United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
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Filing Date: December 6, 2024	)	Case No.: PSH-25-0041
	)	
	)	

Issued: May 5, 2025

Administrative Judge Decision

Andrew Dam, Administrative Judge[1]

This Decision concerns the eligibility of XXXXXXXXXXX (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."[2] As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. BACKGROUND

The Individual received a security clearance in conjunction with his employment with a DOE contractor. Exhibit (Ex.) 1 at 6.[3] In July 2024, the Individual submitted to a random drug screen with the DOE contractor and tested positive for cocaine metabolite. *See* Ex. 4 at 21. Subsequently, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 6–8. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline H of the Adjudicative Guidelines. *Id.* at 5. The SSC also explained that the Individual was subject to

[1] The Administrative Judge originally appointed to adjudicate this matter retired prior to the Office of Hearings and Appeals receiving the transcript for the hearing held. Accordingly, the Director of the Office of Hearings and Appeals appointed me to this matter to issue this Decision.

[2] 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."

[3] Exhibits 1 through 6 submitted by the DOE were submitted as a single PDF, Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by the DOE.

the Bond Amendment, which disqualifies an unlawful user of a controlled substance or addict from holding a security clearance. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 10. The Director of the Office of Hearings and Appeals (OHA) appointed an Administrative Judge in this matter, who subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses in addition to his own testimony. Hearing Transcript, OHA Case No. PSH-25-0041 (Tr.) at 3. The LSO presented no additional witnesses. *Id.* The Individual submitted two exhibits marked Exhibits A and B.[4] The Individual also submitted a written closing statement. The LSO submitted six exhibits marked Exhibits 1 through 6 and also submitted two unmarked exhibits, which have been designated as Exhibits 7 and 8.[5]

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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 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). An addict is defined as an "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 addiction." 50 U.S.C. § 3343(b) (incorporating by reference the definition found at 21 U.S.C. § 802(1)); DOE Order 472.2A, Personnel Security, Appendix C at C-1. Controlled substance is defined as any substance listed as a controlled substance by 21 U.S.C. § 802. 50 U.S.C. § 3343(a)(1); DOE Order 472.2A, Attachment 8 at 8-2; *see also* 21 U.S.C. § 812 (listing cocaine as a controlled substance).

Furthermore, 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 "testing positive for an illegal drug" and any illegal drug use while granted access to classified information or holding a sensitive position. *Id.* at ¶ 25(b), (f). In invoking the Bond Amendment and Guideline H of the Adjudicative Guidelines, the LSO cited the Individual "test[ing] positive for [c]ocaine metabolite on a random drug screen . . ." in July 2024, at which time he possessed a DOE security clearance. Ex. 1 at 5. Given the positive drug test, I find the LSO's invocation of the Bond Amendment and Guideline H of the Adjudicative Guidelines to be justified.

III. REGULATORY STANDARDS

[4] The Individual's two exhibits were submitted as a single PDF. References to these exhibits are to the exhibit letter and the PDF page number.

[5] Exhibits 7 and 8 are signed statements from the DOE contractor's employees responsible for the drug testing program at the DOE contractor's facility. *See generally* Ex. 7; Ex. 8; Tr. at 7.

A DOE administrative review proceeding under Part 710 requires a Decision to reflect 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 her 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

a. Individual's Background, Work History, 2013 Cocaine Use, and Pre-July 2024 Drug Testing

The Individual testified that he started his "first adult job" in a plant, which employed him for seventeen years. Tr. at 42–43; *see also* Ex. 6 at 60 (QNSP indicating employment with this employer from 2002 to 2018). The Individual was self-employed from 2018 to 2019 and then held a manufacturing job from 2019 to 2022. Tr. at 43–45; Ex. 6 at 59. The Individual then began working with his current employer, the DOE contractor, in 2022. Ex. 6 at 57.

The Individual testified that his previous employers subjected him to random drug testing approximately three to four times per year. Tr. at 45. The Individual testified that he had no reservations about taking any drug tests and understood the importance of maintaining a drug-free workspace. *Id.* at 52–53. He further testified that, prior to the July 2024 drug test with the DOE contractor, he had never failed a drug test or received a result that was a concern. *Id*. at 45. However, despite those assurances, the Individual at the hearing admitted to using cocaine once in 2013—contemporaneous with his first job at the plant that regularly subjected him to random drug testing. *Id.* at 56–57.

b. Drug Testing Protocol at the DOE Contractor's Facility

The LSO submitted a signed, written statement from the DOE contractor's Drug & Alcohol Coordinator. *See generally* Ex. 8. The LSO also submitted a signed, written statement from the person serving as both the Site Occupational Medical Director and Medical Review Officer (SOMD/MRO) for the DOE contractor. *See generally* Ex. 7. Both statements provide insight into the DOE contractor's drug testing program, as well as the drug tests conducted on the Individual. *Id.*; Ex. 8.

The DOE contractor selects a randomized batch of employees weekly for drug testing. Ex. 8 at 1. When selected, an employee has two hours to report to Occupational Health Services (OHS). *Id.* A collector with OHS instructs the employee to provide a urine sample in a specimen cup in a controlled environment. *Id.* The specimen cup, "in view of the employee[,]" is then split "into the A and B specimen tubes." *Id.* Both specimen tubes are then sent to a laboratory for testing. *Id.*

The DOE contractor conducts the drug tests through "a federally certified drug testing laboratory, [ ] follow[ing] strict protocols to ensure accuracy and reliability." Ex. 7 at 1. The SOMD/MRO explained that the laboratory uses "Gas Chromatology-Mass Spectrometry [ ]confirmation testing, which is the gold standard for drug analysis" since it "not only identifies the presence of a substance but also quantifies it with an extremely high degree of accuracy, effectively eliminating the possibility of false positives." *Id.* If specimen A tests positive, the employee may "request[] testing of the split sample ('Split B') . . . ." *Id.* Split B then "goes to a second [ ] federally certified drug[-]testing laboratory" that "uses the same methods as the original lab . . . ." *Id.* The SOMD/MRO explained that the "results from the split sample test will not be more accurate, or more reliable, than the results of the original" and "[t]hey should be the same." *Id.*

c. July 2024 Drug Testing

The Individual testified that he had been randomly drug tested one other time by the DOE contractor prior to the July 2024 drug tests. Tr. at 45. The Individual recounted that the result of this prior test was negative for drug use. *Id.* On July 11, 2024, the DOE contractor selected the Individual for random drug testing pursuant to the protocol described in Section IV(b). Ex. 4 at 21; Ex. 8 at 1. The Individual testified that, when he received the notice for the random drug test, he had no concern or worry about failing. Tr. at 45–46. Accordingly, he "went and [ ] took it" thinking "everything was normal." *Id.* at 46. According to the Drug & Alcohol Program Coordinator, the specimens were sent to the first laboratory, which received them on July 12, 2024. Ex. 8 at 1. The SOMD/MRO received the results from the first laboratory on July 13, 2024, which reflected a positive result for cocaine metabolite. *Id.*; Ex. 4 at 21 (Federal Drug Testing Custody and Control Form wherein SOMD/MRO verified that the test results were positive for "cocaine metabolite"); Ex. 7 at 1.

On July 15, 2024, the Individual received a message to report to OHS for a meeting. Tr. at 46, 57; Ex. 8 at 1. At the meeting, he was informed of his positive drug test result. Tr. at 46; Ex. 8 at 1–2. The Individual testified that, when told about his positive drug result, he remarked, "I don't know what's going on, because I don't do drugs." Tr. at 46. According to the Individual's testimony, the doctor told him, "You actually look like you're telling the truth" based on the Individual's demeanor. *Id.* at 58. At the hearing, the Individual maintained, "I haven't done drugs. I don't even smoke. I don't vape. I don't dip. I don't do anything whatsoever." *Id.* at 54.

The Drug & Alcohol Program Coordinator indicated that, "[d]uring the discussion of his results, [the Individual] did not provide a medical reason for the positive results." Ex. 8 at 2. The Individual offered to submit to a hair follicle examination but was informed that his only option was to have the sample re-tested "somewhere else." Tr. at 46–47, 58–59; *see also* Section IV(b). Accordingly, the Individual requested that the DOE contractor "[s]end [Split B] off somewhere else, because" the result was "not correct." Tr. at 47; *see also* Ex. 5 at 26; Ex. 7 at 1; Ex. 8 at 2. The same day, the DOE contractor placed the Individual on administrative leave "pending confirmation on [the] positive drug screen[.]" Ex. 5 at 30–31.

The Drug & Alcohol Program Coordinator indicated that OHS "sent a letter to [the first laboratory] to have the split sample shipped to [a second laboratory] for testing." Ex. 8 at 2. However, on July 23, 2024, OHS received notice that the seal on Split B's tube was damaged in transit and therefore the sample could not be re-tested to confirm the positive result. Ex. 4 at 21 (Federal Drug Testing Custody and Control Form reflecting that the "[Split] B bottle had a broken seal and leaked in transit" resulting in the test being cancelled); *see also* Ex. 8 at 2 ("[A laboratory] customer service representative faxed a letter on 7/23/2024 at 2:59 pm . . . stating they received B bottle specimen . . . for re[-]test on cocaine metabolite, but unfortunately, they were not able to perform the re[-]test as the specimen had a broken seal and leaked in transit.").

Accordingly, on July 23, 2024, the DOE contractor's human resources department contacted the Individual to schedule a "direct observation recollect." Ex. 7 at 2. Eighteen days after the provision of his original urine sample on July 11, 2024, the Individual submitted to another urine test under direct observation on July 29, 2024, which yielded a negative result for drug use. *Id.*; Ex. 4 at 22; Ex. 8 at 2. According to the Individual, when he was called in to take the second drug test, he was not informed about the status of the original urine sample. Tr. at 48 ("They weren't telling me anything. Everything that I knew was from . . . rumors that everybody was telling me.").

Regardless of the negative drug result, the Individual remained on suspension. *Id.* at 49. The Individual maintains that he was never officially informed of the negative drug test result until after the initiation of these proceedings. *Id.* at 59–60. Instead, according to the Individual's testimony, the Individual only heard rumors from other co-workers that the split sample had been "tampered with[ ] or something like that." *Id.* at 47. He had also been informed, via coworkers, that his "second test was clean and that they had lost the sample [for] the first test, when they sent it off" for re-testing. *Id.* at 60.

The Individual testified that he had not "knowingly or willingly use[d] cocaine or anything else" leading up to the July 11, 2024, drug test. *Id.* at 56. When asked for an explanation, the Individual speculated that an exercise supplement might have contributed to his positive drug result. *Id.* at 55 (Individual's testimony explaining that friends at the gym "were giving [him] [ ] supplements" which he believed were "creatines and stuff like that" but that he received them "in [clear] bags" that were not "labeled"). He testified that he no longer associates with those gym friends and that he plans on purchasing his own gym supplements from the store. *Id.* at 56. However, he was ultimately "not sure that [cocaine] was in the[ ] [supplements] to begin with . . . ." *Id.*

Despite the spoilage of Split B of the July 11, 2024, urine sample, the SOMD/MRO explained that the results of drug testing on Split B "should be the same" as the original results. Ex. 7 at 1. His signed statement also recounted, "[i]n my experience, we have never had a split sample fail to confirm the initial positive results, further underscoring the accuracy and reliability of the testing process." *Id.* Accordingly, the SOMD/MRO was "satisfied that [the Individual's] initial positive test establishes that he had cocaine metabolite in his system" and "that cocaine entered his system within four days, or less, of his test on July 11, 2024." *Id.* at 2. Regarding the negative drug test result from the Individual's July 29, 2024, result, the SOMD/MRO explained that "unless [the Individual was] a habitual user . . . a test given 18 days after the first test" would "have a different outcome . . . due to . . . [c]ocaine and its primary metabolite . . . hav[ing] a relatively short detection window in urine, typically up to 2-4 days for occasional users and slightly longer for heavy users." *Id.* Last, the SOMD/MRO provided that "there are no known substances that cause false positives for cocaine in federally certified drug testing" and that the "presence of cocaine metabolite in urine is definitive evidence of use." *Id.*

d. Individual's Most Recent Drug Testing and Current Behavior

The Individual submitted two hair follicle tests from specimens collected in December 2024 and March 2025, both reflecting a negative result for drug use over the 90 days preceding each test.[6] Ex. A at 3; Ex. B at 5; Tr. at 51–52. When asked why he had not taken a hair follicle test immediately after testing positive for cocaine, the Individual explained "[b]ecause [the DOE contractor] said they didn't accept them . . . ." Tr. at 61.

He testified that he does not associate with people who use drugs and that he disassociated with known drug users in consideration of his job with the DOE contractor. *Id.* at 55–56 ("So, my friends from the last two and a half years, since I started at [the DOE contractor], are not the same people. I just did away with hanging around with, you know, different types of people, for the same reason, to take care of my job."). He also indicated that he does not currently frequent establishments where drugs are used; however, he "used to hang around some places, back when [he] was younger," at "bars that . . . get busted for drugs on the boulevard." *Id.* at 55. He testified that he would not have any trouble signing a statement indicating his commitment to refrain from all illegal drug use in the future. *Id.* at 56.

e. Other Testimony from Individual's Witnesses

The Individual's long-term partner (Partner) testified at the hearing. *Id.* at 10–11. She shared that she and the Individual have been together for approximately twenty years and have multiple generations of their family living in their household. *Id.* at 10–11, 22. She testified that the job meant "everything to [the Individual]"; that the Individual was not a "partier[ ] or anything like that"[;] and that the Individual "made sure to eliminate any possibility of anything costing him his job." *Id.* at 12. She recounted that he was "upset" having failed his drug test and in the nine months since his suspension he has maintained that he had not used cocaine. *Id.* at 14. The Partner testified

[6] The hair follicle test was completed by a Quest Diagnostics Laboratory whose website reflects that hair follicle tests "detect a pattern of repetitive drug use for up to 90 days." Quest Diagnostics, *Hair Testing Advantages*, https://www.questdiagnostics.com/business-solutions/employers/drug-screening/products-services/hair-testing/overview (last visited May 2, 2025).

that in the months leading up to the random test she had no reason to believe the Individual was using illegal drugs. *Id.* at 17.

One of the Individual's co-workers (Co-Worker) also testified at the hearing. *Id.* at 25–26. The Co-Worker testified that he sees the Individual outside of work at monthly cookouts and at the gym three to four times per week. *Id.* at 26–27. When asked, the Co-Worker indicated that he had no reason to believe that illegal drugs would be at the cookouts. *Id.* He indicated that he had no reason to believe that the Individual used drugs to remain alert for their shift at 6:00 a.m. *Id.* at 31. In his testimony, the Co-Worker assessed that the Individual could be counted on; stated that he had no reason to doubt his judgment, reliability, or honesty; and expressed he was "shocked" to learn about the drug test results. *Id.* at 26, 32.

The Individual's supervisor (Supervisor) also testified at the hearing. *Id.* at 36. The Individual's Supervisor testified that he had no reason to doubt the Individual's judgment, reliability, or honesty. *Id.* at 37. He also recalled being "shocked" when the Individual's drug test returned positive. *Id.* at 38. The Individual's Supervisor shared that the Individual had speculated that the result might have been caused by "taking some supplements . . . ." *Id.* at 40. During his nine-month suspension, the Individual has maintained to his Supervisor that he had not used cocaine. *Id.* at 39.

V. ANALYSIS

a. Closing Statement

The Individual submitted a written closing statement. *See* Closing Statement. The Individual notes that the record lacks the original test results reviewed by the SOMD/MRO. *Id.* at 1 ("[N]o such actual test result is included in the record . . . There is no indicia of reliability that there was ever a positive test . . . ."). The Individual also cites to 10 C.F.R. Part 707 ("Workplace Substance Abuse Programs at DOE Sites") and notes purported inconsistencies between the DOE contractor's testing procedures and the standards set forth by the Part 707 regulations. *Id.* For example, he notes that the DOE contractor's use of "chromatography/mass spectrometry" for the initial test of the July 11, 2024, sample "would be contrary to the federal regulations" requiring "that 'a confirmed positive test for drugs ***shall*** consist of an initial test performed by the immunoassay method'" *Id.* (quoting 10 C.F.R. § 707.13(a)) (emphasis in original).[7] The Individual also claims that "there is no Confirmed Positive Test" as defined by 10 C.F.R. § 707.4.[8] *Id.* The Individual concludes that "[w]ith everything put together, there is no basis for trusting a compromised test with no record of even the initial (apparently incorrect) test." *Id.* at 2.

Despite the lack of the original test results in the record, I find that there is sufficient information in the record to corroborate the positive result. The SOMD/MRO signed a statement on a Federal Drug Testing Custody and Control Form that verified that the results of the urine testing were

[7] "A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method (GC/MS)." 10 C.F.R. § 707.13(a).

[8] A "Confirmed Positive Test" means "a positive initial or screening test result, confirmed by another positive test on the same sample." 10 C.F.R. § 707.4.

positive for cocaine metabolite. Ex. 4 at 21. Furthermore, the SOMD/MRO also signed a written statement that the Individual's "results came back positive for cocaine metabolite . . ." and explained that the testing method used, specifically "Gas Chromatography-Mass Spectrometry[,]" was the "gold standard for drug analysis" since it could identify and quantify the presence of a substance to "an extremely high degree of accuracy, effectively eliminating the possibility of false positives." Ex. 7 at 1. The Individual, at the hearing, did not challenge the veracity of the positive drug test result but instead attempted to provide an alternative explanation for the positive result: that he perhaps accidentally ingested cocaine from an unmarked bag of supplements. The Individual also failed to obtain a hair follicle drug test rebutting the July 2024 positive result immediately after learning that he tested positive for cocaine metabolite. Furthermore, while an original test result was not included in the record, the Individual, with the benefit of representation of counsel at the outset of this administrative proceeding, had an opportunity to request subpoenas for the original test result or to compel the testimony of the reviewing SOMD/MRO. *See* 10 C.F.R. §§ 710.25(d), 710.26(a). Ultimately, the Individual requested neither. The argument that there is no reliable evidence of a positive cocaine test is unpersuasive.

As for any purported inconsistency with the Part 707 regulations—including the Individual's claims that the initial test on the July 11, 2024, sample should not have been done with chromatography-mass spectroscopy and that the positive result is invalidated by the fact that it was not confirmed by another test on the same sample—those issues are inapposite in adjudicating this matter. The Adjudicative Guidelines are clear that "testing positive for an illegal drug"—without qualification—"could raise a security concern and may be disqualifying . . . ." Adjudicative Guidelines at ¶ 25(b). The Individual tested positive for cocaine, and the security concern is properly raised.

b. The Bond Amendment

The Bond Amendment provides that Federal agencies "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).

The Individual is not an "unlawful user" or an "addict" of a controlled substance, as defined by the DOE's Bond Amendment policy. The Individual admits that he used cocaine once in 2013, and the Individual tested positive for cocaine metabolite once from a July 11, 2024, sample of urine. However, his July 29, 2024, sample of urine tested negative for cocaine metabolite, suggesting to the SOMD/MRO that the Individual is not a habitual user. Furthermore, his most recent hair follicle tests from December 2024 and March 2025 indicate that he has not used drugs within 90 days of each test—effectively representing abstention from cocaine from September 2024 to March 2024, or six months. Accordingly, it appears that he is not currently using illegal drugs. The LSO did not allege, and there is no evidence to support a finding, that the Individual is addicted to cocaine. Therefore, I find that the Bond Amendment does not bar the DOE from granting the Individual a security clearance.

c. Guideline H Considerations

While I find that the Bond Amendment does not bar the restoration of his security clearance, my doubts as to the Individual's judgment, reliability, and trustworthiness are unmitigated by the six-month period of abstinence from cocaine use. In particular, the Individual admitted to using cocaine in 2013 while in a job that regularly drug tested and without regard to the risk to his continued employment. That admission—in conjunction with (1) the Individual's positive drug result for cocaine metabolite in 2024 and (2) the SOMD/MRO's statements regarding the reliability of the drug test—calls into question the Individual's honesty and willingness to comply with laws, rules, and regulations. As explained more thoroughly below, those concerns are not mitigated.

Conditions that can mitigate security concerns based on drug involvement and substance misuse include the following:

(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.

Regarding Paragraph 26(a), I cannot find that the behavior happened so long ago when the Individual tested positive for cocaine metabolite in July 2024, which was less than a year ago. I also cannot make specific findings as to the circumstances surrounding his cocaine use—as the Individual generally denies any purposeful use of cocaine leading up to the collection of his urine sample in July 2024. However, regarding frequency, I can infer that he is not a habitual cocaine user given his prior history of random testing which never yielded a positive result. Even if his cocaine use were infrequent, he admitted to using cocaine in 2013, several years into an employment position that regularly drug tested. Despite knowing he could lose his employment, the risk provided no deterrent when he made that choice. His testimony about the 2013 cocaine use, combined with the recent positive drug test in July 2024, strongly insinuates a disregard for laws, rules, and regulations and casts doubt on his current reliability, trustworthiness, and judgment. Paragraph 26(a) does not apply.

Regarding Paragraph 26(b), the Individual has submitted hair follicle tests demonstrating abstinence from cocaine. Furthermore, testimony from the Individual and his witnesses reflects that he does not associate with drug users or frequent places where drugs are used. However, the Individual has not signed a statement of intent to abstain from all drug involvement and substance misuse. Furthermore, the Individual, in large part, does not acknowledge his drug use—instead offering alternative explanations for why cocaine would be in his system and attacking the veracity of the drug test in his Closing Statement. Paragraph 26(b) does not apply.

Lastly, since the concerns are not based on abuse of prescription drugs, Paragraph 26(c) is patently inapplicable, and Paragraph 26(d) is inapplicable because the Individual did not enroll in or complete a drug treatment program.

Having concluded that the Individual has not established the applicability of any of the mitigating conditions, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guideline 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 does not bar the DOE from restoring the Individual's security clearance. However, I find that the Individual has not brought forth sufficient evidence to resolve the Guideline 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.

Andrew Dam
Administrative Judge
Office of Hearings and Appeals