



with a DOE contractor, he failed to disclose such use on Questionnaires for National Security Positions (QNSPs) that he completed in 2009 and 2010 in conjunction with the security clearance that he held during that employment. *See* Exhibit 7 and Exhibit 9.

The individual completed his treatment for substance abuse prior to being hired by the DOE contractor with whom he is presently employed. His present employment requires that he hold access authorization. In October 2015, the individual completed a QNSP in conjunction with his present application for access authorization, on which he disclosed both his prior illegal use of drugs and his drug treatment. *See* Exhibit 7. As a result of this information, the local security office (LSO) conducted a personnel security interview (PSI) with the individual in January 2016. *See* Exhibit 8. During the PSI, the individual provided the LSO with written authorizations to his treatment providers to release his medical records; he also agreed to be evaluated by a DOE consultant psychologist or psychiatrist. The LSO subsequently received the individual's 2014 treatment records, which included diagnoses by his treating physician of Opioid Dependence and Amphetamine Dependence. *See* Exhibit 10. The LSO did not refer the individual to a DOE psychologist or psychiatrist for evaluation.

Thereafter, the LSO informed the individual in a letter, dated May 12, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under Guideline E (Personal Conduct) and Guideline H (Drug Involvement).<sup>2</sup> *See* Exhibit 3.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 4. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual, represented by counsel, presented the testimony of four witnesses, including that of himself and a consultant psychologist. The LSO introduced ten numbered exhibits into the record;<sup>3</sup> the individual tendered two lettered exhibits (Exhibits A and B) into the record. The exhibits will be cited in this

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<sup>2</sup> See Section III below.

<sup>3</sup> At the hearing, the individual objected to the admission into the record of portions of Exhibit 7 (the individual's 2010 QNSP) and of Exhibit 10 (the individual's medical treatment records) due to the lateness of the submissions. Tr. at 8-11. The documents to which the individual objected had been cited by the LSO in the Notification Letter and, therefore, the LSO should have been prepared to deliver such documents to both the individual and OHA at the commencement of the administrative review process. Instead, the LSO ultimately submitted the documents to OHA one week prior to the hearing and to the individual three days prior to the hearing. Although these documents were submitted in an extremely untimely manner, I note that: (1) the individual testified that the statements in the Notification Letter (including those based upon the LSO's late submissions) were factually correct (*Id.* at 17-18); and (2) both documents should not have been unfamiliar to the individual. Therefore, I have concluded that the individual was not prejudiced by the lateness of the LSO's submissions and I have accepted both documents into the record and given them full evidentiary weight.

Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>4</sup>

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require 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 his 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.

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited Guidelines E and H as the bases for suspending the individual’s security clearance.

Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an individual’s reliability, trustworthiness and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. See Adjudicative Guidelines at Guideline E ¶ 15. With respect to Guideline E, the LSO cited, *inter alia*, the individual’s denials on his 2009 QNSP and 2010 QNSP of illegal drug use and involvement, which denials are contradicted by the individual’s statements during the 2016 PSI and his medical treatment records from 2014. Ex. 3 at 3-4.

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<sup>4</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.energy.gov/oha](http://www.energy.gov/oha).

Guideline H relates to security risks arising as a result of an individual's use of illegal drugs. Illegal drug use raises concerns about an individual's reliability and trustworthiness because such drug use may impair a person's judgment and because using drugs illegally raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *See* Adjudicative Guidelines at Guideline H ¶ 24. With respect to Guideline H, the LSO cited, *inter alia*, the individual answering "yes" on his 2015 QNSP to using and purchasing illegal drugs and misusing prescription drugs while possessing a security clearance; the individual acknowledging during his 2016 PSI that he started using methamphetamines as well as pain medication in 2013, both of which he said he purchased from a known drug dealer; and the individual's medical treatment records which include (1) the individual's history of illegal drug use commencing when he was a teenager, (2) his detoxification in 2014, and (3) his treatment provider's diagnoses in 2014 that the individual suffered from Opioid Dependence and Amphetamine Dependence.<sup>5</sup> Ex. 3 at 4-5.

In light of the information available to the LSO, the LSO properly invoked Guidelines E and H.

#### **IV. Findings of Fact 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)<sup>6</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual's 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.

##### **A. Mitigating Evidence**

The individual disputes neither the facts alleged by the LSO in the Notification Letter nor the diagnoses of his treatment providers that are referred to therein. Tr. at 17-18. Instead,

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<sup>5</sup> In the Notification Letter, the LSO also states that the individual's 2014 treatment records include a diagnosis of Alcohol Dependence. *See* Ex. 3 at 4. Since the LSO limited the security issues in the Notification Letter to personal conduct (Guideline E) and drug involvement (Guideline H), any security concerns arising under Guideline G (alcohol consumption) are not before me and, therefore, are not addressed as part of this Decision. *Id.* at 3-5. To the extent that such issues would have been before me, I note that the individual's forensic psychologist evaluated the individual's alcohol use and testified that the individual's current alcohol consumption is moderate and non-abusive. Tr. at 102.

<sup>6</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

he argues that he has sufficiently mitigated the security concerns set forth in the Notification Letter. With respect to the security concerns arising from his drug involvement, the individual argues that he has mitigated such concerns based upon his completion of a drug treatment program that he voluntarily commenced over three years ago and his abstinence from the illegal use of drugs since completing treatment in October 2014. *Id.* at 130-133. With respect to the security concerns arising from his misrepresentations or omissions during the access authorization process and while holding access authorization, the individual argues that those concerns are mitigated by his having self-disclosed such misrepresentations and omissions, and by his having completed treatment addressing the underlying substance of those misrepresentations and omissions. *Id.* at 133-134.

**B. Administrative Judge Evaluation of Evidence and Findings of Facts:  
Guideline H (Drug Involvement)**

The individual acknowledges that he commenced illegal drug use while he was a teenager: he first used marijuana at age 15, began abusing prescription medications at age 16, and started using cocaine at age 17. Ex. 10; Tr. at 17-18. He began using methamphetamines at age 20. Ex. 10. While much of this use was episodic in nature, his use of methamphetamines and opioids became regular and problematic in approximately 2013, when the individual was in his late twenties. Ex. 8 at 4-5, 11-13, 25-26. He recognized the impact that such use was having on his marriage and his ability to properly care for his young children and, as a result, decided to enter a drug treatment program. Tr. at 36-37. The individual apparently controlled his use to such an extent that both his wife and father-in-law credibly testified at the hearing that they had been unaware of the individual's drug use until he disclosed his decision to seek treatment. *Id.* at 56, 75.

In 2014, the individual voluntarily entered a private drug treatment program, which he and his wife funded from their personal savings. *Id.* at 27-31, 69. The individual was initially admitted to a facility for detoxification, and then transferred to a residential rehabilitation center for a 30-day treatment program, which utilizes a 12-step immersion model of treatment. *Id.* at 31-32. At the commencement of treatment, the treating physician diagnosed the individual with Opioid Dependence and Amphetamine Dependence. At the end of the initial 30-day residential program, the individual concluded that he still needed additional treatment and voluntarily continued residential treatment for an additional 30 days. *Id.* at 32. The individual credibly testified that he has experienced no relapses since completing his treatment and he has not illegally used any controlled substances since immediately prior to his commencement of treatment in July 2014. *Id.* at 50-51.

Although the individual agreed to be evaluated by a DOE consultant psychiatrist or psychologist, the LSO elected not to refer the individual for an evaluation. Instead, with respect to the Guideline H security concerns alleged in the Notification Letter, the LSO relied upon the individual's self-disclosures in the PSI and his 2014 treatment records which the individual authorized his treatment providers to release to the LSO. *See* Ex. 3.

In anticipation of the hearing, the individual retained and was evaluated by a psychologist, who was present for the entire hearing (via telephone) and testified as the final witness, having heard the testimony of all the other witnesses. The LSO stipulated to the expertise of the individual's psychologist. Tr. at 11-12. The individual's psychologist's experience includes serving as director of program evaluation and director of training at a substance abuse residential facility; she has also performed "fitness-for-duty" forensic evaluations for government and military personnel for ten years, primarily representing employers. *Id.* at 85-86, 114-115.

The individual met with the psychologist on three occasions. The psychologist also independently interviewed the individual's wife. *Id.* at 86-87. Her evaluation included having the individual complete standardized psychological testing, as well as conducting clinical interviews with the individual. Ex. A; Tr. at 87.

The psychologist highlighted that the individual's request to extend his residential treatment for an additional 30 days (after completing in-patient detoxification followed by an initial 30-day residential program) reflected increased insight, accountability and responsibility on the part of the individual. *Id.* at 95-96. She testified that such action suggests to psychologists that an individual is willing to sacrifice in order to make the type of treatment gains that are necessary for long-term recovery and that such sacrificial behavior is an important prognostic factor in evaluating the likelihood of recidivism. *Id.* At the hearing, the psychologist noted the changes in the individual's behaviors since completing treatment: he relocated away from, and disassociated from, the social group that was or is engaging in substance abuse; he takes better care of himself in terms of sleep, diet, and work/life balance; his marriage and parenting has improved; and he has increased the use of spiritual coping. *Id.* at 101, 107-108.

The psychologist opined that while the individual has a history of methamphetamine and opiate abuse, he has satisfactorily completed a drug treatment program, is currently abstinent from such substances and has been since July 2014, and has a favorable prognosis. *Id.* at 103, 124-125. She evaluated the individual's aftercare regimen, which varied from that recommended by his treatment providers, and concluded that the individual's aftercare has been appropriate and sufficient. *Id.* at 99-101. She opined that the individual has a low risk of relapse, which she testified is the lowest risk possible, as the profession does not recognize "no risk" as a category. *Id.* at 102-103. She concluded that, although the individual has a history of substance abuse, he currently suffers from no psychological pathology. *Id.* at 126.

The record establishes that the individual demonstrated an intent not to abuse drugs in the future. Ex. 8 at 32. He has acknowledged his drug issues, has established a pattern of abstinence, and has made changes in his life (such as moving and disassociating from the people with whom he had previously used drugs). *Cf.* Adjudicative Guidelines at Guideline H ¶ 26(b)(3). Further, he has successfully completed a drug treatment program, has engaged in adequate aftercare recommendations, and received a favorable prognosis from a duly qualified mental health professional. *Cf.* Adjudicative Guidelines at Guideline H

¶ 26(d). For the reasons set forth above, I find that the individual has resolved the security concerns associated with Guideline H arising from his drug involvement.

**C. Administrative Judge Evaluation of Evidence and Findings of Facts:  
Guideline E (Personal Conduct)**

As described above, the individual began illegally using controlled substances as a teenager and continued such illegal use until he commenced substance abuse treatment in July 2014. Ex. 10. During this period of drug use, the individual completed and certified QNSPs in both 2009 and 2010 on which he falsely denied both having illegally used controlled substances and having illegally possessed or purchased any controlled substances within the prior seven-year period. Ex. 7. On his 2010 QNSP, he also falsely denied having ever illegally used any controlled substances while possessing a security clearance. *Id.* The individual acknowledges that these denials were false. *Id.*; Tr. at 17-18.

Deliberately providing false information during the access authorization process raises legitimate and significant security concerns under Guideline E. Adjudicative Guidelines at Guideline E ¶ 15, 16(a) and (b). However, even with respect to security concerns arising under Guideline E, the Adjudicative Guidelines recognize the appropriateness of considering mitigating conditions in assessing the likelihood of a recurrence of the disqualifying behavior and in determining whether a person is presently an acceptable security risk. *See* Adjudicative Guidelines at ¶ 2(a).

In this situation, the individual successfully avoided detection of his illegal substance use, even by those with whom he spent considerable time. At the hearing, his wife and his father-in-law each credibly testified that they were unaware of the individual's substance use until he disclosed his decision to seek treatment. Tr. at 56, 75.

The individual sought treatment shortly after his earlier employment with a DOE contractor had terminated, the result of a change in his then-employer's contract with DOE. *See* Ex. 8. Subsequent to the individual completing his treatment program, he was offered employment by a different DOE contractor in a position that also required him to possess a security clearance. When the individual completed his QNSP in 2015 in conjunction with his new employment and his application for a new security clearance, he disclosed his prior illegal use of controlled substances, his misuse of prescription medications, and his treatment for use of drugs and/or controlled substances. Ex. 7. The LSO only became aware of the individual's history of drug involvement (and prior falsifications) as a result of the individual's disclosures on his 2015 QNSP. The individual's self-report was not motivated by fear or concern that his prior denials of drug use had been discovered or were about to be disclosed, but reflected an effort to be honest and candid. This is not a situation of an employee suddenly becoming forthright after failing a random drug test or otherwise being confronted with adverse information. Voluntarily correcting one's omissions, concealments or falsifications supports mitigation of security concerns under Guideline E. *See* Adjudicative Guidelines at ¶ 2(e)(2) and at Guideline E ¶ 17(a).

All of the individual's concealments were related to his illegal use of controlled substances. The record reflects that the individual has been honest and candid with the DOE since he completed his substance abuse treatment. He has voluntarily acknowledged the underlying drug use, as well as his falsifications. The forensic psychologist testified at the hearing that the earlier denials are an aspect of the substance use disorder for which the individual has received treatment and now evidences adequate reformation and rehabilitation. Tr. at 108-110. *Cf.* Adjudicative Guidelines at Guideline E ¶ 17(d) (mitigation possible where an individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate factors that caused the untrustworthy or inappropriate behavior, and such behavior is unlikely to recur). These factors all support the mitigation of Guideline E security concerns. *See Personnel Security Hearing*, Case No. PSH-17-0045 (2017) and *Personnel Security Hearing*, Case No. PSH-17-0028 (2017).

For the reasons set forth above, I find that the individual has resolved the security concerns associated with Guideline E.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises 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 Guidelines E and H. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: January 8, 2018