

marked as DOE exhibits (DOE Ex.) 1 through 8. The Individual submitted three exhibits marked as Individual's Exhibits (Ind. Ex.) A through C.

II. Regulatory Standard

The procedures for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the Individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his [or her] eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the Individual to produce evidence sufficient 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). This standard implies that there is a presumption against granting or restoring a security clearance. The regulations further instruct me to resolve any doubts concerning the Individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a); *see also Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard indicates "that security determinations should err, if they must, on the side of denials").

III. Notification Letter and Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E and H of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 29, 2005) (December 29, 2005) (Adjudicative Guidelines or Guidelines). Under Guideline E, the LSO alleges that the Individual has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" and "personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress." Guideline E at ¶ 16 (a), (b), and (e). As support for its security concerns

under Guideline E, the LSO cites the Individual's failure to disclose on his February 2011 Questionnaire for National Security Positions (QNSP) that he had used marijuana in December 2010. In addition, the LSO cites the Individual's use, purchase, and distribution of marijuana, Lysergic acid diethylamide (LSD), and Methylenedioxymethamphetamine (MDMA) while holding an active security clearance.²

Under Guideline H, the LSO alleges that the Individual has used an illegal drug, which can raise questions about the Individual's reliability and trustworthiness. Among the conditions set forth in the Guidelines that could raise a disqualifying security concern are "illegal drug possession, including cultivation, processing, manufacturing, purchase, sale, or distribution" and "any illegal drug use after being granted a security clearance." Guideline H at ¶ 25 (c) and (g). As support for its security concerns under Guideline H, the LSO cites the Individual's use and distribution of marijuana, LSD, and MDMA between December 2010 and October 2012.

I find that there is derogatory information in the possession of the DOE sufficient to raise serious security concerns under Guidelines E and H.

IV. Hearing Testimony and Evidence

The Individual was hired for summer internship employment during his first year in college, when he was 18 years of age. Tr. at 48. As a result of that employment, he completed a QNSP in February 2011. DOE Ex. 8. At that time, he denied all illicit drug use within the previous seven years. *Id.* He was granted an access authorization and began working for the DOE in late May 2011. Tr. at 48; DOE Ex. 5 at 13. He continued to work for the DOE during the summer and winter breaks from college. Tr. at 65; DOE Ex. 5 at 13. After graduating from college, the Individual was hired for a full-time position at the DOE and completed another QNSP in October 2014. DOE Ex. 6. On the October 2014 QNSP, the Individual stated that he used marijuana on three occasions, between December 2010 and December 2011. *Id.* at 26. He stated that those dates were estimates. *Id.* He admitted that he held a security clearance when he used the marijuana.³ *Id.* at 27. Also on the October 2014 QNSP, the Individual admitted he used MDMA approximately six times at concerts. *Id.* at 28. He estimated his dates of usage as June 2011 to October 2012. *Id.* at 27. Finally regarding his usage on the October 2014 QNSP, the Individual admitted that he used LSD four times between June 2011 and October 2012. *Id.* at 28.

Also on the October 2014 QNSP, the Individual answered in the positive when asked whether he had been involved in the "illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance" within the previous seven years. DOE Ex. 6 at 28. The Individual stated that he never purchased marijuana for his own use, but would "pick it up for [his] friends who smoked." *Id.* at 29. He did admit to purchasing LSD three times for his own usage and MDMA approximately four times, again for his own usage. *Id.* at 29-30. In addition, the Individual admitted to picking up LSD twice and

² The Individual denies purchasing marijuana, even for his own use. He did admit that he purchased LSD and MDMA for his own use.

³ Although the Individual was not working for the DOE during the academic year, he maintained his security clearance during that time.

MDMA three times for his friends. *Id.* at 29-30. On the October 2014 QNSP, he stated that he knew the drug dealer, who was a member of his fraternity, and would pick the drugs up for friends to “be a nice guy.” *Id.* at 29-30. He confirmed this at the hearing. Tr. at 63. He testified that his friends would text the drug dealer first, and other than delivering the money and then the drugs, he received no compensation for the activity. Tr. at 35. Like his usage, the Individual admitted that he held a security clearance when engaging in these activities, which he estimated spanned the dates of January 2011 to August 2012. *Id.* at 29-30.

At the hearing, the Individual was asked about the confusion regarding his dates of illegal drug usage. Tr. at 31-32. On the February 2011 QNSP, he denied all illicit drug use within the previous seven years; however, on the October 2014 QNSP, the Individual listed his illegal drug activity for marijuana, LSD, and MDMA as December 2010 to August 2012.⁴ DOE Ex. 6 at 27-30. At the PSI, the Individual stated that “nothing has happened since I’ve been out of college, or even in the last two years of college.” DOE Ex. 5 at 4. Also at the PSI, when asked to pinpoint his use of MDMA, the Individual began by saying “summer.” DOE Ex. 5 at 7. When the personnel security specialist conducting the interview suggested June as the date, the Individual stated that June 2011 was “believable.” *Id.* At the hearing, the Individual was questioned regarding what he told the personnel security specialist. “Q. Okay. But you also told [the personnel security specialist] while you were under oath that you first used that during the Summer of 2011? A. Yes, May is -- May was summer to me; we get out of school in May, at the beginning of May.” Tr. at 49. At the PSI, the Individual stated that he was not sure when he first used marijuana. He stated that it was sometime during his first year of college, but he was not sure of the exact date. DOE Ex. 5 at 16.

Q. Do you remember what you said to that, when he asked you when the first time was, that you used Marijuana?

A. I do.

Q. All right. What was that answer?

A. I said I didn't really know; I had to sit there and kind of think about it.

Q. So why is your answer today different than it was a year and a half ago?

A. I just had time to think about it now. I found [the personnel security specialist] very intimidating and scary, I guess you could say. I didn't even know what that meeting was going to be about. And then I kind of just walked into a buzz saw. But after, you know, having time to think about it not under as much pressure, I realized that I was wrong.

Tr. at 32. The Individual stated that the last day of his illegal drug usage was October 28, 2012. Tr. at 57. *See also*, DOE Ex. 5 at 8.

At the hearing, the Individual did not dispute that he used marijuana one time prior to completing his February 2011 QNSP. Tr. at 30. In addition, he does not dispute that he used marijuana, LSD, and MDMA on a number of occasions while he held an active security clearance. Tr. at 30. In fact, the Individual admitted to his drug use on his October 2014 QNSP. DOE Ex. 6 at 31. At the hearing, he testified that he used marijuana in December 2010, approximately two months prior to completing his first February 2011 QNSP. Tr. at 31. He stated that he did not list his marijuana use on the February 2011 QNSP because he did not intend to use marijuana again. Tr. at 31.

⁴ These dates span all drug activity, including usage and distribution.

As to his later use of marijuana, LSD, and MDMA, the Individual testified that he never used or handled those illegal substances while he was working at the DOE. Tr. at 65. He stated that he did realize he still held an active security clearance, but since he did not have access to any secured information, he did not realize it mattered and he was just “stupid.” Tr. at 65; DOE Ex. 5 at 13. Further, the Individual stated at the PSI that he did not use drugs during the summer because he was away from college. DOE Ex. 5 at 14. He stated his drug use was limited to when he was on campus. Tr. at 65; DOE Ex. 5 at 14. The Individual expounded on his statement that he distributed illegal drugs, testifying that there was a brother in his fraternity who dealt drugs. Tr. at 34, 37. He stated that, if he was heading to his fraternity, very occasionally someone in his dormitory would indicate that the drug dealer was holding drugs for the Individual to pick up and bring back to the dormitory for the other person’s use. Tr. at 34, 37. He asserted that at no time did he initiate a transaction, Tr. at 34, 37, and that the person asking the Individual to pick up the drugs would text the dealer in advance. Tr. at 54, 56. On his October 2014 QNSP, during the PSI, and at the hearing, the Individual avowed that he never received compensation for delivering the illegal drugs, but rather was doing a favor for friends. DOE Ex. 6 at 29-30; DOE Ex. 5 at 6, 19; Tr. at 35. Further, he stated that he was only 18 or 19 at the times he was involved in any type of illegal drug activity. The Individual is presently 24 years old and has matured since his first and second years in college. Tr. at 31. He asserted that he stopped using and distributing illegal drugs because he “stopped hanging out with . . . bad influence type of people.” DOE Ex. 5 at 7. *See also*, Tr. at 35, 37, 40, 48, 62. He further asserted that he has never done illegal drugs with his girlfriend, with whom he lives. Tr. at 45-46. At the PSI, the Individual stated that he stopped because he grew up and became more mature, continuing, “I also have a girlfriend. She straightened me out.” DOE Ex. 5 at 9.

The Individual presented the testimony of his supervisor and another co-worker who attested to his truthfulness and reliability. Tr. at 11, 21-22. However, when confronted with the fact that the Individual may have been involved in distributing illegal drugs, the Individual’s supervisor indicated that he may have trouble trusting the Individual in the future. Tr. at 14, 16-17. That witness did complete his testimony by saying “I haven’t had any problem, no, he’s been -- I mean, as an . . . employee, he’s exactly the kind of person you’re looking for. He’s very -- very good at what he does.” Tr. at 17. The Individual’s co-worker testified, “What they do in school, unfortunately, and part of the growing-up process and being immature and -- is -- like I say, is very unfortunate. Does that mean they’re always -- you know, because they make bad judgment case in something like that, are they always going to be a bad person? And -- I don’t think so.” Tr. at 28.

V. Administrative Judge’s Findings and 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 access authorization should be restored at this time. I find that restoring the Individual’s DOE security clearance will not endanger the common defense and

security, and is 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.

I found the Individual to be credible, honest, and forthcoming in his testimony. His demeanor indicated to me that he was telling the truth at the hearing. He was straight forward and did not waiver in his answers. He made eye contact with me and the attorneys questioning him. He did not appear to be edgy or agitated. While he was not relaxed, the Individual did not seem overly nervous while testifying. He admitted that he made mistakes while in college. The fact that he could not pinpoint the exact dates of his usage on the QNSP and for the Personnel Security Specialist could be of some concern, but for the fact that these events happened over five years ago at a time when he was in a stressful situation in a competitive college atmosphere. At the time of his various illegal drug activities, they were not important enough for the Individual to retain them in his memory. Further, other than some discrepancies in dates, the Individual's memory of what and where events occurred has rarely varied.

A. Guideline E

The LSO listed the Individual's December 2010 marijuana use and his failure to provide that information on his February 2011 QNSP, along with his subsequent illegal drug use while holding an active DOE security clearance, to show that he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to follow rules and regulations. The LSO properly raised the security concern because the Individual deliberately failed to disclose his marijuana use on his QNSP.⁵ Further, he admitted that he knew he held an active security clearance when he used marijuana, LSD, and MDMA between May 2011 and October 2012. Such behavior shows that the Individual fails to follow rules, laws, and/or regulations. I find that there is sufficient evidence in the record to support these claims. The Individual admitted to his drug use on his October 2014 QNSP, during an August 2015 PSI, and at the hearing. He testified that when he used the illicit drugs, he had no access to security information, because he was not working at the DOE facility at the time. In addition, he stated that he has matured since his drug use, which occurred during his first and second years of college, when he was 18 and 19 years of age.

The Adjudicative Guidelines provide a number of potential conditions which can mitigate this type of security concern, including that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Adjudicative Guidelines ¶ 17 (a). In this case, the Individual disclosed his drug involvement on his own, prior to being confronted with the facts. Although there was a discrepancy in his memory between the October 2014 QNSP and hearing and the PSI, as stated above, I found the Individual to be credible and candid in his testimony. In fact, it is because he was honest on the October 2014 QNSP that the Individual has had his security clearance suspended. His use occurred while he was in college, over five years prior to the hearing when he was 18 and 19 years old. He no longer associates with those people with whom he did drugs. The Individual testified that his current girlfriend made

⁵ At the PSI, the Individual could not pinpoint the date of his first marijuana usage other than during his first year in college. On the October 2014 QNSP and at the hearing, he confirmed the date as December 2010, two months prior to completing the February 2011 QNSP.

him realize he should not be engaging in illegal drug activity. Therefore, the Individual has resolved the security concerns of the LSO, pursuant to Adjudicative Guidelines ¶ 17 (a).

Another possible mitigating factor is that “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.” Adjudicative Guidelines ¶ 17 (c). A significant amount of time has passed since the Individual's last use of an illegal drug in October 2012. Further, the Individual has graduated from college, started studying for an advanced degree, and obtained full-time employment. In previous cases, an Administrative Judge has taken testimony that an individual's brain does not mature until he is in his early twenties. *Personnel Security Decision*, Case No. PSH-13-0012 (2013). In that case, an Individual's psychologist emphasized the importance of considering the developmental stages of the brain regarding judgment and decision-making. *Id.* at 6. She testified:

The prefrontal lobe, the largest part of the brain, houses the prefrontal cortex, which mediates the capacity to exercise good judgment and is one of the last brain regions to reach maturation, due to the developmental stages tending to occur in the back-to-front pattern. Brain research indicates brain development is not complete until sometime in the twenties due to the increase in myelin (lipid sheath covering axons that promotes connectivity). As myelin increases, there is a heightened flow of information between regions, whereby, the prefrontal cortex is gradually enabled to oversee and regulate behavioral responses initiated by more primitive limbic structures, which are the source of emotional behaviors. During the teen-age-years, individuals are not thinking about the effects of their behavior on others; this process requires insight and insight requires fully connected frontal lobes. Therefore adolescents rely more on input from the limbic system (primitive and emotional) for information to govern behaviors. The maturation of the judgment, decision-making, problem-solving, and behavioral regulation of [the individual's] frontal lobes has progressed in the last six years considerably, enabling an adult's processing.

Id. at 6. When taking into consideration that the Individual was 18 or 19 when he last engaged in the behavior which raised the security concern five years prior to the hearing, I find that the Individual has resolved the security concerns of the LSO, pursuant to Adjudicative Guidelines ¶ 17 (c).

The Adjudicative Guidelines also provide for mitigation where “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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur,” *id.* at ¶ 17 (d), or where “association with persons involved in criminal activities 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.” *Id.* at ¶ 17 (f). The Individual's illegal drug use occurred during his first two years of college. Further, the Individual's drug usage occurred only while he was at college. He has completed his degree and is no longer in that environment. His drug involvement is unlikely to recur out of the college setting. He testified that he no longer associates

with the Individuals with whom he used drugs in the past, and stopped associating with them at least two years prior to his college graduation. For the reasons set forth herein, I find that the Individual has resolved the security concerns of the LSO, pursuant to Adjudicative Guidelines ¶ 17 (d) and (f).

B. Guideline H

With respect to Guideline H, the LSO's allegation of security concerns is justified by the Individual's illegal drug use and distribution of illegal drugs. Such illegal drug use can impair judgement and may raise questions about a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines ¶ 24.

The record shows that the Individual used and distributed illegal drugs, even after being granted a security clearance. In response, the Individual testified that, although he knew his security clearance was active, he was not working at the DOE and had no access to secured information. Further, as to the LSO concern that he was distributing illegal drugs, the Individual does not deny that he picked up illegal drugs and delivered them to other individuals. He testified that he received no remuneration for carrying the drugs for the drug dealer to his friends. He also admitted that he purchased LSD and MDMA for his personal use. The Individual does not deny the concerns raised by the LSO. Therefore, I find that there is sufficient evidence in the record to support the concerns raised by the LSO under Guideline H.

In considering whether the Individual has resolved a Guideline H security concern, I must look to paragraph 26 of the Adjudicative Guidelines which provides that mitigating conditions 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) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) dissociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence;

Adjudicative Guidelines ¶ 26 (a) and (b).

As stated above regarding Guideline E, the Individual last used and distributed illegal drugs during his first and second years of college, when he was 18 and 19 years old. He is now 24 years old. Further, he testified that he no longer associates with those people with whom he used the illegal drugs and stopped associating with them two years prior to his college graduation. The Individual testified that his significant other, with whom he cohabitates, does not use illegal drugs nor have they ever used illegal drugs together. In fact, he testified that his girlfriend "straightened [him] out." When asked about returning to college for parties, the Individual responded that he has not been to a party at his college since before he graduated. When he returned to school after graduation, it was for a wedding and a funeral. Due to the Individual's maturation discussed in regard to Guideline E above, I find that the Individual has resolved the security concerns of the LSO, pursuant to Adjudicative Guidelines ¶ 29 (a) and (b).

Based on the foregoing, I find that the Individual has resolved the concerns raised by the LSO, pursuant to Adjudicative Guideline H.

VI. Conclusion

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise serious security concerns under Guidelines E and H. 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 have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with those Guidelines. I therefore find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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

Date: May 10, 2017