

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: November 18, 2021) Case No.: PSH-22-0008
)
)
_____)

Issued: February 14, 2022

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The Individual completed a Questionnaire for National Security Positions (QNSP) on May 30, 2019, in connection with seeking access authorization. Ex. 7 at 43. He disclosed that he used cocaine “intermittently” and stimulants on a weekly basis from 2016 to 2017. *Id.* at 34–37. He reported that he pursued treatment in 2017 and had not used illegal drugs “for over a year and a half.” *Id.* at 37. However, he admitted that he had been arrested for possession of a controlled substance and drug paraphernalia within the past month. *Id.* at 32. He denied that alcohol had negatively impacted him personally or professionally in the prior seven years or that law enforcement had ever intervened because of his alcohol consumption. *Id.* at 37. He also denied experiencing any financial delinquencies in the prior seven years. *Id.* at 39–40.

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.

An Office of Personnel Management (OPM) investigator interviewed the Individual on August 27, 2019, as part of OPM's background investigation of the Individual. Ex. 8 at 1.² During the interview, the Individual indicated that his 2019 arrest for possession of a controlled substance occurred after a law enforcement officer observed a crack pipe in the center console of the Individual's parked vehicle and found traces of crack cocaine upon searching the vehicle. *Id.* at 3.³ The Individual denied that he had used illegal drugs since November 2017. *Id.* at 3–4.

The OPM investigator confronted the Individual with evidence that he failed to disclose an arrest for Driving Under the Influence of Alcohol (DUI) in 2000 on the QNSP. *Id.* at 4–5. The Individual represented that the omission was unintentional. *Id.* at 5. He admitted to having been a “heavy drinker” in the past, but represented that he had changed his lifestyle after attending treatment for his drug use in 2017 and no longer consumed alcohol. *Id.* at 4–5. The OPM investigator also confronted the Individual with a credit report which showed numerous delinquent financial accounts the Individual failed to disclose on the QNSP. *Id.* at 5–6; *see also* Ex. 9 at 90–94 (reflecting the delinquent financial accounts reported on the Individual's credit report).

On June 18, 2020, the Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI). Ex. 5. In his response, the Individual admitted to having: consumed alcohol heavily until June 2017; experimented with marijuana, cocaine, methamphetamine, ecstasy, and hallucinogenic mushrooms; misused prescription pain medication; and, used cocaine multiple times per week from 2016 to 2017. Ex. 6 at 1, 3–4. The Individual reported that he completed court-ordered counseling following his 2019 arrest and denied that he had used illegal drugs since November 2017. *Id.* at 3–4. The Individual also represented that he no longer consumed alcohol. *Id.* at 2.

On May 19, 2021, the Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a clinical interview. Ex. 4 at 2. The Individual admitted that he relapsed into problematic alcohol consumption while travelling for work in June 2019 and became intoxicated or “blacked out” multiple times weekly until November 2019. *Id.* at 6. In November 2019, while participating in court-ordered counseling related to his arrest for possession of drug paraphernalia, the Individual relapsed and used cocaine. *Id.* The Individual's wife detected his relapse, and required him to make significant lifestyle changes. *Id.* at 7. The DOE Psychiatrist obtained records from the Individual's court-ordered counseling which revealed that the Individual had used cocaine, crack cocaine, and crystal methamphetamine in May 2019 and tested positive for cocaine use in November 2019. *Id.*

At the request of the DOE Psychiatrist, the Individual provided samples for laboratory testing. *Id.* at 8. The test results were negative for traces of drugs and alcohol, which the DOE Psychiatrist interpreted as strong evidence that the Individual had not used illegal drugs for three to seven days prior to the clinical interview and had not consumed alcohol on a regular, heavy basis within

² The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the first page of Exhibit 8 is marked as page 3 in one location and page 57 in another. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

³ The Individual represented to the OPM investigator that he was arrested on the first occasion that he had operated the vehicle since completing treatment and that he had not cleaned the crack pipe out of the vehicle during a lengthy period in which the vehicle was inoperable due to mechanical issues. Ex. 8 at 3.

several weeks prior to the clinical interview or binge consumed alcohol within approximately one week prior to the clinical interview. *Id.*

Following the clinical interview, the DOE Psychiatrist issued a Psychiatric Assessment (Report) in which he concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Severe, in remission under the *Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5)*. *Id.* at 9–10. The DOE Psychiatrist also found that the Individual met the diagnostic criteria for Cocaine Use Disorder (CUD), Severe, in remission under the *DSM-5*. *Id.* at 10. Additionally, in response to a question concerning whether the Individual had an emotional, mental, or personality condition that could impair his judgment, reliability, stability, or trustworthiness, the DOE Psychiatrist noted the Individual’s repeated dishonesty during the adjudication of his eligibility for a security clearance. *Id.* The DOE Psychiatrist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol until at least November 2021, permanently abstaining from cocaine, attending Alcoholics Anonymous (AA) and working its twelve-step program, joining Narcotics Anonymous (NA), and undergoing periodic drug and alcohol testing to demonstrate his sobriety. *Id.*

The LSO issued the Individual a letter in which it notified 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 letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse), and Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted nine exhibits (Ex. 1–9) and the Individual submitted four exhibits (Ex. A–D). The Individual testified on his own behalf, and offered the testimony of his AA sponsor and his wife. Hearing Transcript (Tr.) at 3. DOE offered the testimony of the DOE Psychiatrist. *Id.*

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as a basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 4. “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 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 representations on the QNSP, to the OPM investigator, and in response to the LOI that he had not used illegal drugs since 2017 and concealment of his use of cocaine and crystal methamphetamine; the Individual’s failure to disclose ten delinquent financial accounts on the QNSP; the Individual’s failure to disclose his arrest for DUI on the QNSP; and, the Individual’s longstanding misuse of alcohol and illegal drugs, reflecting an unwillingness to comply with rules and regulations. Ex. 2 at 4–6. The LSO’s allegations that the Individual deliberately omitted derogatory information that he was

required to disclose on the QNSP, concealed derogatory information that he was required to disclose from the OPM investigator and security officials, and engaged in conduct supporting a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules and regulations, justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(c).

The LSO cited Guideline G (Alcohol Consumption) as another basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 1–2. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The SSC cited: the DOE Psychiatrist’s diagnosis of the Individual with AUD, Severe, under the *DSM-5*; the Individual’s relapses after attempting to abstain from alcohol; the Individual’s admission to consuming alcohol to intoxication multiple times weekly as recently as November 2019; and the Individual’s arrest for DUI. Ex. 2 at 1–2. The Individual’s alcohol-related incidents away from work, binge consumption of alcohol, and diagnosis with AUD by the DOE Psychiatrist justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

The LSO cited Guideline H (Drug Involvement and Substance Misuse) as a third basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 2–4. “The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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 SSC cited: the DOE Psychiatrist’s diagnosis of the Individual with CUD, Severe under the *DSM-5*; the Individual’s arrest for possession of a controlled substance; the Individual’s use of cocaine while in court-ordered counseling for drug misuse in 2019; and the Individual’s admission to using a variety of illegal drugs and misuse of prescription pain medication. Ex. 2 at 2–4. The LSO’s allegations that the Individual engaged in substance misuse, illegally possessed controlled substances and drug paraphernalia, and was diagnosed with a substance use disorder by a mental health professional justify the LSO’s invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c)–(d).

The LSO cited Guideline I (Psychological Conditions) as the final basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 6–7. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychiatrist’s opinion that the Individual repeatedly failed to accurately report his drug use. Ex. 2 at 6–7. As described below, these allegations do not raise a security concern under Guideline I of the Adjudicative Guidelines. *Infra* p. 14.

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 Dep't 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. HEARING TESTIMONY

The Individual's AA sponsor, who has known the Individual for three or four years through the AA program, testified that he volunteered to sponsor the Individual approximately two years ago after the Individual revealed in an AA meeting that he had "slipped" and requested that someone volunteer to sponsor him. Tr. at 22–24. The AA sponsor testified that the Individual attends AA meetings frequently, but less than weekly. *Id.* at 25. The AA sponsor text messages the Individual on a daily basis as part of his role as the Individual's sponsor. *Id.* The AA sponsor indicated that the Individual completed the entire twelve-step program by the summer of 2020. *Id.* at 35–36. He testified that he believed that the Individual was devoted to the AA program, and cited as an example of this devotion that the Individual met him in cold weather in an unheated space under socially-distanced conditions during the early stages of the COVID-19 pandemic to continue his work on the twelve-step program without interruption. *Id.*

The Individual's wife, who has been married to him for twelve years, testified that he consumed alcohol moderately and did not use illegal drugs when they married. *Id.* at 52. She first learned of the Individual's illegal drug use in 2017 after she discovered a form that the Individual used to order drugs and questioned him about it. *Id.* at 74–75. She reported having been "shocked" to discover the Individual's illegal drug use. *Id.* at 72. She and the Individual's mother encouraged him to attend in-patient substance abuse treatment in 2017, which he did for several weeks followed by out-patient aftercare. *Id.* at 57. The Individual's wife testified that she learned that he had relapsed in 2019 while traveling for work. *Id.* at 59–61. She told him that she would not stay with him if he did not cease using illegal drugs because she would not tolerate drug use around their child, and required him to quit his job and find work closer to home so that she could monitor his behavior. *Id.*

The Individual's wife recognized that the Individual was engaged in problematic alcohol consumption when she perceived that he could not stop drinking once he started. *Id.* at 54. She testified that she last observed the Individual consume alcohol in 2017. *Id.* at 63. She believes that

the Individual has abstained from alcohol and illegal drugs for more than two years and indicated that he last disclosed using illegal drugs and alcohol to her in 2019 before taking the job with the DOE contractor. *Id.* at 53–54, 70. Since the Individual’s relapse, she has observed him decline alcohol in settings in which alcohol was served and his consistent behavior caused her to feel confident in his recovery. *Id.* at 63–64.

The Individual testified that he began engaging in problematic drinking in 2012 when he started consuming alcohol daily. *Id.* at 79. He “would just finish off whatever was available,” until he received treatment in 2017. *Id.* at 80. The Individual testified that he began seeking Adderall in 2016 while enrolled in college and discovered that he could purchase powder cocaine from drug dealers from whom he obtained the Adderall. *Id.* at 81–82. Within several months of beginning to use cocaine, the Individual was using it on a daily basis. *Id.* at 82–83.

The Individual initially sought out-patient treatment at his wife’s insistence in September 2017, but after repeatedly testing positive for illegal drugs he was referred to in-patient treatment. *Id.* at 83–84. The Individual recalled that he agreed to in-patient treatment after his wife told him that he could not remain with the family if he did not do so. *Id.* at 84. The Individual reported that he began attending AA meetings while in out-patient treatment for substance abuse in 2017, and that he attended meetings multiple times weekly beginning in December 2017 after his release from in-patient treatment. *Id.* at 87, 113. The Individual testified that he had intended to completely abstain from alcohol and illegal drugs after his release from in-patient treatment. *Id.* at 113–14.

The Individual initially testified that, in 2018, at which time he was regularly attending AA meetings, he relapsed and resumed using alcohol and illegal drugs. *Id.* at 87–88. He further testified that his cocaine addiction led him to begin purchasing crack cocaine in 2018 and, when he was unable to obtain cocaine, crystal methamphetamine. *Id.* at 85. However, he subsequently revised his testimony and claimed that he first relapsed following in-patient treatment in 2019. *Id.* at 116. The Individual hid his relapse from his wife because he feared that she would divorce him. *Id.* at 118–19. He indicated that he was not sure how his wife discovered his relapse. *Id.* at 119; *but see* Ex. 4 at 6–7 (reflecting the Individual’s statements to the DOE Psychiatrist that his wife learned of his relapse in November 2019 after observing physical symptoms of his cocaine use at home).

According to the Individual, on May 5, 2019, while returning home from a work trip, he ran out of gasoline on the highway. *Tr.* at 90. The Individual called his wife, who picked him up and drove him to obtain gasoline. *Id.* When they returned, the Individual observed law enforcement officers around the vehicle but “didn’t even know they found anything in there until they started handcuffing [him].” *Id.* at 90. The Individual admitted that law enforcement officers recovered a plastic bag containing cocaine residue from his breast pocket. *Id.* at 93. Regarding the circumstances under which the plastic bag was recovered, the Individual testified as follows:

I actually was surprised that I had that in my pocket, but I’m pretty sure I had intended [] to throw it away after leaving my vehicle, because I didn’t want to leave it in there. As far as when I last used, it would have been at some point prior to that. But it actually [] caught me off-guard just that I even had it in my pocket. And I think I -- as best I can recall, you know, under oath, I probably saw it there and said,

you know what, I better not have that in there, I'm going to put in my pocket and throw it away, and I forgot to throw it away.

Id. at 94–95; *see also* Ex. 4 at 7 (summarizing notes from the Individual's court-ordered drug treatment indicated that he admitted to having used crystal methamphetamine the day of his arrest).

The Individual entered into a plea agreement pursuant to which he paid a fine and attended court-ordered drug treatment. Tr. at 89; *see also* Ex. B at 1–3 (reflecting the plea agreement and disposition of the charges against the Individual). The Individual testified that he participated in weekly one-on-one and group sessions and periodic drug testing. Tr. at 101; *see also* Ex. A (reflecting that the Individual began receiving court-ordered treatment in June 2019 and was discharged after completing the program in April 2020).

The Individual represented that his response to the LOI in which he indicated that he had last used illegal drugs in November 2017 was an error and not an intentional misrepresentation. Tr. at 96. The Individual admitted that he had used crystal methamphetamine and crack cocaine several weeks prior to completing the QNSP in May 2019, and that he had inaccurately represented that he last used illegal drugs in 2017. *Id.* at 97–98. The Individual likewise admitted to having provided incorrect information during the interview with the OPM investigator concerning the last date on which he used illegal drugs. *Id.* at 100–01.

The Individual testified that he has refrained from alcohol and illegal drug use since November 22, 2019, and intends to abstain from alcohol and illegal drug use for the rest of his life. *Id.* at 109–10. To support his recovery, he regularly attends AA meetings, has participated in NA meetings, and does not carry a credit card or significant amounts of cash to avoid experiencing temptation to relapse. *Id.* at 102–03. The Individual acknowledged that he and his wife participate in parties and social events where alcohol is served, but denied experiencing cravings to consume alcohol. *Id.* at 119–20. He indicated that he refused alcohol at these social occasions even when he was actively consuming alcohol because he was trying to hide his drinking from his wife, and that he has not disclosed to any of the people he sees at these parties that he is abstaining from alcohol. *Id.* at 120. The Individual also represented that he would agree to take monthly or more frequent drug tests in the future if doing so would address the security concerns. *Id.* at 105, 111; *see also* Ex. D (reflecting that the Individual tested negative for illegal drugs in January 2022).

The DOE Psychiatrist opined that the information provided by the Individual during the hearing demonstrated rehabilitation from his AUD and CUD. *Id.* at 141. He testified that he had recommended two years of abstinence from alcohol for the Individual because of the Individual's significant risk of relapse as indicated by his prior difficulties in abstaining from illegal drugs and alcohol. *Id.* at 135. Although he recommended that the Individual attend NA, the DOE Psychiatrist opined that NA meetings were not as critical to his recovery as participating in AA and noted that the two programs share many similarities in their approach to supporting recovery. *Id.* at 137. The DOE Psychiatrist indicated that, provided that the Individual's self-reporting was accurate, he would not recommend that the Individual undergo additional alcohol or drug testing going forward. *Id.* at 138–39. The DOE Psychiatrist indicated that he perceived the Individual to be at a higher risk of relapse than the average person, but that his risk of relapse would be lower if "he continues in the vein of rehabilitation that he has been." *Id.* at 147.

Regarding whether the Individual had a psychological condition that could impair his judgment, reliability, stability, or trustworthiness, the DOE Psychiatrist testified that he believed that highlighting the Individual's untruthfulness was useful for the LSO's security staff to consider in adjudicating the Individual's case. *Id.* at 141–42. He indicated that he had not diagnosed the Individual with a condition under the *DSM-5* as a result of his dishonesty. *Id.* at 143.

V. FINDINGS OF FACT

The Individual consumed large quantities of alcohol on an approximately daily basis from 2012 to 2017. Tr. at 79–80; Ex. 4 at 5. He continued to consume alcohol while receiving outpatient substance abuse treatment beginning in June 2017. Ex. 4 at 5. He received in-patient alcohol treatment from November 29, 2017, to December 15, 2017, and was diagnosed with AUD, Severe, under the *DSM-5*. *Id.* The Individual began attending AA meetings in December 2017 and continued to do so regularly as of the date of the hearing. Tr. at 22–23, 25, 87, 113.

The Individual relapsed following treatment and resumed consuming alcohol between February and June 2019. Ex. 4 at 6; Tr. at 87–88, 116. He binge consumed alcohol multiple times weekly until at least November 2019. Ex. 4 at 6. The Individual obtained an AA sponsor in November 2019 and worked the twelve-step AA program, completing the twelve steps in the summer of 2020. Tr. at 35–36. The Individual is in daily contact with his AA sponsor via text messaging. *Id.* at 25. The DOE Psychiatrist diagnosed the Individual with AUD, Severe, and recommended that the Individual continue participating in the AA program and undergo random alcohol testing. Ex. 4 at 9–10. The Individual did not comply with the DOE Psychiatrist's recommendations for alcohol testing.

The Individual experimented with various illegal drugs in his youth from 1996–2000. Ex. 6 at 3. He enrolled in college in 2013 and began purchasing Adderall without a prescription. Ex. 4 at 5; Tr. at 81. Beginning no later than the summer of 2016, the Individual started purchasing powder cocaine. Tr. at 81. After several months, the Individual used cocaine on a daily basis. *Id.* at 82–83. He continued to use cocaine while receiving outpatient substance abuse treatment beginning in June 2017. Ex. 4 at 5. He received in-patient substance abuse treatment from November 29, 2017, to December 15, 2017, and was diagnosed with CUD, Severe, under the *DSM-5*. *Id.*

The Individual relapsed following treatment and resumed using cocaine between February and May 2019. Ex. 4 at 6; Tr. at 87–88, 116. The Individual began purchasing crack cocaine and crystal methamphetamine during this period. *Id.* at 85–88. On May 5, 2019, the Individual was arrested, and law enforcement officers recovered a crack pipe from his vehicle and a plastic bag containing cocaine residue from his breast pocket. Ex. B at 8. The Individual entered into a plea agreement pursuant to which he was ordered to pay a fine and attend a drug treatment program. *Id.* at 1–3. The Individual began the court-ordered treatment on June 21, 2019. Ex. A. The Individual tested positive for cocaine use during his participation in the court-ordered treatment program. Ex. 4 at 6. In November 2019, the Individual's wife detected physical signs of the Individual's cocaine use and threatened to divorce him if he did not stop using illegal drugs. *Id.* at 6–7.

The DOE Psychiatrist diagnosed the Individual with CUD, Severe, under the *DSM-5*. *Id.* at 10. The DOE Psychiatrist recommended that the Individual join NA and undergo monthly drug testing. *Id.* The Individual obtained one drug test, which was negative for traces of controlled substances, on January 10, 2022. Ex. D.

On May 30, 2019, the Individual completed the QNSP and certified that its contents were true, complete, and correct to the best of his knowledge and belief. Ex. 7 at 43. The Individual falsely claimed on the QNSP that he had not used illegal drugs since 2017. *Id.* at 36–37. The Individual lied when he told the OPM investigator on August 27, 2019, that he had not consumed alcohol or used illegal drugs since November 2017. Ex. 8 at 5. In his June 19, 2020, response to the LOI, the Individual falsely claimed that he had not used any illegal drugs since November 2017. Ex. 6 at 3–4. The Individual falsely told the DOE Psychiatrist that he was not using illegal drugs at the time of his arrest for possession of drug paraphernalia. Ex. 4 at 6–7, 9. The Individual falsely claimed during the hearing that his response to the LOI concerning his illegal drug use was an unintentional error. Tr. at 96.⁴

VI. ANALYSIS

A. Guideline E

The LSO's allegations that the Individual withheld derogatory information from the QNSP, was untruthful regarding his use of illegal drugs, and demonstrated an unwillingness to comply with rules and regulations through his misuse of alcohol and use of illegal drugs justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(c). The Individual asserted that some of his omissions were unintentional, that he had demonstrated transparency with respect to his drug use despite prior untruthfulness, and that he was committed to complying with rules and regulations in the future. The Adjudicative Guidelines provide 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

⁴ The Individual indicated that he last used cocaine in 2017 in response to three separate questions on the LOI, including claiming that his “conscious decision since recovery in 2017 has been and will continue to be, to live completely drug and alcohol free.” Ex. 6 at 4. It is inconceivable that the Individual's responses were typographical errors in light of the consistency and vehemence of his responses, particularly considering his other documented falsehoods concerning his use of illegal drugs.

- 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.

Adjudicative Guidelines at ¶ 17(a)–(g).

The Individual did not make prompt, good-faith efforts to disclose his untruthfulness regarding his drug and alcohol use. Almost two years elapsed between the Individual's untruthfulness on the QNSP regarding his drug and alcohol use and his admission to that effect to the DOE Psychiatrist, during which time the Individual persisted in falsely denying drug and alcohol use since 2017 to the OPM investigator and in response to the LOI. The Individual's testimony that he was not intentionally untruthful in his response to the LOI, and that he was surprised to have a plastic bag containing drug residue in his pocket during his May 5, 2019, arrest despite using crystal methamphetamine earlier that day, shows that he is still not prepared to fully acknowledge the extent of his untruthfulness and derogatory conduct. Therefore, I find the first mitigating condition under Guideline E inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is not present because the Individual did not claim to have acted on the advice of counsel or another representative in making his untruthful statements. *Id.* at ¶ 17(b). The third mitigating condition is inapplicable because the Individual's untruthfulness concerned topics of critical importance to his suitability to hold access authorization, occurred throughout the investigative process, and was not the product of unique circumstances. *Id.* at ¶ 17(c).

Although the Individual has taken positive steps to resolve the drug and alcohol abuse that formed the basis for most of his untruthfulness, I am not convinced that he is likely to prioritize truthfulness over his own self-interest if he perceives the two to be at odds in the future. The Individual cited the support of his AA sponsor, progress working the twelve steps of the AA program, and controls put in place by his wife following his November 2019 relapse as critical to his recovery. All these positive influences were in place when the Individual provided false information in his response to the LOI in June 2020. Moreover, as noted above, the Individual denied that he intended to deceive the LSO with his response to the LOI during his hearing testimony and sought to minimize his conduct in connection with his May 2019 arrest. As the Individual's untruthfulness persisted even after making positive life changes, and the Individual did not fully acknowledge that untruthfulness at the hearing, I am not convinced that the positive changes cited by the Individual are sufficient to resolve the concerns regarding his untruthfulness. *Id.* at ¶ 17(d).

The fifth mitigating condition is not applicable because the Individual has not established that he is at reduced risk of manipulation or duress. He did not offer evidence that his family, friends, or colleagues were aware of his substance abuse problems or that he could not be manipulated by the threat of disclosing this information. Moreover, he repeatedly hid his alcohol consumption and

illegal drug use from his wife because he feared that she would divorce him. I am concerned that he would place himself at risk of manipulation by attempting to hide a relapse in the future, rather than seek the necessary help, out of fear of losing his wife. Thus, the fifth mitigating condition under Guideline E is inapplicable. *Id.* at ¶ 17(e).

The sixth mitigating condition is inapplicable because the LSO did not receive derogatory information concerning the Individual from an unreliable source. *Id.* at ¶ 17(f). The final mitigating condition does not apply because the LSO did not identify association with persons engaged in criminal conduct as a basis for its determination that the Individual is ineligible for a security clearance. *Id.* at ¶ 17(g).

The Individual has demonstrated an extensive pattern of untruthfulness and minimization of his conduct that persisted even after the Individual made positive changes to address his substance abuse. The Individual's dishonesty and lack of candor when he perceives himself to be at risk is inconsistent with the obligations of a security clearance holder. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

The DOE Psychiatrist's diagnosis of the Individual with AUD, the Individual's binge consumption of alcohol, and the Individual's arrest for DUI justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d). The Individual represented that he had abstained from alcohol since November 2019 and was effectively managing his AUD with support from his AA sponsor and wife. An individual can mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d).

The passage of over two years since the Individual's last self-reported consumption of alcohol, during which time the Individual was administered one PEth test which was negative for traces of regular, heavy alcohol consumption, and was in close contact with his AA sponsor, provides some evidence that his alcohol-related misconduct is unlikely to recur. However, the Individual's self-reported abstinence from alcohol is of minimal weight in light of his repeated untruthfulness during

the adjudication of his eligibility for a security clearance. Moreover, the Individual binge consumed alcohol for six months or more in 2019 while participating in AA, and hid his alcohol consumption from his wife and social acquaintances. Considering the Individual's unreliability in reporting his own substance abuse, and the lack of alcohol testing to support the Individual's claims, I am unsure as to when he last consumed alcohol. Accordingly, I cannot conclude that so much time has passed that the Individual's alcohol consumption does not cast doubt on his current reliability, trustworthiness, or judgment, or that he has established a pattern of modified consumption or abstinence in accordance with treatment recommendations. Thus, I find the first, second, and fourth mitigating conditions under Guideline G inapplicable. *Id.* at ¶ 23(a)–(b), (d).

The third mitigating condition is inapplicable because of the Individual's prior relapse following treatment. *Id.* at ¶ 23(c).

Although the DOE Psychiatrist opined that the Individual has substantially complied with his treatment recommendations and that the Individual's AUD is in sustained remission, I do not share the DOE Psychiatrist's confidence in the Individual's self-reported period of abstinence or ability of the Individual's wife and AA sponsor to detect his relapses. In the absence of the alcohol testing recommended by the DOE Psychiatrist, I cannot determine the period of the Individual's abstinence from alcohol. As the DOE Psychiatrist premised his opinion upon the Individual's self-reporting, I assigned reduced evidentiary weight to the DOE Psychiatrist's assessment that the Individual had demonstrated rehabilitation. Thus, I find that none of the mitigating conditions under Guideline G are applicable and that the Individual has not resolved the security concerns asserted by the LSO.

C. Guideline H

The Individual's significant history of substance abuse and the DOE Psychiatrist's diagnosis of the Individual with CUD justify the LSO's invocation of Guideline H. *Id.* at ¶ 25(a), (c)–(d). The Individual asserted that he has avoided using illegal drugs since November 2019 and has applied the skills he has learned through AA to aid his recovery. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline H if:

- (a) 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 judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Id. at ¶ 26(a)–(d).

The first two mitigating conditions under Guideline H are not applicable because I cannot confidently determine when the Individual last used illegal drugs. The Individual tested negative on one drug test immediately following the DOE Psychiatrist's evaluation and a second within a few days of the hearing. These two tests provide too incomplete of a picture of the Individual's behavior to corroborate his claims as to his last use of illegal drugs. Moreover, the Individual's credibility to self-report his own illegal drug use is significantly undermined by his frequent dishonesty during the investigation of his eligibility for a security clearance. I am likewise not confident in the Individual's wife's ability to detect his illegal drug use. The Individual's wife was present when he was arrested in May 2019 after a crack pipe was discovered in his car and a plastic bag with cocaine residue was found in his pocket, and yet she apparently did not realize that he relapsed into using illegal drugs until six months later. A person capable of overlooking such obvious signs of drug use is not a reliable source of information on the Individual's drug use or a check on his behavior. Besides the Individual's success at hiding his illegal drug use from his wife for significant periods of time in the past, it is apparent that he would be motivated to do so at present out of fear that she would divorce him if she learned of a relapse. Thus, I find the first two mitigating conditions under Guideline H inapplicable. Adjudicative Guidelines at ¶ 26(a)–(b).

The third mitigating condition under Guideline H is inapplicable because the Individual was not prescribed prescription drugs after a severe or prolonged illness. *Id.* at ¶ 26(c). The fourth mitigating condition under Guideline H is not applicable because the Individual relapsed following his 2017 in-patient drug treatment program and continued to use illegal drugs while participating in court-ordered drug treatment. *Id.* at ¶ 26(d).

The Individual has self-reported a significant period of abstinence from illegal drugs, but provided limited objective evidence in the form of drug test results. In light of the Individual's extensive prior drug use, relapses during and after treatment, successful concealment of his drug use from his wife for long periods of time, and untruthfulness regarding his drug use during the investigative process, I cannot confidently determine the length of the Individual's abstinence from illegal drugs or conclude that he will not relapse again in the future. Thus, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

D. Guideline I

The DOE Psychiatrist clarified during the hearing that he had not intended to communicate in his Report that the Individual had a psychological condition, and instead wished to assist the LSO by identifying instances in which he found the Individual to have been untruthful. As the DOE Psychiatrist clarified that he did not believe that the Individual had a psychological condition that could impair his judgment, reliability, or trustworthiness, and the DOE Psychiatrist's Report was the only derogatory information cited by the LSO in the SSC under Guideline I, I find that the security concerns under Guideline I are resolved.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, G, and H of the Adjudicative Guidelines. After considering all 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals