

The Office of Personnel Management (OPM) conducted a background investigation of the Individual. Ex. 10 at 11. OPM's investigation revealed that the Individual had failed to disclose the full extent of his drug use, that he had illegally purchased CBD products containing THC, that he had voluntarily entered treatment for drug use, and that he underwent a substance abuse evaluation following his arrest for several offenses in 2018. *See* Ex. 4 at 3–4 (summarizing information collected during OPM's investigation). The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the information collected during the background investigation. Ex. 5. In his response to the LOI, the Individual admitted that he had intentionally omitted information from the QNSP because he feared that he would be denied access authorization. *Id.* at 26.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. 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) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 ten exhibits (Ex. 1–10). The Individual submitted three exhibits (Ex. A–C). The Individual testified on his own behalf and offered the testimony of one character witness. Hearing Transcript (Tr.) at 3, 9, 57. The LSO did not call any witnesses. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “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 alleged that the Individual: deliberately omitted information concerning his use of illegal drugs, purchase of illegal drugs, and substance abuse treatment from the QNSP; and deliberately concealed or omitted information during an interview with an OPM investigator. Ex. 1. The LSO’s allegations justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(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*

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).

An 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). An individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

The Individual signed and submitted the QNSP on September 29, 2020. Ex. 9 at 46. As part of completing the QNSP, he certified that his statements therein were “true, complete, and correct to the best of [his] knowledge and belief . . .” *Id.* In the portion of the QNSP concerning illegal use of drugs and controlled substances, the Individual disclosed that he had previously used THC. *Id.* at 40. Specifically, the Individual indicated that he had “experimented with THC during [his] first semester of college in 2005” and “[i]n 2018 went through an experimental trial of self-medicating with controlled CBD (small % of THC).” *Id.* The Individual represented that he discontinued THC use after each experiment and “never developed a habit[] and [had] never been a frequent user.” *Id.*

The Individual checked boxes marked “no” in response to each of the following questions on the QNSP:

- Do you have an additional instance(s) of illegal use of a drug or controlled substance to enter?
- In the last seven (7) years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?
- Have you EVER been ordered, advised, or asked to seek counseling or treatment as a result of your illegal use of drugs or controlled substances?
- Have you EVER voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance?

Id. at 41.

On October 28, 2020, an investigator interviewed the Individual as part of OPM’s background investigation. Ex. 10 at 65. During the interview, the Individual disclosed that he participated in a diversion program following a 2018 arrest, pursuant to which he underwent a substance abuse

evaluation, individualized counseling, and an alcohol and drug education class. *Id.* at 71.³ The Individual asserted that he had not disclosed this information on the QNSP “due to oversight.” *Id.* at 71–72.

Regarding his illegal drug use, the Individual told the investigator that he had used marijuana “approximately 5-10 times” while in college and that “he stopped using drugs” after his marijuana use resulted in his expulsion from student housing. *Id.* at 73. He also told the investigator that he had used CBD oil containing THC for medicinal purposes on a weekly basis in 2018 until his arrest in April 2018, at which point he asserted that he discontinued using the CBD oil. *Id.* Following the interview, the investigator communicated with the Individual on more than a dozen occasions to obtain additional information and medical releases, the last of which communications occurred on March 1, 2021. *Id.* at 74–79.

On November 2, 2020, the investigator interviewed the attorney who represented the Individual in proceedings related to his 2018 arrest, and the attorney divulged that the Individual voluntarily entered treatment for substance abuse in April 2018 separately from the diversion program. *Id.* at 136–37. On November 4, 2020, the investigator interviewed a friend of the Individual who revealed that the Individual had not discontinued marijuana use in 2005 as he claimed. *Id.* at 105–06. On March 25, 2021, the investigator obtained treatment records from the diversion program the Individual entered into after his arrest. *Id.* at 108–09. The treatment records indicated that the Individual reported having used marijuana on an approximately daily basis since age 19 and cocaine on an approximately monthly basis beginning at age 31. *Id.* at 110.

In July 2021, the LSO issued the LOI to the Individual. Ex. 5. In his response, the Individual represented that he had used marijuana, at varying levels of frequency, from 2005 to 2019. *Id.* at 4. He indicated that he purchased the marijuana approximately monthly when he was regularly using it. *Id.* The Individual asserted that he had “experimented” with cocaine on three occasions from 2016 to 2017. *Id.* at 4–5. He also disclosed that he had voluntarily sought drug or substance abuse-related treatment on three occasions: in May 2018 following his arrest, in the summer of 2018 with a second treatment provider, and in 2019 through the diversion program. *Id.* at 6. Through this treatment, the Individual indicated that he was diagnosed with “Cannabis Use Disorder.” *Id.* at 10–11.

In his response to the LOI, the Individual represented that he did not understand that he was required to disclose his purchases of CBD oil containing THC on the QNSP because the purchases were lawful in the state in which they were made. *Id.* at 25. He also denied that he had used marijuana daily for thirteen years, as some of his treatment records indicated. *Id.* at 26. However, he admitted that he had intentionally failed to disclose the full extent of his illegal drug use on the QNSP and in his interview with the investigator because he “feared [his] application [for access authorization] would be denied.” *Id.*

³ The Individual’s arrest, which he disclosed on the QNSP and was not a basis for the LSO’s security concerns, resulted from bizarre behavior during a “state of psychosis” the Individual attributed to a medication he was prescribed. Ex. 10 at 71, 109. Although the Individual asserted that he was not under the influence of illegal drugs at the time of the arrest, he disclosed to the investigator that a drug test following his arrest detected “trace amounts” of THC. *Id.*

At the hearing, the Individual testified that his untruthfulness on the QNSP and in the interview with the investigator regarding the full extent of his drug use were due to being “very shameful of some . . . things that occurred in [his] past, and [] really just trying to move forward, keep it in the past.” Tr. at 16. The Individual likewise attributed his failure to disclose his voluntary treatment to being “very embarrassed and shameful” *Id.* at 23. He also asserted that he had “underestimated the consequences of an omission” on the QNSP and acknowledged that he was “fearful that [his] application [for access authorization] would be denied.” *Id.* at 17, 25. The Individual disputed that he had failed to disclose attending court-ordered substance abuse treatment, as alleged by the LSO, stating that the treatment was not court-ordered, but instead that he entered into the diversion program voluntarily. *Id.* at 21–22; *see also* Ex. 2 at 3–4 (reflecting the Individual’s denial of the allegation when he requested a hearing).

The Individual represented that he now “live[s] a much more positive lifestyle . . . [and is] cleaner and healthier.” Tr. at 25. The Individual represented that he had not used illegal drugs since 2019 and denied using “toxicants [sic] of any kind,” other than alcohol, as of the date of the hearing. *Id.* at 25–26. A friend of the Individual since childhood testified that he believed that the Individual had overcome “his struggles a few years ago” and was a trustworthy person. *Id.* at 58, 61, 63. The Individual’s brother and a friend of three years submitted letters in which they expressed the belief that the Individual is a truthful person. Ex. A; Ex. C.

V. ANALYSIS

The LSO’s allegations that the Individual deliberately omitted derogatory information from the QNSP and in his interview with the investigator justify its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b). Conditions that may mitigate security concerns under Guideline E include:

- (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.

Adjudicative Guidelines at ¶ 17(a)–(g).⁴

The Individual's admission to failing to disclose derogatory information concerning his drug use on the QNSP and in the interview with the investigator was not sufficiently prompt for the first mitigating condition under Guideline E to apply in this case. Approximately ten months elapsed between the date the Individual submitted the QNSP and the date he admitted to his omissions in his response to the LOI, during which time he interacted with the investigator numerous times and could have revealed the full extent of his omissions. Instead, the Individual failed to fully admit to his omissions until he was confronted with the facts by the LSO in the LOI. For these reasons, I find the first mitigating condition inapplicable.

The third mitigating condition is inapplicable because the Individual's conduct was serious and relatively recent. Failure to fully disclose derogatory information on a QNSP and in a personnel security interview raises serious security concerns. *Id.* at ¶ 15 (“Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes”). The subject matter of the Individual's omissions, drug use and treatment, likewise concerns topics that are likely to affect one's judgment and reliability, and reinforces the serious nature of his conduct. The recency of Individual's admission to these omissions, less than one year prior to the hearing, is too recent to mitigate the serious security concerns raised by his behavior. Therefore, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The Individual's acknowledgement of his omissions and his abstinence from illegal drugs since 2019, which the LSO does not contest, could support the applicability of the fourth and fifth mitigating conditions under Guideline E. However, the Individual had already undergone substance abuse treatment and established a lengthy period of abstinence from illegal drugs by the time that he submitted the QNSP and participated in the interview with the investigator. The Individual's repeated failure to disclose his derogatory conduct until being confronted with the facts, even after these positive life changes, suggests that the concerns as to his reliability have not been resolved. Thus, I find the fourth and fifth mitigating conditions inapplicable. *Id.* at ¶ 17(d)–(e).

The Individual has not satisfied any of the mitigating conditions under Guideline E, and I am not convinced that he will proactively disclose derogatory information in the future if he

⁴ The second mitigating condition is inapplicable to the facts of this case because the Individual did not allege that his omissions were on the advice of counsel. Adjudicative Guidelines at ¶ 17(b). The sixth mitigating condition is not applicable because the LSO did not obtain information from an unreliable source and, other than arguably the treatment notes indicating that the Individual used marijuana daily upon which the LSO's allegations do not rely, there is no unsubstantiated information at issue. *Id.* at ¶ 17(f). The last mitigating condition is not applicable because the LSO's determination was not premised upon the Individual's association with persons engaged in criminal acts. *Id.* at ¶ 17(g).

perceives his own interests to be at risk. For these reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline E 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. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals