

security concerns under “Guideline E: Personal Conduct” and “Guideline H: Drug Involvement” of the Adjudicative Guidelines (Guideline E and Guideline H). Ex. 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced seven numbered exhibits (Exhibits 1-7) into the record. The individual presented the testimony of six witnesses, including herself. The exhibits will be cited in this 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.²

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 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 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 mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines E and H of the Adjudicative Guidelines. Guideline E relates to security risks arising from personal conduct. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Guideline

² OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at that site.

E at ¶ 15. In citing Guideline E, the LSO stated that it relied upon the individual's admission that her co-habitant currently uses marijuana and, that between 2008 and 2013, the individual would smoke marijuana one to three times a week. Ex. 1 at 1.

Guideline H relates to an individual's drug involvement, which raises questions about an individual's reliability and trustworthiness. Guideline H at ¶ 14. In citing Guideline H, the LSO cited that the individual admitted: (1) smoking marijuana one to three times a week between 2011 and 2013; (2) giving her co-habitant \$10 to \$20 a month to purchase marijuana between 2011 and 2013; (3) giving her co-habitant \$20 to \$40 a month to purchase marijuana between 2008 and 2011; (4) smoking marijuana three to four times a week between 2008 and 2011; (5) smoking marijuana eight to ten times a month between 2001 and 2008, including purchasing the marijuana eight to ten times a month, spending between \$10 and \$40 each time; (6) driving while under the influence of marijuana three to five times between 2001 and 2003; (7) attempting to grow marijuana in 2010 or 2011; (8) trying cocaine approximately 12 times between 2004 and 2005, including purchasing it on three occasions; (9) using ecstasy three or four times between 2004 and 2005, including purchasing it on each occasion; (10) trying mushrooms on two occasions between 2004 and 2005, including purchasing it on each occasion; (11) illegally ingesting Vicodin on two occasions in 2007, although she did not have a prescription. Ex. 1 at 1-2.

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

IV. Findings of Fact and Hearing Testimony

The individual does not dispute the facts alleged in the Notification Letter. Tr. at 68. As such, I adopt the factual allegations in the Notification Letter as my factual findings in this case. The individual presented five character witnesses, including her co-habitant, her grandmother, her uncle, her supervisor, and her best friend's mother.

The individual testified that she stopped using marijuana in 2013 because she wanted to start a "real career." Tr. at 56. She testified that she was totally honest on her QNSP and during the PSI in July 2017. *Id.* at 61, 70. When she was hired at DOE, the individual asked her co-habitant to not have marijuana in their home and to not smoke marijuana in her presence. Tr. at 58. She testified that he acquiesced to her requests, but she still smelled marijuana's odor on her co-habitant occasionally. *Id.* at 68. The individual asserted that her co-habitant stopped smoking marijuana the day she had her PSI, in July 2017. *Id.* at 66. She continued that they are more active together and their relationship has grown since they both stopped smoking marijuana. *Id.* at 74. The individual declared that marijuana will not "affect my future, because it's completely out of my life and [his] life." *Id.* at 63. She concluded that her co-habitant's first reason for ceasing his marijuana usage was to "help her career," but after he researched its physical side effects and determined that his use could affect their ability to have children, he decided that he will never smoke marijuana again. *Id.* at 60, 64.

The individual's grandmother and her uncle testified that the individual is very trustworthy and reliable, and that whenever the family needs help, the individual is the first to respond. Tr. at 15, 19, 49, 50, 52. The best friend's mother confirmed their assessment. *Id.* at 23, 24. All three of these witnesses also testified that the individual is honest. *Id.* at 14-15, 24, 25, 48. The individual's supervisor testified that the individual is trustworthy and very honest. *Id.* at 32, 33. She continued

that the individual has not attempted to violate any terms of her current work situation, where she must be escorted everywhere she goes. *Id.* at 46.

The individual's co-habitant testified that they have been residing together since 2008. *Tr.* at 81. He continued that the individual asked him to stop smoking around her when she got her job at the DOE facility. *Id.* at 83. The co-habitant stated that, after the individual asked him not to have marijuana in their house nor to smoke around her, he would smoke in the side yard or back yard and hid his marijuana from her. *Id.* at 83, 84. The co-habitant asserted that, even when he was using marijuana, he would only smoke a little directly before going to sleep. *Id.* at 93. The co-habitant testified that, immediately after the individual's PSI in July 2017, he stopped smoking marijuana and has not used any illegal drugs since that date. *Id.* at 85. He confirmed the individual's assertion that their relationship is better and that they have more in-depth conversations. *Id.* at 95. The co-habitant claimed that will never use marijuana again. *Id.* at 96. He confirmed the individual's testimony that he researched the side effects of marijuana and was appalled by what he ascertained, including that it can cause anxiety, depression, increased risk for heart attack or stroke, and fetal cell deformities. *Id.* at 88, 89. The co-habitant concluded, "her life is my life and vice versa." *Id.* at 90.

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'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. Guideline E

As an initial matter, I note that legitimate security concerns exist as a result of the individual's personal conduct. Associating with a person involved in criminal activity can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline E at ¶ 16(g). Furthermore, engaging in activities which, if known, could affect the person's personal, professional, or community standing can also raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See Id.* at 16(e)(1). Here, the individual admitted that her co-habitant used marijuana and that, until 2013, she used marijuana with him.

Guideline E provides that the following conditions (in relevant part) may mitigate security concerns: (1) 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; (2) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and (3) association with person 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. Guideline E at ¶ 17(c), (e), and (g).

In the present case, the individual has readily admitted that she used marijuana with her co-habitant between 2008 and 2013. Given the passage of time, almost five years prior to the hearing date, I find that the individual's illegal drug use happened so long ago that the Guideline E mitigating factor described in ¶ 17(c) is applicable to the individual, as her past marijuana use no longer casts doubt upon her current reliability, trustworthiness or judgment. In addition to the passage of time, the individual ceased marijuana use, and in fact all illegal drug use, prior to her being hired by the DOE contractor. It is evident to me that her desire to mature and have a "real career" outweighed her desire for illegal drugs. Accordingly, the individual has demonstrated mitigation of the concerns, pursuant to Guideline E at ¶ 17(e).

Further, the individual acknowledged that she asked her co-habitant to stop using marijuana in her presence when she started working at the DOE, thinking that would be sufficient to satisfy any concerns the DOE might have regarding her illicit drug involvement. When the individual and her co-habitant determined that associating with a person who continued to use marijuana would cause an issue with her security clearance, the individual's co-habitant immediately ceased smoking marijuana. His cessation of use occurred nearly eight months prior to the date of the hearing. I found the individual and her co-habitant to be honest and credible. In fact, after reading the record but prior to hearing any of the testimony, I was impressed with the individual's honesty in answering the questions addressed to her in a complete and truthful manner. Further, the co-habitant appeared extremely remorseful that his conduct was affecting the individual's ability to have her security clearance granted. Both the individual and co-habitant testified that, after he ceased using marijuana (which occurred as soon as he realized his usage would affect her ability to get a security clearance), he researched the physical repercussions of his long-term marijuana use and was surprised by the results. They both testified that neither of them will use marijuana again, due both to the potential impact on her security clearance and to the physical ramifications of its use. Accordingly, the individual has demonstrated mitigation of the concerns, pursuant to Guideline E at ¶ 17(g).

B. Guideline H

I note that legitimate security concerns exist as a result of the individual's illegal drug involvement. The illegal use of controlled substances can raise questions about an individual's reliability and trustworthiness. Guideline H at ¶ 24. Here, the individual admitted that she had used marijuana, cocaine, ecstasy, and mushrooms. Guideline H at ¶ 25(a).

Guideline H provides that the following conditions (in relevant part) may mitigate security concerns: (1) the behavior happened so long ago that it does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and (2) the individual acknowledges her drug involvement and has established a pattern of abstinence, including disassociation from drug-using associates. Guideline H at ¶ 26(a) and (b).

As stated above under Guideline E, the individual has admitted that she used illegal drugs, primarily marijuana, between 2001 and 2013, stopping nearly five years prior to the hearing. Consequently, I find that the individual's prior illegal drug use happened so long ago that it no

longer casts doubt upon the individual's reliability, trustworthiness or judgment. Accordingly, the individual has demonstrated mitigation of the concerns, pursuant to Guideline H ¶ 26(a). Further, with the cessation of use of marijuana by her co-habitant, the individual is no longer associating with a drug user. Given the individual's abstinence from illegal drug use and her successful efforts to end illegal drug use by her co-habitant, I find that the Guideline H mitigating factor described in ¶ 26(b) is applicable to the individual.

For these reasons, I find that the individual has resolved the security concerns under Guidelines E and H.

VI. 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 of 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 under Guidelines E and H. 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 under the regulations set forth at 10 C.F.R. § 710.28.

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