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

In the Matter of: Personnel Security Hearing)	
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Filing Date: January 13, 2025)	Case No.: PSH-25-0060
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Issued: April 3, 2025

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ The present case involves an Individual who had omitted derogatory information from a Questionnaire for National Security Position (QNSP) and during an Enhanced Subject Interview (ESI). This Decision considers whether the Individual has resolved the security concerns raised by his omissions. 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 granted.

I. Background

On April 1, 2024, the Individual signed, certified, and submitted a QNSP to a Local Security Office (LSO). Ex. 5 at 42. In this QNSP, the Individual initially stated that he was presently employed by a local firm (Employer). Ex. 5 at 20. However, in response to a subsequent question asking if he had been disciplined for misconduct in the workplace, the Individual reported that he had been: “Disciplined for attendance [by the Employer] but didn’t receive any warning beforehand, I was let go from job.” Ex. 5 at 21. The Individual estimated that this termination occurred in February 2024. Ex. 5 at 21. The QNSP asked the Individual whether he had used any illegal drugs or controlled substances in the past seven years. Ex. 5 at 36. The Individual responded to this question by stating “no.” Ex. 5 at 36.

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

The Office of Personnel Management (OPM) subsequently conducted a background investigation of the Individual. On April 26, 2024, an OPM investigator conducted an ESI of the Individual. Ex. 5 at 48. During the ESI, the Individual reported that the Employer had terminated him in February 2024. Ex. 5 at 48. The Individual claimed that this termination occurred after he texted his supervisor to inform the supervisor that he was not going to report for his next shift. Ex. 5 at 48. He further claimed his supervisor replied “ok” to this text. Ex. 5 at 48. He then claimed that he had received a phone call from human resources informing him that he did not have enough leave to miss this shift and as a result, the Employer was terminating him. Ex. 5 at 48–49. The Individual claimed that he thought he had enough outstanding leave to take the shift off. Ex. 5 at 49.

An OPM investigator interviewed an acquaintance of the Individual on April 26, 2024. Ex. 5 at 57. The acquaintance informed the OPM investigator, that the Individual “tried use of marijuana before he joined the Army but did not like it.” Ex. 5 at 58.

An OPM investigator interviewed a representative (Representative) of the Employer on May 6, 2024. Ex. 5 at 53. The Representative reported that she had met with the Individual on several occasions in 2023 to discuss his attendance issues and to inform him of the consequences of any further attendance issues. Ex. 5 at 53. The Individual had been issued written counseling on three occasions. Ex. 5 at 53. The Employer issued a fourth written counseling document to the Individual which included his termination papers. Ex. 5 at 53. The Individual did not show up for his termination meeting. Ex. 5 at 53.

On May 9, 2024, an OPM investigator contacted the Individual by telephone for some follow-up questions. Ex. 5 at 49. The investigator reported that he asked the Individual why he did not report his termination in his QNSP. Ex. 5 at 50. The Individual stated that “he should have added this separation, but he was fearful this would cripple him from getting his clearance.” Ex. 5 at 50.

On August 5, 2024, the LSO issued a Letter of Interrogatory (LOI) to the Individual inquiring about the Individual’s illegal drug use, his employment at the Employer, and statements he had made in his QNSP and during his ESI. Ex. 6 at 1–2. Later that day, the Individual responded to this LOI. Ex. 6 at 1. In this LOI response, the Individual apologized for his omissions, stating: “I apologize for not enclosing this information during the interview, I was nervous and concerned this wouldn’t allow me to get a security clearance . . .” Ex. 6 at 1. He then admitted using marijuana “for like a couple of months in the summer of 2017” and “one other time in 2018 with my wife.” Ex. 6 at 1. The Individual further stated: “As far as my employment history, . . . I was concerned that I would not be able to get a security clearance if I had writeups for work attendance . . . [and] I was nervous that I would be disqualified from getting my security clearance because of getting fired from [the Employer].” Ex. 6 at 1.

A. Present Administrative Review Proceeding

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it had received derogatory information creating substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded

the Individual's request to the Office of Hearings and Appeals (OHA). 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, as well as his mother, brother, and spouse. The DOE Counsel submitted six exhibits, marked as Exhibits 1 through 6. The Individual submitted no exhibits.

II. The Summary of Security Concerns (SSC)

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning his eligibility for a security clearance under Guideline E (Personal Conduct) of the Adjudicative Guidelines.

Under Guideline E, the LSO cited the Individual's failure to report his marijuana use on his QNSP, his failure to be fully forthcoming in his QNSP concerning the circumstances of his employment with the Employer in his QNSP, and his provision of false information during his ESI. This information adequately justifies the LSO's invocation of Guideline E. 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 "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" and "deliberately . . . concealing or omitting information, concerning relevant facts to . . . an investigator [or] security official . . . involved in making a recommendation relevant to a national security eligibility determination." 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 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. 10 C.F.R.

§ 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Hearing Testimony

The Individual's mother testified at the hearing that she and the Individual are close and see each other weekly. Tr. at 11. She testified that the Individual has a strong conscience. Tr. at 14. When he would lie as a child, he would always end up confessing the truth. Tr. at 15. She repeatedly testified that she was only aware of one use of marijuana by the Individual. Tr. at 16, 22. The Individual told her that he didn't realize that the Employer had warned him that he would be disciplined if he had anymore absences. Tr. at 18. The Individual told her he omitted his marijuana use from his QNSP because he had forgotten about it since he had only used marijuana once. Tr. at 22–23, 29.

The Individual's brother testified on the Individual's behalf at the hearing. He testified that he was aware of the Individual's marijuana use. Tr. at 39. He admitted to using marijuana with the Individual. Tr. at 39. He testified that before the Individual had submitted the QNSP, he had advised the Individual that he should be open and honest when completing his QNSP. Tr. at 43–45. He testified generally to the Individual's honesty and good character. Tr. at 48.

The Individual's spouse testified on his behalf at the hearing. She testified that, during the seven years that she has known the Individual, she is only aware of the one occasion on which he used marijuana. Tr. at 59. She testified that she believes that the Individual inadvertently forgot to include some information in his QNSP. Tr. at 64, 67. She testified that the Individual is a "rule follower." Tr. at 70. She further testified: "I think the nerves got to him, and I just don't see him intentionally answering things incorrectly or falsifying things." Tr. at 73.

The Individual testified that he: "wasn't deliberately trying to lie and everything and be dishonest with everything. I really . . . was trying to be as honest as possible and everything as far as, like, filling that out, the questionnaire and everything." Tr. at 81. The Individual further admitted that he had not reported the full circumstances that led to his termination by the Employer because of his concern that he would not be granted a security clearance if he had reported that he had been terminated by the Employer for attendance problems. Tr. at 82–83, 88. He testified that he did not realize that he had been given his final warning when he was terminated. Tr. at 83. He described his decision to use marijuana as "a stupid decision, stupid choice." Tr. at 94. The Individual subsequently contended that his omissions from the QNSP were inadvertent and that he "wasn't trying to lie or anything like that." Tr. at 96. The DOE Counsel then confronted the Individual with his prior admission that he had omitted information from the QNSP because he was concerned it might prevent him from receiving his security clearance. Tr. at 97–98. The Individual then provided the following explanation:

Like I said, sir, I was rushing through it and even with those I had been answering questions so much that from the DOE and everything and I apologize, I should have, I should have. But I never deliberately tried to lie. I wasn't trying to falsify any information on anything.

Tr. at 99. The DOE Counsel then asked the Individual why he did not disclose this information to the OPM investigator during his initial interview. Tr. at 101. The Individual responded by stating: “I should have, and I just, I was, my nerves were wrecked, and I was already answering a bunch of questions from her that I was, like, getting questions shot-off left and right. And I should have and I didn’t, and, yes, sir.” Tr. at 101. The Individual subsequently inadvertently admitted that he failed to disclose his marijuana use because he was concerned it would prevent him from receiving his security clearance. Tr. at 103. However, the Individual subsequently attributed his omissions to his haste in completing the QNSP. Tr. at 104. The Individual did acknowledge that he should have handled his attendance problems with the Employer with more maturity and accountability. Tr. at 106. He agreed that he should have acknowledged his admissions more fully. Tr. at 114. He also admitted that he “messed up” and should have been “upfront and honest.” Tr. at 115–16.

V. Analysis

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E, four of which are relevant to the present case.² First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if they “made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Adjudicative Guidelines at ¶ 17(a). In the present case, the Individual clearly did not make prompt good faith efforts to correct his omissions, and did not do so until confronted by the OPM investigator about his termination by the Employer and by the LSO in the LOI about his past marijuana use. Accordingly, I find that the mitigating condition set forth at ¶ 17(a) is not present in the instant case.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “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” and “[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.” Adjudicative Guidelines at ¶ 17(b). In the present case, the Individual does not contend that he was counseled to omit derogatory information. Accordingly, I find that the mitigating condition set forth at ¶ 17(b) is not present in the instant case.

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶ 17(c). In the present case, the security concerns raised by the Individual’s omissions of his marijuana use and the circumstances of his termination are not minor matters, given that they served to conceal potentially disqualifying information from the LSO. Moreover, these concealments were repeated, and the Individual continued to provide conflicting accounts of the circumstances leading to these omissions, claiming both that they resulted from his failure to

² The remaining mitigating factors under Guideline E, set forth at ¶ 17(e), (f), and (g), apply to circumstances other than the deliberate omission of information during the security clearance process.

exercise due care in completing his QNSP and LOI responses and that he was afraid to disclose the derogatory information because he was concerned that it might prevent him from obtaining his security clearance. This inconsistent testimony casts doubt on his present reliability, trustworthiness, and good judgment. Accordingly, I find that the mitigating condition set forth at ¶ 17(c) is not present in the instant case.

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶ 17(d). In the present case, the Individual has acknowledged his error in judgment. However, he has not 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, given his less than reliable testimony at the hearing, he has not shown that such behavior is unlikely to recur. Accordingly, I find that the mitigating condition set forth at ¶ 17(d) is not present in the instant case.

Accordingly, I find that the Individual has not mitigated the security concerns raised by his failure to report his marijuana use and the circumstances which led to his termination from the Employer. Therefore, the Individual has not resolved the security concerns raised under Guideline E.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, I find that the Individual has not brought forth sufficient evidence to resolve each of the security concerns raised under Guideline E. 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, the Individual’s security clearance should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals