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

In the Matter of: Personnel Security Hearing	)		
Filing Date: August 20, 2018	)	Case No.: PSH-18-0064	
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Issued: November 13, 2018

**Administrative Judge Decision**

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Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be granted.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In October 2016, the Individual submitted a Questionnaire for National Security Positions (QNSP). Ex. 4. In March 2017, during his background interview, the Individual admitted to providing false answers on the two QNSP questions concerning the use of illegal drugs and the misuse of prescription drugs, prompting an April 2018 personnel security interview (PSI). Ex. 5.

After the PSI, the Local Security Office (LSO) informed the Individual, in a letter dated July 10, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. An attachment to the Notification Letter described the derogatory information raised security concerns under Guideline E (Personal Conduct). Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me

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

as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, DOE Counsel introduced six exhibits (Ex. 1-6) into the record, but did not present the testimony of any witnesses. The Individual introduced two exhibits (Ex. A-B) into the record and presented his own testimony. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline E of the Adjudicative Guidelines. Ex. 1.

Guideline E concerns information that an Individual has engaged in “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [which] can raise questions about an individual’s reliability, trustworthiness and ability to protect classified or sensitive information.” Guideline E at ¶ 15. Of special interest under this guideline is an individual’s “failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* In invoking Guideline E, the Notification Letter cited the Individual certifying that in the last seven years, he has not illegally used any drugs or controlled substances, but later admitting that in July 2015, he illegally used marijuana. Ex 1. Additionally, the Notification Letter cited the Individual certifying on his QNSP that in the last seven years, he had not intentionally engaged in the misuse of prescription drugs, but later admitting that from spring to winter 2015, he used his girlfriend’s Adderall prescription. *Id.* The Individual admitted during the PSI that he intentionally did not report these incidents on his QNSP because he was afraid of the consequences. *Id.* The Individual’s omission of this relevant information from his QNSP justifies the invocation of Guideline E. Guideline E at ¶ 16(a).

## **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), cert. denied, 499 U.S. 905 (1991) (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 his 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. 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. FINDINGS OF FACT**

In Section 23 of his October 2016 QNSP, the Individual marked “No” in response to the question, “In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.” Ex. 4 at 40. He also replied “No” to the question, “In the last seven (7) years have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?” *Id.*

In March 2017, the Individual met with an Office of Personnel Management (OPM) investigator for a background interview. Ex. 6. During this interview, the Individual volunteered that he experimented with marijuana at least once out of curiosity. *Id.* at 67. The Individual also admitted that during the summer of 2015 through the winter of 2015 (or possibly January 2016), he used Adderall as a study aid while preparing for his exams. *Id.* at 68.

During his April 2018 PSI, the Individual described his experience with marijuana as occurring in the summer of 2015. Ex. 5 at 9. He stated that his girlfriend brought home a marijuana pastry ball, of which he tried a bite, because he “thought it would be an interesting experience.” *Id.* at 9-10. When asked why he did not try more of the marijuana pastry, the Individual indicated that he could not confidently say that he did not try another bite. *Id.* at 12. He stated that his girlfriend only had the one pastry ball and, since he did not feel anything the first time, he does not believe he would have tried another bite. *Id.* Although his girlfriend used marijuana before and after this incident, the Individual stated that she also stopped using marijuana either that summer or in the fall, after a couple of bad experiences. *Id.* at 22.

When describing his experience using Adderall during his PSI, the Individual stated that he used his girlfriend’s prescribed Adderall when studying for exams for approximately six months. Ex. 5 at 14-15. He stated that he took Adderall two or three times a month, but probably used Adderall a couple of days in a row leading up to his Comprehensive Exam. *Id.* at 15. He stated that his girlfriend would sometimes give him her expired pills, and that he would take about half of an approximately 10 milligram pill to help him concentrate while studying. *Id.* at 16, 18. Although he could not recall why he would need to take Adderall in January 2016 since he would not have had any exams, the Individual believes this would be the last possible date he would have taken Adderall. *Id.* at 18. The Individual stated that he stopped taking Adderall because “it just...didn’t seem like a good thing, didn’t let [him] sleep, and [he] didn’t...want to have to rely on that.” *Id.*

When questioned why he intentionally answered these questions incorrectly on his QNSP, the Individual stated that he was afraid of the consequences. *Id.* at 31. He further stated that the decision felt wrong and he tried to correct the omission at the earliest opportunity. *Id.*

At the hearing, the Individual testified that when filling out the QNSP in October 2016, he was afraid, which is why he made the mistake of lying. Tr. at 24. He testified that after completing the

QNSP, he thought about it a lot and researched how to correct the record. Tr. at 21. Although he could not find much information online, he stated that one source recommended making corrections during the background information. *Id.* The Individual heard similar advice during a presentation given by his employer on the security clearance process. Tr. at 22. The Individual further testified that, during his March 2017 interview, when the investigator asked him questions about drugs and misuse of prescriptions, he admitted to lying on the QNSP. Tr. at 18.

The Individual testified that the only person who knows about his marijuana use and misuse of Adderall is his girlfriend. Tr. at 19. He submitted as evidence a March 2017 chat conversation between the two of them in which he tells her that he plans to tell the OPM investigator about these incidents and asks her to also tell the investigator the truth. Ex. A. at 4; Tr. at 19-20. In that conversation, the Individual's girlfriend asks him whether any of his coworkers admitted to drug use during their background investigation. Ex. A at 5. The Individual replied, "Idk. Either way I'm going to tell them. Consequences be damned." *Id.*; Tr. at 23. He testified that had he asked her to, he believes his girlfriend would have lied for him. Tr. at 28. The Individual also submitted an October 2017 email chain between himself and his employer, in which he informed his employer that he did not qualify for an interim security clearance because of his marijuana use. Ex. B.

## V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should be granted. I find that granting the Individual a DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

An individual can mitigate Guideline E security concerns by showing that he or she made a prompt, good-faith effort to correct the omission, concealment, or falsification before confrontation. Guideline E at ¶ 17(a). Additionally, Guideline E security concerns can be mitigated by demonstrating that the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). In this case, the Individual has demonstrated that he corrected his mistake at the first available instance, during his OPM interview. Ex. 6 at 67. The Individual presented evidence at the hearing to corroborate his testimony that he made the decision to admit to his drug use and misuse of Adderall before being confronted in anyway. Ex. A at 4; Tr. at 21. In fact, despite the high likelihood that his untruthful answers would never be questioned, the Individual still made the admission during his OPM interview. Tr. at 25. By admitting to his prior drug use both during the background interview and to his employer, the Individual reduced the possibility of his previous falsification being used to exploit him. Ex. B; Tr. at 26-27. Although the Individual exercised questionable judgment when intentionally providing false answers on his QNSP, I find that the Individual has demonstrated that he made a prompt, good-faith effort to correct this falsification and that he has taken positive steps to reduce any future vulnerability related to this issue. Guideline E ¶ 17(a), (e). I therefore find that the

Individual has mitigated security concerns raised by the Guideline E derogatory information described in the Notification Letter.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E of the Adjudicatory Guidelines. After considering all of 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 mitigated the security concerns asserted in the Notification Letter under Guideline E. Accordingly, I have determined that the Individual's access authorization should be granted. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Brooke A. DuBois  
Administrative Judge  
Office of Hearings and Appeals