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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: February 24, 2021 ) Case No.: PSH-21-0020  
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Issued: May 3, 2021

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and 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 should not be granted access authorization.

**I. BACKGROUND**

On June 3, 2019, the Individual submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO) initiating an application for a DOE security clearance.<sup>2</sup> Exhibit (Ex.) 8 at 57. The Individual’s QNSP disclosed his history of three incarcerations. His first incarceration occurred in 1988, when he served a 30-day sentence for Distribution of Marijuana (Felony). Ex. 8 at 49. His second incarceration occurred in 2007, when he served a 30-day sentence (with 12 months of probation) for Misdemeanor Harassment and Misdemeanor Unlawful Use of a Telephone.<sup>3</sup> Ex. 8 at 50. His third incarceration occurred from October 2009 until May 2012, when he served 2 years and nine months of a five-and-a-half-year sentence for Assault with Intent to Commit a Felony, Tampering with Evidence, and Criminal Damage to Property. *Id.* at 46–48.<sup>4</sup>

<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.

<sup>2</sup> By signing this QNSP, the Individual certified that all the information he provided therein was true, complete, and correct to the best of his knowledge and belief. Ex. 8 at 57.

<sup>3</sup> The Individual was also charged with a third misdemeanor count: Negligent Use of a Firearm. This charge was dismissed. Ex. 8 at 50.

<sup>4</sup> The Individual indicated on the QNSP that he was incarcerated from 2009 to 2012. Ex. 8 at 48. However, the Individual later indicated that he had misunderstood how to answer the question and that the term of incarceration to

In a section of the QNSP related to unlawful drug use, the Individual checked a box marked “No” in answer to a question concerning whether he had intentionally engaged in the misuse of prescription drugs during the prior seven years. *Id.* at 52.

The Office of Personnel Management (OPM) conducted a background investigation of the Individual. On June 26, 2019, an OPM investigator (the Investigator) conducted an Enhanced Subject Interview (ESI) of the Individual. Ex. 9 at 73. The Individual told the Investigator that he was arrested and charged with Distribution of Marijuana in 1988 after his roommate gave him marijuana to sell because he was out of work and had no money for food. *Id.* at 75. The Investigator’s Report states that the Individual further claimed that he had “never used illegal drugs,” that his 1988 arrest was his “only involvement with illegal drugs,” and that he never had “an interest in THC.”<sup>5</sup> Ex. 9 at 76. The Individual further reported that his 2007 arrest occurred after he sent his first wife (Ex-Wife One) angry text messages after hearing that she was in a bar without her wedding ring.<sup>6</sup> Ex. 9 at 75. The Individual claimed that he subsequently divorced Ex-Wife One but maintained an on-again-off-again romantic relationship with her. *Id.* at 74. He claimed that the October 2009 arrest occurred after Ex-Wife One cancelled a date with him and told him that she was going out with another man. *Id.* According to the Individual, he “became angry” and went to Ex-Wife One’s home. *Id.* at 74–75. The Individual’s daughter refused the Individual admission to the home after which he “tapped” his handgun against a window of the home causing the window to break. *Id.* at 75. The Individual then went to the home of a neighbor who was a law enforcement officer and self-reported the incident. *Id.*

The Investigator interviewed the Individual’s second wife (Ex-Wife Two) on July 1, 2019. Ex. 9 at 87. According to Ex-Wife Two, to whom the Individual was married from 2015 to 2017, the Individual was prescribed Hydrocodone in 2016 for back pain. *Id.* Ex-Wife Two reported that her marriage to the Individual “began to fall apart” in May 2017 after the Individual began acting in an “emotionally abusive” manner after combining whiskey with his Hydrocodone. *Id.* Ex-Wife Two explained that she decided to divorce the Individual after an incident in which her 14-year-old son intervened while the Individual was “yelling and berating her and accusing her of cheating.” *Id.* Ex-Wife Two stated that she feared that the conflict would escalate to physical violence between her son and the Individual. *Id.*

The Investigator interviewed the Individual’s daughter (the Daughter) on July 16, 2019. *Id.* at 96. According to the Daughter, her mother, Ex-Wife One, divorced the Individual because of his drug use. *Id.* at 97. The Daughter believed that the Individual was using methamphetamine and “seemed to go off the deep end after he realized that [Ex-Wife One] was not going to come back to him.” *Id.* The Daughter provided her account of the events that led to the Individual’s 2009 arrest. According to the Daughter, she was at Ex-Wife One’s home when the Individual knocked on the door, pulled out a handgun, and said that he was there to kill Ex-Wife One. *Id.* The Individual’s daughter asserted that she physically prevented the Individual from entering the home while Ex-Wife One retrieved a firearm and hid in a bathroom with the Individual’s granddaughter. *Id.* The

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which he was sentenced for the 2009 offense began in May 2010 and ended with his release in May 2012. *See* Ex. 9 at 75.

<sup>5</sup> THC is the primary active ingredient in marijuana.

<sup>6</sup> The Individual reported that police also charged him with Felon in Possession of a Firearm when they arrested him for this offense because they discovered firearms in his vehicle when making this arrest. *Id.* at 75–76.

Daughter reported that the Individual unsuccessfully attempted to gain entrance to the home by breaking a window and then fled before law enforcement arrived. *Id.* The Daughter opined that the Individual was under the influence of drugs during the incident. *Id.* The Daughter also reported that the Individual's personality had changed since his release from prison, that he was now a "happy go lucky" person, and that she had resumed associating with him. *Id.*

On September 13, 2019, the LSO issued a letter of interrogatory (LOI) to the Individual. Ex. 7 at 1. The Individual responded to the LOI on September 20, 2009. Ex. 7 at 23. In his response, the Individual admitted to having misused Hydrocodone by consuming it with whiskey to better control his back pain. *Id.* at 16. The Individual acknowledged that he had "probably not" responded correctly to the QNSP question concerning misuse of prescription drugs because "having even [one] drink while taking prescription medication is considered misuse." *Id.* at 20. The Individual represented that he last combined alcohol with Hydrocodone in 2016. *Id.* at 5, 15. The Individual, responding to specific questioning, admitted that he had used marijuana (on a weekly basis) from 1988 to 1989, cocaine from 1987 to 2007, and methamphetamine (on a weekly basis) from 2007 to 2009. *Id.* at 12-13.

On February 7, 2020, the LSO issued a notification letter to the Individual informing him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a summary of security concerns (SSC) attached to the notification letter, the LSO explained that the derogatory information raised security concerns under the Bond Amendment as well as Adjudicative Guidelines E (Personal Conduct) and J (Criminal Conduct).

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. 2. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing that I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from seven witnesses: the Individual's supervisor from 2018 to 2019 (Former Supervisor), the Individual's current supervisor (Current Supervisor), a co-worker of the Individual (Co-Worker), a management official in the Individual's chain of command (Senior Manager), the Individual's second-level manager (Second-Level Manager), the spouse of the Individual's Co-Worker (Co-Worker's Spouse), and the Individual. *See* Transcript of Hearing, Case No. PSH-21-0020 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9. The Individual submitted eleven exhibits marked as Exhibits A through K.

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

The LSO cited 50 U.S.C. § 3343(c)(1)(A) (Bond Amendment) as the first basis for denying the Individual access authorization. Ex. 1 at 1.

"[A]bsent an express written waiver . . . the head of a Federal agency may not grant or renew a security clearance . . . for a covered person who [] has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year." 50 U.S.C. § 3343(c)(1)(A). The SSC cited the fact that the Individual was sentenced to imprisonment for a term of five years and six months and served two years of that sentence. Ex. 1 at 1. The LSO's invocation of the Bond Amendment is justified by the Individual's two-year incarceration. 50 U.S.C. § 3343(c)(1)(A).

The LSO cited Guideline E of the Adjudicative Guidelines as the second basis for denying the Individual access authorization. Ex. 1 at 1–2. “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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s failure to disclose his misuse of Hydrocodone on the QNSP and the Individual’s statements during the ESI indicating that he had never used illegal drugs, despite his previous marijuana, cocaine, and methamphetamine use. Ex. 1 at 1–2. The LSO’s allegations that the Individual deliberately omitted relevant facts from the QNSP and provided false or misleading information during the ESI justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline J of the Adjudicative Guidelines as the final basis for denying the Individual access authorization. Ex. 1 at 2. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s history of arrests which led to his three incarcerations, the Individual’s admissions that he had used marijuana, cocaine, and methamphetamine on a regular basis and the Individual’s admission that he misused Hydrocodone. Ex. 1 at 2. These allegations justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

### **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 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. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

### **IV. THE HEARING**

Prior to the Hearing, the Individual submitted eight exhibits showing that the Individual is an exemplary employee. Exs. A, B, C, D, E, F, H, and I. He also submitted four letters of reference generally attesting to his good character, trustworthiness, and reliability. Exs. C, D, E, and F. He submitted a credit report indicating that his credit score significantly exceeds the national average. Ex. G.

At the Hearing, the Individual contended that the security concerns raised by the LSO under Guideline E are mitigated by the presence of the condition set forth in § 17(c) of the Adjudicative Guidelines, and that the security concerns raised under Guideline J (and the Bond Amendment) are mitigated by the presence of the conditions set forth at §32(a) and §32(d). Alleging that the QNSP question concerning drug use was worded ambiguously, the Individual contended that his answer to it was truthful. The Individual also contended that he did not intentionally provide false information about his drug use during the ESI because he misinterpreted the Investigator's questioning, and because he would have lacked an incentive to provide false information because his illegal drug use had occurred in the distant past.

The Former Supervisor testified on the Individual's behalf at the Hearing. He interacted with the Individual at work daily for approximately two years and testified that the Individual was "one of the best employees [he] ever had." Tr. at 14. The Former Supervisor opined that the Individual demonstrated excellent judgment and reliability, scrupulously adhered to rules and regulations, and behaved trustworthily in the workplace. *Id.* at 13–15.

The Current Supervisor, who interacts with the Individual daily at work and occasionally socializes with him on weekends, testified at the Hearing that the Individual was an excellent employee who demonstrates "top notch" reliability and that he trusted the Individual to manage work when he was not physically present. Tr. at 24–28. He stated that he intends to recommend the Individual for his position when he retires. *Id.* at 28–30; *see also* Ex. H; Ex. I (reflecting the Individual's performance ratings)

The Co-Worker testified at the Hearing that he sees the Individual daily at work and that they carpool together approximately three hours roundtrip each day. *Id.* at 36–37. The Co-Worker also testified that he sees the Individual socially outside of work. *Id.* at 37. The Co-Worker testified that the Individual informed him that he had misunderstood the Investigator's questioning concerning his drug use because the environment in which he was interviewed was noisy. *Id.* at 39, 43–44. The Co-Worker further testified that the Individual was a reliable and trustworthy employee and that the Co-Worker viewed him "as a brother." *Id.* at 40–42.

The Senior Manager testified at the Hearing that he hired the Individual and observed him at the workplace daily. *Id.* at 48–49. The Senior Manager testified that he believed that the Individual was "a good employee" and that the Individual had never tested positive for drug use on a random test or committed any security violations. *Id.* at 50. The Senior Manager expressed his belief that the Individual complied strictly with rules and regulations and was one of his most reliable employees. *Id.* at 50–51. Because of his position, the Senior Manager opined that he would know if the Individual had engaged in misconduct in the workplace. *Id.* at 51–52.

The Second-Level Manager testified at the Hearing that he works with to the Individual daily, and that the Individual is "very professional" and exercises good judgment. Tr. at 57-58. The Second-Level Manager has never known the Individual to fail to comply with rules and regulations or to

have committed security breaches. *Id.* at 58–60. The Second-Level Manager also observed that the Individual is one of his most reliable employees. *Id.* at 58–59.

The Co-Worker’s Spouse testified that she was a friend of the Individual and that, prior to the COVID-19 pandemic, the Individual came to her home periodically for social visits. Tr. at 67–68. The Co-Worker’s Spouse testified that she had always known the Individual to be reliable and trustworthy, and that she found him to be a kind and caring person. *Id.* at 68–69.

During his Hearing testimony, the Individual claimed that his 2007 arrest occurred when he discovered that Ex-Wife One was going to bars and dancing with other men. Tr. at 79–80. The Individual reported that he then sent Ex-Wife One “mean and hateful texts” and that a text in which he asked her why she was “playing games” and said that he “only play[s] to win” led to his arrest. *Id.* at 81. According to the Individual, the prosecution reduced the felony charges to misdemeanors. *Id.* at 81–83; *see also* Ex. J (reflecting that the Individual was charged with a misdemeanor offense); Ex. K (reflecting that the Individual pleaded guilty to two misdemeanors and that a third charge was dismissed).

The Individual testified that he and Ex-Wife One attempted to reconcile after their divorce, however Ex-Wife One frequently broke off dates with him which he perceived as her toying with him. Tr. at 84–85. According to the Individual, his 2009 arrest occurred after he came to Ex-Wife One’s home and observed her with another man. *Id.* at 85–86. The Individual testified that he “freaked out,” pulled out a gun, and said that he was going to shoot the other man. *Id.* at 86. The Individual testified that he took his gun with him out of his vehicle after observing the other man’s truck in the driveway when he arrived. *Id.* at 111. The Individual testified that the gun was unloaded and that he broke a glass door in the process of exiting the home. *Id.* at 86. The Individual further testified that he had brandished the gun because he “wanted the attention” and to show Ex-Wife One how badly she was hurting him. *Id.* at 112. He claimed he had no intention to hurt anyone. Tr. at 112. The Individual testified that he pleaded guilty to the charges filed in connection with this incident and was sentenced to five years and six months of imprisonment but earned an early release because of good behavior. *Id.* at 88–89

The Individual testified that he engaged in a substantial rehabilitation program during this incarceration. He successfully: completed a twelve-month therapeutic program (where he learned “the right way to handle things”), completed two vocational training programs of four months and six months, earned his grade equivalency diploma (GED), completed a parenting course, completed an anger-management course, and attended Alcoholics Anonymous meetings. *Id.* at 89–93. The Individual reported learning through his imprisonment that life was not about himself, but rather about what he could do for others, and that he has control over his own actions but not those of other people. *Id.* at 93.

The Individual attributed his criminal conduct related to Ex-Wife One in part to abandonment issues resulting from his difficult upbringing. *Id.* at 93–94. The Individual testified that he was strongly attached to Ex-Wife One’s family and felt that his life was falling apart when the marriage began to deteriorate. *Id.*

The Individual testified that he stopped using marijuana and cocaine when Ex-Wife One became pregnant in the late 1980s because he did not want drugs to be part of their children’s lives. Tr. at 94–95. The Individual testified that he had not used cocaine since that time. *Id.* at 95. The Individual

explained that he had misworded his response to the LOI, in which he represented that he stopped using cocaine “until 2007,” and that he meant to say that he stopped using cocaine in the 1980s but began using methamphetamine in 2007. *Id.* at 95–96. The Individual said that he began using methamphetamine in 2007 because he was distraught over the adverse events occurring in his life. *Id.* at 97. The Individual testified that once he began using methamphetamine, the drug “had him.” *Id.* He denied any illegal drugs since his arrest in 2009 and testified that he intends to permanently abstain from illegal drug use. *Id.* at 98.

The Individual testified that he had not tried to deceive the Investigator during the ESI. Tr. at 99–100. The Individual testified that the Investigator “asked me if I used drugs” and that he replied by stating: “I hate drugs. No I don’t.” Tr. at 99. The Individual claimed that he did not intend to deceive the Investigator because he believed that the Investigator was asking only whether he was presently using illegal drugs.<sup>7</sup> *Id.* at 100, 102, 116–17. The Individual did not recall the Investigator asking him whether his marijuana distribution was his only involvement with illegal drugs. *Id.* at 117–19.

The Individual explained that he did not disclose his use of alcohol with Hydrocodone on the QNSP because he did not understand this practice to be something he was required to disclose. *Id.* at 102–03, 105–06. The Individual indicated that, when he completed the QNSP, he did not believe that it was wrong for him to have used alcohol while taking Hydrocodone, and he testified that he only realized that DOE might object to the behavior after receiving the LOI.<sup>8</sup> *Id.* at 120–22, 127. The Individual did not recall whether his doctor advised him against combining alcohol and Hydrocodone. *Id.* at 123.<sup>9</sup>

## V. FINDINGS OF FACT

I find the Individual’s testimony that he failed to disclose his use of alcohol with Hydrocodone on the QNSP because he did not consider the concurrent use of both substances to constitute “misuse” to be credible, in light of the ambiguous nature of the word “misuse.”

I find that the Individual has not shown that his failure to disclose his past illegal drug use to the Investigator was unintentional or due to a misunderstanding. I find the Individual’s explanation for this omission, that he believed that the Investigator was only asking him about his 1988 arrest for Distribution of Marijuana and whether he currently used drugs, too implausible to credit. The

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<sup>7</sup> The Individual testified that he knew of co-workers who frequently used marijuana who had been told that they could obtain a security clearance if they took one year to “clean up,” and therefore he had “no intentions to pull the wool over anybody’s eyes” to hide his much less recent drug use. Tr. at 100–01.

<sup>8</sup> The Individual testified that he was prescribed the Hydrocodone for back pain and that he consumed alcohol with Hydrocodone once or twice weekly depending on the severity of the back pain in order to sleep and not to “get high.” Tr. at 104–06. The Individual indicated that he had not used Hydrocodone since 2016 and that he did not intend to resume using Hydrocodone in the future because he was effectively treating his back pain through physical therapy, ibuprofen, and avoiding heavy lifting. *Id.* at 108–10.

<sup>9</sup> The Individual responded “of course” in answer to a question on the LOI regarding whether he had been advised against combining alcohol and Hydrocodone, and indicated that his doctor had provided him with this guidance. Ex. 7 at 6. The Individual testified at the hearing that he did not know why he had provided that answer in response to the LOI. Tr. at 123.

Investigator's Report unequivocally states that the Individual "has never used illegal drugs" and that the Individual indicated that his only involvement with illegal drugs occurred in 1988 when he attempted to sell marijuana. Ex. 9 at 76. The Investigator also noted that Individual specifically reported, during the ESI, that future marijuana use on his part was unlikely because he never had an interest in marijuana. Finally, the Investigator's Report states that the Individual indicated, during the ESI, that his illegal drug use "did not have any impact on work, finances, school, home, family or friends." Ex. 9 at 76. The Investigator's Report and the Individual's implausible explanation concerning the Report, convince me that the Individual deliberately concealed the true extent of his illegal drug involvement during his ESI and then was less than candid about this concealment during his Hearing testimony.

It is uncontested that the Individual was convicted of Marijuana Distribution, pleaded guilty to misdemeanor charges related to text messages that he sent to Ex-Wife One in 2007, pleaded guilty to multiple offenses in connection with his 2009 altercation at Ex-Wife One's home, and used illegal drugs, including regular use of methamphetamine from 2007 to 2009. The Individual completed vocational training, earned his GED, and attended therapy, AA, and anger management counseling while incarcerated. The Individual has also established a highly positive work record. There is no indication in the record that the Individual has been arrested or charged with any offense since his release from prison in 2012.

## **VI. ANALYSIS**

### **A. Guideline E (Personal Conduct)**

The Adjudicative Guidelines provide the following seven conditions which may mitigate security concerns under Guideline E:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) 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;
- (d) 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons 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.



*Id.* at ¶ 17(a)–(g).

The mitigating condition set forth at § 17(a) is not present. The Individual did not fully disclose his history of illegal drug use until confronted with the information in the LOI. Moreover, the Individual continued to exhibit a lack of candor during the Hearing concerning his failure to disclose his illegal drug use during his ESI.

The mitigating condition set forth at § 17(b) is not applicable to the facts of this case because the Individual has not asserted that his omissions occurred upon the advice of legal counsel or of a person with professional responsibilities for advising or instructing the Individual specifically concerning security processes.

The mitigating condition set forth at § 17(c) is partially present. The Individual provided a reasonable explanation for his failure to disclose his combination of Hydrocodone with alcohol on the QNSP and was forthcoming about the frequency and manner of his combination of the substances in response to the LOI and at the Hearing. However, I find the explanation that the Individual offered at the Hearing for his failure to disclose his illegal drug use to the Investigator to be less than candid and therefore reflective of a present defect in his judgment, trustworthiness, and reliability. Either the Individual intentionally misled the Investigator or the inferences that he drew from the Investigator's questions were so unreasonable and self-serving that he cannot be relied on to bring forward derogatory information in the future. In either case, I find that the Individual's failure to disclose his illegal drug use to the Investigator and his continuing lack of candor at the Hearing call into question his present judgment and reliability. Therefore, the mitigating condition set forth at § 17(c) does not resolve all of the security concerns raised under Guideline E.

The mitigating condition set forth at § 17(d) is also partially present. After the Individual failed to disclose the full extent of his illegal drug use during his ESI, he acknowledged the full extent of his illegal drug use in his response to the LOI, after being asked a large number of highly specific questions. However, the questionable justifications he offered at the Hearing for his omissions during the ESI raise the concern that the Individual's lack of credibility may recur and casts continuing doubt upon his reliability, trustworthiness, and judgment.

The mitigating condition set forth at § 17(e) is not applicable to the facts of this case because the LSO has not alleged that the Individual is vulnerable to exploitation, manipulation, or duress. The mitigating condition set forth at § 17(f) is not applicable in this case because the LSO has not relied upon unsubstantiated allegations or information from an unreliable source. The mitigating condition set forth at § 17(g) is not applicable because the LSO has not raised security concerns related to the Individual's association with persons involved in criminal activity.

Having concluded that none of the mitigating conditions under Guideline E are sufficiently present to fully mitigate the security concerns raised under Guideline E by the Individual's failure to disclose his illegal drug use to the Investigator, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

**B. Guideline J (Criminal Conduct)**

An individual may mitigate security concerns under Guideline J if:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) [there is] no reliable evidence to support that the individual committed the offense; and,
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

*Id.* at § 32(a)–(d).

The mitigating condition set forth at § 32(a) is not present. Over eleven years have passed since the last act of criminal conduct by the Individual cited by the LSO in the SSC, and the Record is replete with evidence showing that he has made significant strides towards rehabilitation, including his excellent work performance, his completion of job training and education while incarcerated as well as his full compliance with the terms of his parole; however, the gravity of the offense that led to the Individual's most recent incarceration continues to cast doubt upon the his judgment and reliability. These doubts are reenforced by evidence in the Record indicating that, as recently as 2017, the Individual fell back into a pattern of behavior that led him to commit criminal activity on at least two past occasions, even after the Individual's efforts to achieve rehabilitation. Specifically, as indicated by the Investigator's Report, Ex-Wife Two reported that, in 2017, while the Individual was combining alcohol and Hydrocodone, he came to suspect that she was engaging in infidelity, yelled at and berated her, and on at least one occasion caused her to fear that he would "get physical" with her minor son.<sup>10</sup>

Despite all of his efforts at rehabilitation, including anger management counseling while in prison, the problems that caused the Individual to commit the criminal activity for which he was incarcerated reemerged and contributed to the Individual's divorce from Ex-Wife Two in 2017. While the Individual was not charged with a crime as a result of his behavior towards Ex-Wife Two, the Individual's recurrent pattern of jealousy, substance misuse, and lack of emotional control cause me to question whether the underlying issues that led him to commit criminal conduct are still present. In light of the evidence that the Individual has not shown that he has sufficiently changed the patterns of behavior that led him to commit criminal conduct in the past, I am not confident that he will refrain from criminal conduct in the future or that his judgment and reliability are unimpaired.

The mitigating condition set forth at § 32(b) is not applicable to the facts of this case because there is no evidence that the Individual was pressured or coerced into committing criminal conduct. The mitigating condition set forth at § 32(c) is not applicable to the facts of this case as the Individual does not dispute that the committed the criminal conduct alleged by the LSO.

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<sup>10</sup> In his response to the LOI, the Individual indicated that he "never touched" Ex-Wife Two but admitted that, after consuming alcohol and Hydrocodone, he yelled at her and told her to leave their home due to his jealousy and his perception that she was engaging in marital infidelity. Ex. 7 at 16. The Individual went on to concede that his misuse of Hydrocodone contributed to his divorce and described his divorce from Ex-Wife Two as "a casualty of my first wife." *Id.*

The mitigating condition set forth at § 32(d) is partially present in this case. The Individual obtained vocational training, earned his GED, and attended therapy, AA, and anger management counseling while incarcerated, all of which contribute towards mitigation. In addition, he has recently established an exemplary employment record. However, as described above, the investigative record related to the Individual's behavior towards Ex-Wife Two, and his continuing lack of candor at the Hearing, suggests that he has not freed himself from the patterns of behavior that led to his criminal conduct and casts too much doubt on his emotional control, stability, and judgment for me to conclude that granting him a security clearance will not endanger the common defense and security and will be clearly consistent with the national interest.

For these reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

### **C. Bond Amendment**

The Individual did not deny the fact that he served a term of imprisonment exceeding one year. The Individual is consequentially disqualified from holding a DOE Access Authorization under the Bond Amendment. 50 U.S.C. § 3343(c)(1)(A). As the Individual has not satisfactorily mitigated the criminal conduct for which he was incarcerated that raised security concerns under Guideline J, an exception to disqualification under the Bond Amendment is not appropriate in this case. *See Personnel Security Hearing*, OHA Case No. PSH-19-0005 at 9 (2019) (finding that an exception to disqualification under the Bond Amendment is not warranted where the conduct which led to an individual's incarceration raised unmitigated security concerns under Guideline J).

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guideline E and Guideline J of the Adjudicative Guidelines and the Bond Amendment. 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 resolved the security concerns asserted by the LSO. 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.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals