drug use, the

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<sup>4</sup> According to the Individual, he underwent a polygraph, and it was apparent that the polygrapher did not believe his assertion that he had never used drugs. Tr. at 24. Immediately following the first polygraph examination, the polygrapher indicated the Individual had an adverse reaction to the question about his drug use and asked whether “there was anything [he] wanted to shed light on.” *Id.* at 30. The Individual said he did not and that they could do a second polygraph, which was immediately administered. *Id.* at 31. After the second polygraph, the Individual admitted to the polygrapher that he had “accidentally smoked a marijuana cigar.” *Id.*

Individual concealed his illegal marijuana use from 2019.<sup>5</sup> *Id.* at 61 (answering “No” when asked if had illegally used drugs or controlled substances in the last seven years). In response to the LOI asking about his failure to include his marijuana use on his February 27, 2024, QNSP, the Individual stated that, “[t]he information was left out as I did not actively feel any emotional/physical/effects from the incidents and did not consciously make an effort to smoke or ingest a known illegal substance with desired outcome of being ‘high’ or otherwise under the influence.” Ex. 5 at 24. He reiterated his position at the hearing, stating, “I had never taken it or ingested it or been around it in any manner that would have put me under the influence or made me feel any sort of effect in any way. So I didn’t inherently think that I had done anything illicit or illegal” Tr. at 18. The Individual further explained his failure to include his marijuana use on his QNSP because “I have not been high, I haven’t taken drugs.” *Id.*

Furthermore, the Individual asserted that he falsified the information regarding his marijuana use on his most recent QNSP, because he was not concerned about the DOE having access to his previous QNSPs. Tr. at 42. He stated, “I just assumed they would not check [my previous QNSPs].” *Id.* He stated that, “[i]n my mind, if you answered yes on [the question about drug use], there would be no opportunity to elaborate on – on any level of interaction that you’ve ever had with drugs.” *Id.* at 27. The Individual claimed that he has learned from the process involved in this hearing and that he is “more comfortable with the process now.” *Id.* at 51.

## 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,

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<sup>5</sup> More than seven years had passed since the Individual’s 2016 marijuana use when he completed the 2024 QNSP, and therefore he was not required to disclose it therein.

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.

I cannot find that the Individual has met any of the mitigating factors under Guideline E. The Individual did not come forward about his marijuana use until confronted by the fact in the LOI, even though he previously admitted his drug use to another federal agency during a polygraph. In fact, the Individual maintained the fabrication over a period of five years and through three QNSPs and at least one polygraph examination. Thus, the first mitigating condition is inapplicable. Adjudicative Guidelines at ¶ 17(a).

The second mitigating condition is inapplicable to the facts of this case because the Individual did not allege that he relied on the advice of counsel or another representative in completing the QNSPs. Further, after his confrontation during the polygraph examination where he admitted his drug use, the Individual should have been aware that he needed to be completely truthful during the security clearance process. *Id.* at ¶ 17(b).

The Individual's repeated falsification on his QNSPs presents significant security concerns because of the doubts raised as to his honesty and judgment. At the hearing, the Individual claimed that he denied using marijuana because he smoked marijuana accidentally and had never gotten high from the drug. This self-serving interpretation of the QNSP question concerning drug use casts significant doubt on the Individual's willingness to truthfully provide information when he perceives that doing so will not be in his best interest. Further, the Individual maintained this falsification over a period of five years and in three QNSPs. Accordingly, I find that the Individual's conduct is not minor or infrequent, nor did it occur under unique circumstances. Therefore, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The fourth mitigating condition is inapplicable to the facts of this case because the Individual has not acknowledged the issue—at times minimizing his marijuana use and the concealment of such; furthermore, he has not pursued counseling related to this conduct. *Id.* at ¶ 17(d). The fifth mitigating condition is irrelevant because the LSO did not allege that the Individual engaged in conduct that placed him at heightened risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). For the reasons explained above, I find that the information on which the LSO based its security concerns was sufficiently reliable to raise security concerns under Guideline E. For those same

reasons and because the Individual has admitted to the concealment of his marijuana use, I find the sixth mitigating condition inapplicable. *Id.* at ¶ 17(f). The seventh mitigating condition is irrelevant because the LSO did not allege that the Individual associates with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline E are applicable to the facts of this case. Accordingly, I conclude 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 Guideline E 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 asserted by the LSO. 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.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals