



(“Summary of Security Concerns”), the LSO explained that the derogatory information raised security concerns under Guideline E of the Adjudicative Guidelines.

In response, the Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eight numbered exhibits (Exs. 1-8) into the record. The Individual submitted no exhibits and offered the testimony of four witnesses, including his own.

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

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 1.<sup>2</sup> Guideline E states that “[c]onduct 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 or sensitive information.” Adjudicative Guidelines at ¶ 15. Special emphasis is placed on “any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* A condition that could raise a security concern includes “[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . [or] determine national security eligibility or trustworthiness.” *Id.* at ¶ 16(a). The admission by the Individual that he deliberately provided false response to several questions in the QNSP justifies the LSO’s invocation of Guideline E.

## **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) (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 or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of

---

<sup>2</sup> Numerous exhibits offered by DOE contain documents with printed page numbers that are inconsistent with the pagination of the exhibit workbook. This decision cites to exhibits based on the pagination of the combined exhibit workbook and not page numbers printed on documents contained within exhibits.

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 did not dispute the Summary of Security Concerns which recounted his failure to provide truthful answers on his June 28, 2019, QNSP. Ex. 2 at 7-8. Within the QNSP, the Individual certified that, in the preceding seven years, he had not used illegal drugs, had not purchased illegal drugs, nor ever been asked to seek counseling or treatment as a result of using illegal drugs. Ex. 8 at 59, 60.

During the subsequent ESI, the Individual disclosed to the investigator that he had in fact used and purchased marijuana during the relevant time frame, and he had received counseling for his use of marijuana in 2011. Ex. 8 at 127-28. By way of providing more detail, he told the investigator that he last used and purchased marijuana in 2014. *Id.* at 127-28. He claimed that he did not report his marijuana use because he never got into trouble for it and did not think he had to list it. *Id.* The Individual stated that he would not use it in the future because he no longer has an interest in it. *Id.* He failed to list his purchase history in the QNSP because he no longer uses marijuana, he never “[got] in trouble over it,” and it did not affect his ability to do his job. *Id.* Finally, the Individual told the investigator that he did not disclose his prior marijuana related therapy because he did not like talking about his past marijuana use. *Id.* He explained that he saw the therapist because his parents made him after his mother discovered marijuana in his property when he still lived with his parents. *Id.* at 129.

The investigator also asked the Individual about a 2014 alcohol-related auto accident he disclosed in his QNSP. *Id.* at 125. As part of his response, the Individual said that he was interviewed by law enforcement but could not remember details from the questioning. *Id.* He disclosed that he was taken to a hospital after the accident. *Id.* While at the hospital, he provided a blood sample that was later tested for the presence of alcohol. *Id.*

The record indicates that after the ESI concluded, an investigator obtained a police report documenting a 2015 auto accident involving the Individual. *Id.* at 148; *compare id.* at 122, *with id.* at 147. According to the police report, the Individual stated that he had consumed alcohol and “three joints of marijuana.” *Id.* at 148.

The record also contains information that the Individual submitted with his request for the present administrative hearing. Ex. 2 at 7. Therein, he stated his regret for “omitting” information regarding his prior marijuana use referenced above. *Id.* He stated that he “was completely wrong to not disclose information because [he] was not proud of things that had happened.” *Id.* He explained that he did not realize the gravity of his failure to disclose his past marijuana use. *Id.* He further explained that his “response was driven from fear and shame not from a desire to mislead investigators[.]” *Id.* He also stated that this conduct did not define his character and ability to be trustworthy and responsible. *Id.*

## V. HEARING TESTIMONY

At the hearing, the Individual presented testimony from his work colleague and former mentor, his girlfriend, and his grandmother. All testified that he was honest, reliable, and trustworthy. Tr. at 21, 31-32, 32-34, 46. In addition, the work colleague testified that the Individual conscientiously followed all work-related security rules. *Id.* at 23. The Individual's grandmother, who previously carried a "level of clearance," testified to the Individual's strong character and reliability. *Id.* at 32-33, 38. She highlighted how the Individual selflessly moved into her home to care for her and his grandfather when his grandfather fell ill.<sup>3</sup> *Id.* at 32-34. The Individual's girlfriend testified that the Individual takes his job very seriously, and he is honest with her, his friends, and his family. *Id.* at 48-49.

The Individual provided testimony regarding his failure to provide accurate information during the security process. The Individual testified that he failed to include his marijuana use within the last seven years because he thought "by the time the paperwork [got] in [it would have been] seven years [since his last use]." *Id.* at 55. However, the process moved faster than he expected. *Id.* He also testified that his 2014 marijuana use was less frequent than his 2011 use and he therefore did not remember it. *See id.* Then he later testified that he failed to disclose the information because he was afraid. *Id.* at 56. He did not want all his hard work to be overshadowed by past conduct that he no longer engages in. *Id.* He was afraid he would lose his job if he answered the questions truthfully. *Id.* When asked why he failed to list his marijuana use but not a 2014 alcohol-related offense or previous psychological counseling, he stated that he "overlooked" reporting the marijuana use. *Id.* at 57. When asked to clarify the apparent contradiction in his explanation that he consciously decided to omit the information due to fear as opposed to an oversight or memory lapse, the Individual confirmed that he chose to withhold the information. *Id.* at 57, 65. However, he denied that his conduct was an attempt at deceit. *Id.* at 60.

The Individual recognized that he "made a misstep in the process," and he stated that he regretted his decision. *Id.* at 56. He was especially regretful that his conduct placed his ability to support his family in jeopardy. *Id.* at 70. He testified that he has never caused a security infraction and follows all security guidelines. *Id.* at 62. He expressed his love for this country, and he recognized "that there must be great scrutiny taken with the security process as those who are deemed fit to hold a clearance must be of exceptional character so that the security of the nation can be preserved." *Id.* at 69. He testified that, going forward, he would be honest and not withhold any information regardless of how he felt so that his character would not be in question. *Id.* at 70-71.

Finally, the Individual testified that his last use of marijuana coincided with the alcohol-related automobile incident that precipitated the 2015 police report. *Id.* at 74.

---

<sup>3</sup> The Individual's grandmother has since moved in with him, upon his request after his grandfather passed away, and the Individual continues to care for her. Tr. at 34-35.

## VI. ANALYSIS

The following relevant conditions could mitigate a security concern under Guideline E:

(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;

Adjudicative Guidelines at ¶ 17.

I find that the Individual has not mitigated the security concerns under Paragraph 17(c) listed above. The Individual's conscious decision to provide inaccurate answers to direct questions during the investigation process to avoid disclosing information that could raise a security concern does not constitute a minor offense. *See* Adjudicative Guidelines at ¶ 2(i) ("any incident of intentional material falsification or purposeful non-cooperation with security processing is of significant concern").

I also find that the Individual has failed to present sufficient evidence for me to conclude that he has mitigated the concern under the remaining basis listed in Paragraph 17(c) above. The clearance process has certainly impacted the Individual's life and his understanding of the importance of providing candid, truthful information during the security clearance process. I have considered the testimony of his witnesses who believe that he is trustworthy. I have also considered the fact that the Individual disclosed his deceitful conduct during the ESI. However, the preceding information must be balanced against the fact that the Individual chose to provide false information at the very beginning of his clearance process, which occurred only eighteen months before the hearing. Furthermore, at the hearing, the Individual had trouble acknowledging that he intentionally provided false information; instead, he wavered by characterizing his conduct as a mere oversight before admitting it was a conscious, intentional decision.<sup>4</sup> He only confirmed the latter after being confronted with the inconsistency. Finally, I am concerned by the lack of candor evinced by his decision to not disclose his marijuana use in relation to his 2015 auto accident. He withheld the information twice: on his QNSP and during the ESI. Had the investigator not subsequently obtained the related police report, the record would be devoid of these omissions. The significance of the offense, the relatively short passage of time, and the Individual's persistent inability to fully acknowledge that his conduct was calculated to deceive, compels me to conclude that he has not mitigated the concern due to the passage of time, frequency, or circumstances surrounding his conduct.

---

<sup>4</sup> This same difficulty is illustrated by the Individual's statements during the ESI contrasted with the explanations he provided in his written request for an administrative hearing. *See supra*.

Turning to the Paragraph 17(d) mitigating factor, for the same reasons as above, I do not find that he has presented sufficient evidence to demonstrate that he has acknowledged his conduct and taken sufficient action to alleviate the stressors, circumstances, or factors that contributed to his untrustworthy and inappropriate behavior. Consequently, I do not find that the Individual has resolved the Guideline E security concerns.

## **VII. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals