

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

In the Matter of: Personnel Security Hearing)	
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Filing Date: February 20, 2025)	Case No.: PSH-25-0086
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Issued: April 29, 2025

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

I. BACKGROUND

The Individual applied for access authorization² in connection with prospective employment with a DOE contractor. Ex. 2 at 1. The Individual in September 2023 completed a Questionnaire for National Security Positions (QNSP). Ex. 3 at 48. In the September 2023 QNSP, he (1) answered "No" when asked if he had been fired from an hourly job he previously held; (2) answered "Yes" to having used marijuana within the last seven years; and (3) answered "No" when asked if he had been subject to a disciplinary procedure under the Uniform Code of Military Justice (UCMJ). *Id.* at 22–23, 27–28, 39. During the background investigation, the Local Security Office (LSO) discovered (1) discrepant information indicating he had been fired from the hourly position; (2) that the Individual had used marijuana on three occasions between October 2017 and November 2022—which he failed to disclose in a prior 2019 QNSP and partially overlapped with him holding a clearance; and (3) discrepant information indicating that the Individual had been arrested and disciplined for "Provoking[,] Speechless or Gestures" and "Assault Consummated by Battery"

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as "access authorization" or "security clearance."

² The Individual holds access authorization with a branch of the U.S. military because of his enlistment in the armed services. Exhibit (Ex.) 3 at 41.

under the UCMJ. *Id.* at 53, 58–59, 64, 78, 81, 131; Ex. 4 at 1–2. The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 2 at 1–3. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and H of the Adjudicative Guidelines. *Id.* at 4–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1 at 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted four exhibits (Ex. 1–4). The Individual submitted eight exhibits (Ex. A–H). The Individual testified on his own behalf and offered the testimony of another witness, his mother. The LSO called no witnesses.

II. THE SECURITY CONCERNS

Guideline E relates to questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. The refusal to be truthful and honest during the administrative review process is especially concerning. *Id.* Conditions that could present a security concern under Guideline E include “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . , determine national security eligibility or trustworthiness, . . . ;” “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, . . . involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;” and “disruptive, violent, or other inappropriate behavior.” *Id.* at ¶ 16(a)–(b), (d)(2). In citing Guideline E, the LSO relied upon the Individual’s (1) failure to disclose his firing from his hourly position; (2) failure to disclose his marijuana use when completing his 2019 QNSP; and (3) UCMJ offenses and the failure to disclose them. Ex. 2 at 4–6. Accordingly, there is sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E. *See* Adjudicative Guidelines at ¶ 16(a)–(b), (d).

Guideline H relates to the illegal use of controlled substances, including prescription and non-prescription drugs. Adjudicative Guidelines at ¶ 24. “The illegal use of controlled substances . . . can raise questions about an individual’s reliability and trustworthiness . . . 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.” *Id.* In citing Guideline H, the LSO relied upon the Individual’s self-reported use of marijuana that occurred both prior to and while holding a security clearance. Ex. 2 at 6. Accordingly, there is sufficient derogatory information in the possession of DOE to raise security concerns under Guideline H. *See* Adjudicative Guidelines at ¶ 25(a), (c), (f) (indicating that substance misuse, illegal possession of a controlled substance, and illegal drug use while granted access to classified information may raise security concerns under Guideline H).

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 Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be 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 to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 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

a. Marijuana Use Prior to and While Holding a Security Clearance

The Individual attended high school from fall 2015 to spring 2019. Ex. 3 at 21. The Individual submitted a QNSP in February 2019 for a position with the armed services. *Id.* at 59, 137. Despite his marijuana use at least once in high school, the Individual in the February 2019 QNSP certified that he had not "[i]n the last seven (7) years . . . illegally used drugs or controlled substances[.]" *Id.* at 131 (emphasis in original). The Individual's mother and the Individual both testified that an army recruiter came to their home and advised the Individual to not disclose any illegal drug use, as it would slow down the processing of his paperwork to join the armed services. Transcript of Hearing, OHA Case No. PSH-25-0086 (Tr.) at 16–17, 31, 51–52.

The Individual received a security clearance with the armed services in December 2019. Ex. 3 at 41. As of the date of the hearing, the Individual still held a clearance and maintained employment with the armed services. Tr. at 44, 69. The Individual in his testimony acknowledged that he used marijuana while holding his clearance with the armed services. *Id.* at 72. The Individual further testified that, while not aware that the marijuana use would present a problem to maintain his clearance, he "was aware that in the [armed services] you aren't supposed to" use illegal drugs. *Id.* at 53. The Individual admitted at the hearing that he has not reported the marijuana use to the armed services. *Id.* at 69.

In his 2023 QNSP, the Individual admitted to using marijuana prior to completing both the 2019 and 2023 QNSPs, including while holding a clearance with the armed services. *Id.* at 39. However, he provided inconsistent information regarding his marijuana use. In the September 2023 QNSP, the Individual disclosed that he first used marijuana in October 2017 and that his most recent use occurred in November 2022. *Id.* During a November 2023 Enhanced Subject Interview (ESI), the Individual disclosed that he had used marijuana three times, again reiterating that the first time he used marijuana occurred in October 2017 and the last time in November 2022; he could not recall when exactly the second use of marijuana took place. *Id.* at 58–59.

Later, in August 2024, the Individual responded to a Letter of Interrogatory (LOI) issued to him by the LSO and disclosed that his three uses of marijuana occurred in February 2019, May 2021, and January 2023—conflicting with the prior statements that he had first used marijuana in October 2017 and last used marijuana in November 2022. *Compare* Ex. 4 at 1 *with* Ex. 3 at 39, 58–59. Then, yet again at the hearing, the Individual provided a different date of when he first used marijuana. Tr. at 45–46 (testifying that his first time using marijuana “would have been [in the summer of] 2018” since he was “going into [his] senior year” of high school). He also at first testified to only smoking marijuana three times. *Id.* at 70–71. However, the Individual later amended his testimony by stating that he may have used marijuana “three or four” times. *Id.* at 97. When asked to explain the discrepancy, the Individual explained that “[i]t’s been so long . . .” *Id.* at 46. When asked if he had smoked marijuana (1) sometime in the summer of 2018; (2) another time in February 2019; (3) again in May 2021; and (4) last in January 2023—ultimately amounting to at least four incidents—the Individual responded affirmatively. *Id.* at 48. The Individual explained that he used marijuana “[t]o look cool around [his] friends” and due to “[p]eer pressure.” *Id.* at 50, 55. For example, he testified the last time he used marijuana was with friends while watching a sporting event. *Id.* at 48.

When completing the September 2023 QNSP, the Individual received the advice that “if you got anything” or “if you [have] ever done anything, just go and tell [the DOE].” *Id.* at 55. Accordingly, the Individual testified that he attempted to be “completely honest” in completing the September 2023 QNSP by disclosing his marijuana use. *Id.* The Individual represented that he no longer associates with people who use marijuana, although he still talks to one of his friends with whom he previously used marijuana by phone biweekly. *Id.* at 56–57; *see also* Ex. 3 at 59. The Individual at the hearing testified that he would not be peer pressured into using marijuana in the future since he can “think for [himself] now” and understands that it can have a “negative effect later on down the road.” Tr. at 57. His mother also testified that he no longer associates with such individuals. *Id.* at 23. However, his mother only sees him in-person two to four times per year and admitted she remained unaware of his marijuana use prior to the investigation and these proceedings. *Id.* at 11, 17–18.

b. 2019 UCMJ Offenses

According to the Individual, while at basic training, a fellow trainee (Trainee 1) physically performed below the standards set by the drill sergeant. Ex. 3 at 56; Tr. at 74–75. Because of Trainee 1’s performance, the drill sergeant would make “the smoke session [drills] even longer” for all the trainees—which in turn resulted in Trainee 1 being bullied by other irritated trainees. Tr. at 74; *see also* Ex. 3 at 56; Ex. 4 at 1. The Individual testified that he told one of the irritated

trainees (Trainee 2) to “shut up and leave [Trainee 1] alone.” Tr. at 75; *see also* Ex. 3 at 56; Ex. 4 at 1. Later that night, after “lights out[,]” the Individual went to the restroom. Tr. at 75–76; *see also* Ex. 3 at 56–57; Ex. 4 at 1. The Individual testified that Trainee 2 followed him into the restroom, turned the lights out, and exited the restroom. Tr. at 76; Ex. 3 at 57. Then, when the Individual emerged from the restroom, he walked to his bunk in the dark when Trainee 2 struck him in the head. Tr. at 76; Ex. 3 at 57. The Individual believes that Trainee 2 struck him with a lock or key lock from a footlocker. Ex. 3 at 57; Ex. 4 at 1. The Individual blacked out; however, he later heard from “other members in the barracks that after being hit in the head by [Trainee 2,] [the Individual] body slammed [Trainee 2] to the ground” at which point “apparently [the Individual] hit his head and completely blacked out.” Ex. 3 at 57.; *see also* Tr. at 76. The Individual described “blood rushing down the side of [his] face” and subsequently being hospitalized for a “fracture in [his] orbital and [] concussion” and needing “stitches in [his] eye.” Tr. at 76–77.

Military police records reflect that the Individual received charges for “Assault Consummated by Battery” and “Provoking[,] Speechless or Gestures” for the fight pursuant to the UCMJ. Ex. 3 at 78. The records also reflect that administrative action was taken, specifically “counseling[.]” *Id.* The Individual marked “No” in the September 2023 QNSP when asked if he had “been subject to . . . disciplinary procedure under the [UCMJ] . . .” *Id.* at 27. The Individual maintained that he lacked notice of the charges and offenses which he omitted from the September 2023 QNSP. Ex. 4 at 1. At the hearing, the Individual testified that he was never put in handcuffs, read his Miranda Rights, nor told at any point that he was being arrested or charged. Tr. at 80; *see also* Ex. 4 at 1 (“It was never made known to me that I had criminal charges under UCMJ”).³ The Individual did recall writing a witness statement. Tr. at 78, 81. However, he claimed that the only outcome of which he knew was that he and Trainee 2 were separated into different platoons upon his return to training. *Id.* at 79; Ex. 4 at 1.

c. Employment from September 2022 to July 2023

The Individual worked in an hourly position from September 2022 to July 2023. Ex. 3 at 22–23. The Individual reported in his September 2023 QNSP that he had left the position for a “[n]ew job opportunity” and further certified that he had not been “[f]ired” in the last seven years. *Id.* However, during his investigation, the hourly employer disclosed that he fired the Individual “for not showing up to work as soon as [he] completed his [military] training . . .” *Id.* at 64. During his November 2023 ESI, the Individual, when confronted with the information, “advised he was definitely fired.” *Id.* at 55. Later, in his August 2024 response to the LOI, he explained that he “failed to list the termination [in the 2023 QNSP] because [he] thought it would effect [sic] [his] hiring process and prevent [him] from getting hired . . .” Ex. 4 at 1.

At the hearing, the Individual explained that from re-reviewing the text messages sent by his employer, he now believes that he instead might have been “let go” or that the employer discontinued his hourly employment as opposed to firing him. Tr. at 36–37, 90, 99; *see also* Ex. C

³ The Individual also testified that he did not believe he was ever arrested because the military police “[n]ever fingerprinted me.” Tr. at 80. However, the notes from the ESI reflect that when “asked if he were [sic] fingerprinted and photographed[,]” the Individual “verified that he was.” Ex. 3 at 57. Furthermore, in his August 2024 response to the LOI, the Individual wrote that “[w]e also got fingerprints done and witness statements were taken as well.” Ex. 4 at 1.

(employer's text messages stating, "I don't have any work for you at this time" and "Have no work for you can't use you [sic]"). The Individual's mother testified that she also understood that the Individual was not fired from his hourly work and that the employer simply lacked work for him. Tr. at 15–16. Regardless, the Individual answered affirmatively when asked if he "had a concern" that "if [he] answered the question [on the QNSP] in a certain way, it could have a negative impact on [his] ability to get a security clearance." *Id.* at 39.

V. ANALYSIS

Based on the record before me, I am not convinced that the Individual has fully mitigated the LSO's security concerns. I first address the Guideline H concerns and then the Guideline E concerns.

A. Guideline H

Conditions that could mitigate Guideline H security concerns 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. As a preliminary matter, mitigating conditions (c) and (d) lack application, as the concerns raised do not include prescription drug use and because no testimony or documentary evidence was provided regarding substance abuse treatment.

Regarding mitigating condition (a), the Individual admitted to drug use in 2017, 2019, 2021, and 2023. I cannot find that the drug use happened under "unusual circumstances" given the mundane details surrounding the drug use—he used the marijuana with friends and simply felt peer

pressured. Furthermore, I can acknowledge that the marijuana use occurred from 2017 to 2023 in what the Individual characterized as three or four incidents and that the Individual self-reported that his last marijuana use occurred approximately two years ago. However, the fact that the Individual has used marijuana almost every two years and failed to report the marijuana use—all in spite of having a clearance and knowing that it would be an issue with the armed services—demonstrates a likelihood that the marijuana use will recur and casts doubt on the Individual's trustworthiness. Mitigating condition (a) does not apply.

Regarding mitigating condition (b), the Individual has acknowledged his drug involvement and substance misuse by coming forward of his own volition. However, he has provided little evidence of overcoming the problem and establishing a pattern of abstinence. The Individual's marijuana use has occurred about every two years because of peer pressure, meaning that his self-reported two years of abstinence has little probative value. I have no evidence in the form of drug testing that shows he has maintained abstinence. I have the Individual's self-serving assurances that he does not associate with the individuals who provided him with marijuana before. These assurances are only corroborated by his mother; however, his mother testified that she remained unaware of his marijuana use prior to the investigation and proceedings and that she only sees him in-person two to four times per year. Finally, the Individual did not submit a signed statement indicating he intends to abstain from all drug involvement in the future. Given the lack of evidence, I cannot find mitigating condition (b) satisfied.

I cannot find that the Individual has satisfied mitigating conditions (a) or (b). The Individual therefore has not resolved the security concerns asserted by the LSO under Guideline H.

B. Guideline E

Guideline E concerns may be mitigated if:

- (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.

Even if I were to credit that the Individual did not believe he had been charged in 2019 for UCMJ offenses, I cannot find that the Individual has mitigated the concerns raised under Guideline E as a whole. First, I could not find mitigating condition (a) satisfied with respect to the Individual's concealment of his marijuana use and termination from his hourly position. Regarding his marijuana use, the Individual came forward in good faith and before being confronted with the facts. However, it cannot be said that he came forward promptly where his initial omission occurred when completing the 2019 QNSP and when the disclosure did not take place until four years later, when he completed his 2023 QNSP. Furthermore, while the Individual's testimony is that he now no longer believes he was fired, he believed he had been fired at the time he filled out the 2023 QNSP and failed to disclose this belief until confronted with the information during the ESI. He admitted in the August 2024 response to the LOI that he failed to disclose the information because of its potential negative impact on his employment prospects. For those reasons, mitigating condition (a) does not apply.

Regarding mitigating condition (b), the Individual's behavior cannot be attributed to the advice of legal counsel or a person with relevant professional responsibilities. While there is testimony that an armed services recruiter advised the Individual to lie about his marijuana use, the Individual also testified that he understood that his marijuana use presented a problem in connection with his employment with the armed services. No one advised him to continue lying, to continue using marijuana in contravention of his responsibilities as a clearance holder and employment in the armed services, and to continue concealing his marijuana use. Furthermore, the omission of his termination from the 2023 QNSP cannot be attributed to the advice of legal counsel or a person with relevant professional responsibilities. Accordingly, mitigating condition (b) does not apply.

Regarding mitigating condition (c), I find that the concealment of his drug use and the falsifications in the 2019 and 2023 QNSPs raise serious concerns. The omission and falsifications cannot be described as minor given the seriousness of the following: (1) the Individual knowingly furnished false information in the 2019 QNSP; (2) the Individual understood the risk to his employment but still used marijuana while holding access authorization; (3) the Individual had an obligation to report his drug use to the armed services but had not yet reported the information; (4) the concealment of his drug use continued over a four-year period; and (5) the Individual admitted to omitting his original belief regarding his firing because it could negatively affect his employment

prospects. The purposefulness of the Individual's conduct, the length of time for which it persisted, and the disregard towards the investigative process and reporting requirements simply cannot be considered minor.

I also cannot find the behavior so infrequent given that the concealment continued over a period of about four years. I also cannot say that his general pattern of dishonesty occurred so long ago given that he failed to disclose his termination in his most recent 2023 QNSP. Last, I cannot find the concealment and falsifications to have occurred under unique circumstances. While the original falsifications and concealment might be attributed to youth or a fear of losing his clearance and employment, those circumstances are not remarkable in a way that mitigates the concerns raised. Accordingly, mitigating condition (c) does not apply.

Regarding mitigating condition (d), the Individual eventually acknowledged the reporting failures. However, I have no evidence of counseling. While the Individual has taken positive steps, insofar as he finally disclosed his drug use, I cannot find that the behavior of dishonesty is unlikely to recur. Again, the concealment of his marijuana use occurred over a four-year period. Furthermore, in his most recent 2023 QNSP, he omitted his termination from his hourly position. I find that the four-year period of dishonesty and most recent omission from his 2023 QNSP preclude a finding that the behavior—specifically the dishonesty—is unlikely to recur. *See* 10 C.F.R. § 710.7(c) (requiring consideration of, among other things, “[t]he nature, extent, and seriousness of the conduct[, and] the frequency and recency of the conduct,” in applying the Adjudicative Guidelines). Since I cannot make a finding that the behavior—specifically the dishonesty—is unlikely to recur, mitigating condition (d) does not apply.

Regarding mitigating condition (e), the LSO did not raise any concerns regarding personal conduct that could result in vulnerability to exploitation, manipulation, or duress. Mitigating condition (e) lacks application.

Regarding mitigating condition (f), there exists no dispute as to the reliability of the information because the Individual came forward. Mitigating condition (f) lacks application.

Regarding mitigating condition (g), the concerns raised by the LSO did not involve the Individual's association with those involved in criminal activities. Accordingly, mitigating condition (g) also lacks application.

For the aforementioned reasons, I find that none of the mitigating conditions are applicable to the facts of this case and 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 Guidelines E and H of the Adjudicative Guidelines. After considering all the relevant information, 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 Individual has not brought forth sufficient evidence to resolve the security

concerns set forth in the Notification Letter under Guidelines E and H. Accordingly, I find the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. 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