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

In the Matter of: Personnel Security Hearing)
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Filing Date: April 15, 2019) Case No.: PSH-19-0022
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Issued: July 17, 2019

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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."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 should not be granted access authorization.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In October 2017, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) in which he disclosed that he had previously used marijuana, but had stopped doing so in 2016 and had not used any other illegal drugs or controlled substances in the last seven (7) years. DOE Ex. 5 at 27–28. However, a background investigation conducted by the Office of Personnel Management (OPM) revealed that the Individual had used marijuana as recently as August 2017, and that the Individual had failed to disclose his use of cocaine and hallucinogenic mushrooms on the e-QIP. *See* DOE Ex. 4 at 1 (summarizing the adverse information obtained by OPM through the background investigation).

The Local Security Office (LSO) conducted a personnel security interview (PSI) of the Individual on July 31, 2018. DOE Ex. 6 at i. During the PSI, the Individual admitted that he had intentionally omitted the last date on which he had used marijuana, the fact that numerous members of his family used marijuana in his presence, and his prior use of cocaine and hallucinogenic mushrooms. *See* DOE Ex. 3 at 1. As the information provided by the Individual in the PSI presented unresolved

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.

security concerns, the LSO informed the Individual, in a notification letter dated March 21, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline E, Personal Conduct” and “Guideline H, Drug Involvement.” DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing concerning the matter. At the hearing, the LSO introduced seven (7) numbered exhibits (DOE Ex. 1–7) into the record. The Individual introduced one (1) lettered exhibit (Ind. Ex. A) into the record and presented the testimony of two (2) witnesses, including himself. I received a transcript of the proceedings (Tr.) on July 16, 2019.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) as one of the reasons for denying the Individual a security clearance. DOE Ex. 1 at 1. Conduct involving questionable judgement, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Adjudicative Guidelines at ¶ 15. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. *Id.* The Notification Letter asserted that: the Individual admitted during the PSI that he last used marijuana in 2017 despite listing July 2016 as the date he last used marijuana on the e-QIP; the Individual admitted during the PSI that he used hallucinogenic mushrooms and cocaine and failed to disclose those facts on the e-QIP; and the Individual admitted that his father regularly used marijuana in his presence. DOE Ex. 1 at 1. The Individual’s apparent deliberate omission of relevant facts from a personnel security questionnaire and the Individual’s association with persons involved in criminal activity justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 28(a), (g).

The LSO also cited Guideline H (Drug Involvement) in the Notification Letter as a reason for denying the Individual a security clearance. DOE Ex. 1 at 2. The illegal use of controlled substances and the use of other substances that cause physical or mental impairment can raise questions about an individual’s reliability and trustworthiness, both 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. Adjudicative Guidelines at ¶ 24. The Notification Letter asserted that: the Individual admitted that he used marijuana, with declining frequency, from 2008 to August 2017; the Individual admitted to purchasing and using illegal hallucinogenic mushrooms on two (2) occasions; and the Individual admitted to using cocaine from April 2012 to February 2013. DOE Ex. 1 at 2. The Individual’s substance misuse and illegal possession of a controlled substance justify the LSO’s invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c).

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

The Individual executed the e-QIP on October 23, 2017, including a certification that the contents of the e-QIP were true, complete, and correct to the best of his knowledge and belief. DOE Ex. 7 at 48. The Individual disclosed on the e-QIP that he began using marijuana in May 2009, and represented that he had stopped using marijuana in July 2016 because of the costs of purchasing marijuana, the adverse health consequences, and his desire “never [to] do anything to risk [his] job or clearance.” *Id.* at 27–28. The Individual indicated that he had not illegally used any other drugs or controlled substances in the prior seven (7) years. *Id.* at 28.

OPM initiated a background investigation of the Individual as part of the security investigative process in February 2018. *Id.* at 54. During an interview with an OPM investigator, the Individual stated that he most recently used marijuana in August 2017. *Id.* at 56. The Individual also admitted to having used cocaine on two (2) occasions in 2012, and to having used hallucinogenic mushrooms on three (3) occasions from 2012 to 2013. *Id.* The Individual indicated that he had intentionally omitted this information from the e-QIP because he was worried that it would negatively affect his ability to obtain a security clearance. *Id.* at 57. At least four (4) individuals interviewed by the OPM investigator concerning the Individual's background told the OPM investigator that the Individual had used illegal drugs. *Id.* at 61, 65, 69, 71.

During the PSI, the Individual reported that he began using marijuana in high school, and increased his marijuana use when he began attending college. DOE Ex. 6 at 11–13. The Individual confirmed that he had last used marijuana in August 2017. *Id.* at 16. The Individual also confirmed that he had used hallucinogenic mushrooms and cocaine. *Id.* at 19–20, 42–43, 45. The Individual reported that his use of marijuana and hallucinogenic mushrooms adversely affected his academic performance to the point that he transferred to a different university. *Id.* at 28–29.

The Individual reported that when he was in college he purchased marijuana approximately once every three (3) months with his roommate, and purchased hallucinogenic mushrooms on two (2)

occasions. *Id.* at 14, 25. The Individual indicated during the PSI that he was aware that it was illegal to purchase the marijuana and hallucinogenic mushrooms, but that he “wasn’t perturbed really . . . since it was natural . . . [and] didn’t seem as bad as most.” *Id.* at 25–26.

According to the Individual, “everyone on [his] dad’s side of the family” and four (4) friends who he saw almost every week used marijuana, including in his presence. *Id.* at 33–34. The Individual estimated that his father smoked marijuana three (3) times each week and, when asked how often his father used illegal drugs in his presence, reported that “recently, it’s been every time.” *Id.* at 36.

During the PSI, the Individual explained that he had lied about his drug use on the e-QIP because he “didn’t want it to affect [his] professional life . . . [and he] thought it’d be a better lie [sic] than to be honest.” *Id.* at 35. The Individual added that he thought that “being associated with mushrooms and cocaine would just sound really criminal [and] [he did not] feel like [] a criminal as a person.” *Id.* at 53. The Individual said that lying on the e-QIP was a mistake, and that he had no intention to falsify, omit, or misrepresent information on any government forms in the future. *Id.* at 49, 61.

At the hearing, a friend of the Individual who sees the Individual approximately weekly testified as to the Individual’s honesty and kindness towards others. Tr. at 18–19. The Individual’s friend testified that he and the Individual had used marijuana together in the past, but that he had not observed the Individual use marijuana since at least 2017. *Id.* at 24. The Individual’s friend also testified that he had observed the Individual refuse marijuana offered to him during social events in friends’ homes. *Id.* at 21.

The Individual testified that he did not contest any of the allegations in the Notification Letter, except for the allegation that his father smokes marijuana in front of him every time that he visits. *Id.* at 35, 44–45. With respect to his drug use, the Individual testified that he felt remorse after minimizing his drug use on the e-QIP and “came clean” after being asked about his drug usage during an interview with an OPM investigator. *Id.* at 33. The Individual confirmed that he had used marijuana once or twice each month until August 2017, when he applied for his current position with the DOE contractor. *Id.* at 36. The Individual also confirmed that he had used hallucinogenic mushrooms on three (3) occasions, and cocaine on two (2) occasions. *Id.* at 39–40.

The Individual offered into evidence a signed statement in which he committed to abstain from drug involvement in the future and acknowledged that any future drug use on his part would be grounds for revocation of any access authorization he might hold at that time. Ind. Ex. A. However, the Individual expressed that he intended to return to using marijuana in the future if it was federally decriminalized or if he does not obtain a security clearance. Tr. at 49. The Individual testified that his father has not used marijuana in his presence for approximately one (1) year, and that his friends who use marijuana will leave the room to smoke when he is present. *Id.* at 42, 47–48.

The Individual expressed that he did not believe that his drug use was “the real issue at hand,” and that he perceived DOE as more concerned about his untruthfulness. *Id.* at 33. When asked why DOE should trust him now after he previously lied on the e-QIP, the Individual said that he could not see why DOE should do so. *Id.* at 48. However, the Individual promised that he “would not do anything to harm another person or harm the United States of America or its secrets or anything to that effect.” *Id.* at 50.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony 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. The security concerns at issue center on whether the Individual's untruthfulness in the security investigative process, association with drug-using individuals, and prior drug use himself, reflect a lack of reliability, trustworthiness, and ability to protect classified or sensitive information. After due deliberation, I find that the Individual should not be granted a DOE security clearance. Specifically, I cannot find that granting the Individual a security clearance would not endanger the common defense and security, or that doing so would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The relevant evidence and my specific findings in support of this decision are discussed below.

A. Adjudicative Guideline E Considerations

The Individual admitted to lying about his drug usage on the e-QIP to increase his chances of obtaining a security clearance and also to associating with drug-using individuals. However, the Individual asserted during the hearing that he revealed the prior drug usage that he had omitted from the e-QIP before being confronted with the facts, and that his father had not used marijuana in his presence for approximately one (1) year. These assertions implicate two (2) potentially mitigating conditions under Guideline E.

An individual may mitigate security concerns related to omissions or misrepresentations under Guideline E if the Individual "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Adjudicative Guidelines at ¶ 17(a). In this case, the Individual waited approximately four (4) months from the date that he submitted his e-QIP to reveal to the OPM investigator the information that he had omitted from the e-QIP. Moreover, in light of the numerous individuals who informed the OPM investigator about the Individual's prior drug use, it is plausible that the Individual considered the likelihood that the full extent of his drug usage would come to light during the investigation in deciding to make his disclosure to the OPM investigator. OHA has previously found an individual's disclosure of misrepresentations on an e-QIP neither prompt nor in good faith when the Individual waited months to make the disclosure and did so under circumstances in which it was likely that the derogatory information would come to light through the investigative process whether or not the individual made the disclosure. *See Personnel Security Hearing*, OHA Case No. PSH-18-0070 at 7 (2019) (finding that an individual's disclosure of his father's undocumented immigration status to an OPM investigator after his father had been arrested was neither prompt nor in good faith). Similarly, I find that the circumstances under which the Individual disclosed his misrepresentation to the OPM investigator in this case do not satisfy the mitigating condition set forth at paragraph 17(a) of Guideline E.

An individual may mitigate security concerns related to associating with persons involved in criminal activity if the involvement has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgement, or willingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 17(g). Here, regardless of the Individual's father's

frequency of drug use, the Individual testified during the hearing that he associates with drug-using friends, including the friend who testified on his behalf during the hearing. The Individual's willingness to continue associating with drug-using individuals, even after learning that doing so could affect his eligibility for a security clearance, reflects an unwillingness on the part of the Individual to conform to rules applicable to those who hold security clearances. Accordingly, I find this mitigating condition inapplicable.

Having found that the Individual failed to demonstrate that any of the mitigating conditions under Guideline E are applicable in this case, I conclude that the Individual failed to resolve the security concerns asserted by the LSO under Guideline E.

B. Adjudicative Guideline H Considerations

The Individual acknowledged his prior drug use and association with drug-using individuals, but asserted that he would not use drugs again while in a position that required him to hold a security clearance, and that his father had not used marijuana in his presence in approximately one (1) year. The assertions implicate two (2) potential mitigating conditions under Guideline H: (1) 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 judgement; and, (2) the individual demonstrates that he or she has disassociated from drug-using associates, changed or avoided the environment in which drugs were used, and provided a signed statement of intent to abstain from all drug involvement and acknowledged that any future involvement is grounds for revocation of national security eligibility. Adjudicative Guidelines at ¶ 26(a)–(b).

The Individual began using illegal drugs when he was a minor and he smoked marijuana on a bi-weekly basis until at least August 2017. The Individual's drug use spanned multiple phases of his life, and is not obviously attributable to any particular individual or environment. The only evidence that the Individual provided to support his claimed abstinence from marijuana was his own testimony and the testimony of a friend who sees the Individual approximately once each week. In light of the Individual's previous untruthfulness concerning his drug usage, and the Individual's heavy evidentiary burden under the Part 710 regulations, I find this testimony insufficient to show that he has ceased using illegal drugs and that the circumstances have changed so significantly that he is unlikely to use illegal drugs again. Moreover, the Individual continues to associate with friends with whom he previously used marijuana, and those friends have recently used marijuana in the Individual's presence at social gatherings.

For the aforementioned reasons, the Individual failed to demonstrate that any of the mitigating conditions under Guideline H are applicable in this case. I therefore conclude that the Individual failed to resolve the security concerns asserted by the LSO under Guideline H.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guidelines E and H of the Adjudicatory Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals