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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: May 17, 2022) Case No.: PSH-22-0083
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Issued: August 9, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an 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.”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’s access authorization should not be restored.

I. Background

On February 18, 2015, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 8 at 1. The QNSP asked the Individual three questions pertaining to illegal drug use: (1) “**In the last seven (7) years**, have you illegally used any drugs or controlled substances?” (2) “**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?” and (3) “**In the last seven (7) years**, have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?” Ex. 8 at 33 (emphasis in the original). The Individual answered “no” to each of these questions. Ex. 8 at 33.

During the ensuing security clearance investigation, a local security organization (LSO) issued a Letter of Interrogatory (LOI A) to the Individual after obtaining derogatory information indicating that the Individual used controlled substances. Ex. 10 at 1. On October 17, 2016, the Individual submitted his response to LOI A (LOI Response A) in which he admitted using marijuana on a

¹ Under the regulations, “Access authorization” means 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). Such authorization will also be referred to in this Decision as a security clearance.

daily basis, from 1994 to 2002; cocaine on a monthly basis, from 1999 to 2001; and methamphetamine on six to eight occasions from 1999 to 2001. Ex. 10 at 1. In the LOI RESPONSE A, the Individual further stated: “I stopped using [illegal drugs] when my oldest daughter was born (6-7-02). I may have smoked marijuana once or twice shortly after that, but had stopped completely by 2003.” Ex. 10 at 3. In response to a question inquiring about his future intentions concerning the use of illegal drugs he stated: “I’ve been completely done using them for over 14 years and have no intention of using them again.” Ex. 10 at 3.

On October 25, 2016, the Individual signed and submitted a DOE Drug Certification which included the following promises:

I agree that at no time, in any jurisdiction (e.g., country) and in any job for which I have been given a DOE access authorization will I:

- a. buy, sell, accept as a gift, experiment with, traffic in, use, possess or be involved with illegal drugs. Involvement includes knowingly being in the presence of others who are in the illegal possession of these drugs.
- b. use drugs, inhalants, or other substances that imitate the hallucinogenic and stimulant properties of illegal drugs in a manner that deviates from approved medical direction. Use of such drugs is acceptable if used as lawfully prescribed for my use. . . .

Ex. 9 at 1.

Shortly after the Individual signed the Drug Certification, on October 31, 2016, the LSO granted a DOE security clearance to him. Ex. 4 at 6.

Over four years later, on January 12, 2019, the Individual enrolled in an intensive outpatient treatment program (TP) to address his opioid abuse. Ex. 5 at 1. The Individual delayed reporting his enrollment in this program to the LSO until June 2, 2021, almost two and a half years after his enrollment.² Ex. 5 at 1. In the written statement to the LSO (the Self-report) in which the Individual reported his enrollment in the TP, he stated in pertinent part: “I enrolled because I have been struggling with abuse of prescription opioids for many years. Although I struggled with drug abuse of other types when I was young, I put an end to these habits when my oldest daughter was born (06-07-2002).” Ex. 5 at 1. The Individual further admitted that his opioid use began about 13 or 14 years before he enrolled in the TP, when he had been prescribed Hydrocodone. Ex. 5 at 1. He became addicted to the Hydrocodone and began supplementing his legally supplied opioids with illegally purchased opioids. Ex. 5 at 1. By the end of 2014, the Individual admitted, he was obtaining all of his opioids illegally. Ex. 5 at 1. The Individual further stated:

There had been no specific incident driving this decision, so the need to Self-report did not occur to me. Then I realized maybe I did need to report when a clearance

² DOE Order 472.2 requires that individuals maintaining DOE access authorizations must report “. . . treatment for drug or alcohol abuse.” DOE Order 472.2 at Attachment 4. Order 472.2 further provides that “[a]ll individuals have a specific obligation to report personnel security-related matters as they occur . . .” DOE Order 472.2 at ¶ 4.v.

issue caused a co-worker to be fired. I found the Self-reporting information page on the company intranet and discovered that I should have reported. This is the reason for reporting this now, 2+ years after I had started the program.

I have been totally clean since I started the program. I am still in the program. I see a counselor every other week for a 1 on 1 session. I go to a group recovery meeting once a week. I also see a physician assistant every month or so who monitors my progress and manages my mental health prescriptions. The prescriptions I take are: Suboxone/Naloxone - 8mg/2mg; Disulferam 250 mg; Duloxetine 30 mg; and on occasion Trazadone 50 mg.

Ex. 5 at 2.

The LSO subsequently issued a second LOI (LOI B) to the Individual. On June 28, 2021, the Individual signed and submitted his response to LOI B (LOI Response B), in which he essentially repeated the information in the Self-report, admitting that he first illegally purchased opioids in 2008 or 2009, and had been “habitually obtaining opioids illegally and abusing them” since 2014. Ex. 7 at 1-2. The Individual further stated: “Many times I tried to quit. . . . The longest period I was ever able to go prior to entering treatment was about 2 months in 2011.” Ex. 7 at 4. The Individual admitted that he intentionally provided false information in his February 18, 2015, QNSP, stating: “The denial was false information. At the time, I was illegally using 40 to 50 mg [of opioids] several times a week.” Ex. 7 at 4. He explained his reason for providing false information in his QNSP, stating: “Fear that I would be unable to get a security clearance, and therefore lose my job, is the reason I provided false information at the time” and “I knowingly provided false information because I thought that if I was honest, my clearance would be denied and I would lose my job.” Ex. 7 at 4-5, 9. The Individual admitted that he delayed reporting his illegal drug use and his treatment in a timely manner because he thought he would lose his clearance which would lead to termination from his employment. Ex. 7 at 9. He also admitted that he failed to disclose his opioid addiction in his LOI Response A, because he thought it would disqualify him from receiving his security clearance and lead to his termination. Ex. 7 at 10. The Individual further admitted abstaining from illegal drug use prior to a drug test to avoid detection of his illegal drug use and that he concealed his illegal opioid use from an investigator who interviewed him on September 7, 2016, because he believed that it would disqualify him from having a security clearance. Ex. 7 at 5-6. The Individual also admitted stealing opioids from his father on two occasions. Ex. 7 at 3. The Individual indicated that he has been receiving treatment from the TP since January 12, 2019. Ex. 7 at 6-7. He reported that a physician’s assistant from the TP prescribes him medication to address his opioid addiction and monitors his prescriptions, and that he was obtaining individual and group counseling as well. Ex. 7 at 7.

In his LOI RESPONSE B, the Individual included copies of his treatment records from the TP covering the time period beginning on January 11, 2019, and continuing until June 14, 2021. Ex. 7 at 1, 35. A New Patient Evaluation (NPE) dated January 19, 2019, included in these treatment records indicates a summary of the Individual’s illegal drug use history: The Individual’s narcotic use began when he was 13; he started using cocaine 20 years prior to the evaluation; he continued using cocaine for fourteen more years; he started using LSD during his teen years; he used LSD

twice in 2018; he used methamphetamine as a teenager; and he used marijuana from age 15 until “a year ago” (sometime in 2018). Ex. 6 at 1. Concerning the Individual’s opioid use, the NPE states:

His [urine analysis test] today showed positive for both opioids and oxycodone. He is currently on the Z-Pack and prednisone along with cough syrup including Phenergan and Codeine for bronchitis and asthma issue he has been having. His last use of the Phenergan with Codeine was yesterday morning. He admits to trouble with cutting down. He spends a lot of time and money to get these drugs. He does build up a tolerance and continues to use despite psychological and physical repercussions. He has lost interest in things he would typically enjoy and just generally is not very motivated to do anything.

Ex. 6 at 1. The TP staff diagnosed the Individual with Opioid Use Disorder (OUD). Ex. 6 at 2. The NPE indicates that his treatment plan included medication, individual counseling, and group counseling. Ex. 6 at 2. Concerning the Individual’s alcohol use, the NPE states “His use of alcohol started when he was about 32 and has been as heavy as half of a fifth a day.” Ex. 6 at 1. On March 15, 2019, the TP diagnosed the Individual with Alcohol Use Disorder (AUD) and indicated that his last use of alcohol occurred in January 2019. Ex. 6 at 7. However, the Individual begun drinking again on June 7, 2019. Ex. 6 at 10. The July 22, 2019, follow-up report indicates that the Individual had begun to abuse his Suboxone prescription by taking twice the prescribed dose. Ex. 6 at 13. An October 4, 2019, follow-up note states:

His last use of alcohol unfortunately was this weekend on the 28th of September. His last use of opioids was on January 12, 2019. . . He notes that he is trying to stay away from the alcohol but even admits himself that he is not sure he wants to quit. He was able to avoid drinking during the week but the weekends are tougher. He has been working on alcohol use through counseling however he notes he is still struggling quite a bit with it. When he drinks, it is typically a couple of beers and even this weekend some mixed drinks. He was again informed that any alcohol with Suboxone is dangerous as they are both CNS depressants and can lead to death. We did discuss starting Antabuse, which he is willing to do. He was also encouraged to start AA and NA groups. . . He is aware that if he is seen positive for alcohol, we will have to taper off his Suboxone.

Ex. 6 at 17.

Because of the derogatory information set forth above, the LSO requested that he undergo an evaluation by a DOE-contracted Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on March 3, 2022, and issued a report of his findings (the Report) on April 4, 2022.³ Ex. 4 at 12. During the CI, the Individual admitted engaging in very heavy alcohol

³ In addition to interviewing the Individual, the Psychologist provided for the administration of three tests to the Individual on March 22, 2022: a standardized psychological assessment, the Minnesota Multiphasic Personality Inventory 3 (MMPI); a urine drug screening; and a Phosphatidylethanol (PEth) blood test (which detects alcohol use during the previous 28-days). Ex. 4 at 7, 34-38. The result of the PEth test was highly positive at 657 ng/mL (the

consumption on the prior evening. Ex. 4 at 5. The Individual also reported that he had repeatedly tried to stop using alcohol but had never succeeded, describing his alcohol use as a “substitute addiction” for opioids. Ex. 4 at 5. The Individual stated, during the CI, that he has been drug free for three years and claimed to be free of cravings. Ex. 4 at 5. In addition to conducting the CI, the Psychologist had also, on March 30, 2022, contacted the Individual’s caseworker at the TP, the PA who had been treating the Individual since January 2019. Ex. 4 at 8. The PA reported that she has been meeting with the Individual on a weekly basis and had been prescribing several medications to address his OUD, AUD, and depression. Ex. 4 at 8. The PA reported that the Individual had not discussed his struggles with alcohol with her. Ex. 4 at 8.

In the Report, the Psychologist concluded that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for two disorders: OUD, Severe, and AUD, Severe. Ex. 4 at 9. He further opined, “Currently his alcohol misuse is uncontrolled and is the most serious condition.” Ex. 4 at 8. Concerning the Individual’s OUD, the Psychologist found that the Individual “has fully complied with all treatment recommendations. His treatment for his addiction to opioids will be considered completed once he has been successfully withdrawn from Suboxone.” Ex. 4 at 10. The Report did not include the Psychologist’s own treatment recommendations.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that his security clearance was suspended and that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from two witnesses: the Individual and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0083 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10. The Individual submitted three exhibits, marked as Exhibits A through C.

The Individual’s Exhibit A consists of 17 Drug Test Monitoring Forms indicating that the Individual was drug tested on: April 9, 2021; April 16, 2021; May 14, 2021; June 14, 2021; July 15, 2021; August 13, 2021; September 13, 2021; October 15, 2021; November 12, 2021; December 13, 2021; January 12, 2022; February 10, 2022; March 4, 2022; April 6, 2022; May 11, 2022; June 10, 2022; and July 8, 2022. Ex. A at 1-17. These test results were all positive for “BUP” but negative for each of the other controlled substances that the test was intended to detect.⁴ Ex. A at 1-17. The Drug test Monitoring Forms indicated that the Individual tested positive for alcohol use

detection limit is 23 ng/mL). Ex. 4 at 7, 37-38. The result of the urine drug screening test was negative. Ex. 4 at 34. The Laboratory report of the Individual’s PEth test results states: “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption. However, the Center for Substance Abuse Treatment (CSAT) advises caution in interpretation and use of biomarkers alone to assess alcohol use. Results should be interpreted in the context of all available clinical and behavioral information.” Ex. 4 at 37-38.

⁴ The Individual did not provide any information explaining what “BUP” is. However, the record indicates that the Individual has been prescribed Suboxone and Naloxone, both of which are brand names for Buprenorphine.

on April 9, 2021; June 14, 2021; August 13, 2021; February 10, 2022; March 4, 2022; April 6, 2022; and June 10, 2022. Ex. A at 1, 4, 6, 12, 13, 14, and 16.

Exhibit B is a series of 13 progress notes prepared by the PA after appointments with the Individual that occurred on April 19, 2021; June 14, 2021; July 15, 2021; August 13, 2021; September 13, 2021; October 15, 2021; November 11, 2021; December 17, 2021; January 28, 2022; March 4, 2022; April 6, 2022; May 13, 2022; and June 17, 2022. Ex. B at 1-13. Each of these progress notes indicates that the Individual's last opioid use occurred on January 12, 2019.

Exhibit C is a letter dated July 11, 2022, from the Individual's psychotherapist (the Psychotherapist) addressed to Whom it May Concern. Ex. C at 1. The Psychotherapist reported that she has been treating the Individual for OUD, AUD, and Depression with Anxious Distress since January 18, 2019. Ex. C at 1. The Psychotherapist noted that the Individual's OUD "has been managed well on Suboxone, Medication Assisted Treatment for the past 3.5 years." Ex. C at 1. The Psychotherapist further reported that the Individual had relapsed recently when he used alcohol and had been referred to a treatment program for group therapy, however that program was subsequently closed. She further reported that the Individual was currently trying to find a new group therapy provider. Ex. C at 1.

II. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cited Adjudicative Guidelines E, G, H, and J.

In invoking Guideline E (Personal Conduct), the LSO cited: (1) the Individual's intentional concealments or omissions of derogatory information in his QNSP, his LOI Response A, his September 9, 2016, security interview, and his Self-report; (2) his violation of a DOE Drug Certification; and (3) his failure to timely report his participation in the IOP. This information adequately justifies the LSO's invocation of Adjudicative Guideline E. Adjudicative Guideline E provides that "[c]onduct 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. Among the disqualifying conditions that can raise a security concern under Adjudicative Guideline E are the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness . . ."; "deliberately . . . concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination. . ."; "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group;" and "violation of a written or recorded commitment made by the individual to the employer as a condition of employment." Adjudicative Guidelines at ¶ 16(a), (b), (e), and (f).

The LSO also invoked Guideline G (Alcohol Consumption), citing the Psychologist’s finding that the Individual meets the DSM-5 criteria for AUD. This information adequately justifies the LSO’s invocation of Adjudicative Guideline G. The Adjudicative Guidelines state: “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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern under Adjudicative Guideline G are “diagnosis by a duly qualified medical or mental health professional (e.g. . . . clinical psychologist . . .) of alcohol use disorder,” “failure to follow treatment advice one diagnosed,” and “alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(d), (e), and (f).

The LSO also invoked Guideline H (Drug Involvement), citing the Individual’s longstanding opioid use; his diagnosis of OUD by the Psychologist, the IOP, and the Psychotherapist; his use of marijuana, methamphetamine, cocaine and LSD; and his enrollment in the TP. This information adequately justifies the LSO’s invocation of Adjudicative Guideline H. “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 LSO also invoked Guideline J (Criminal Conduct) in the Notification Letter, citing the Individual’s illegal purchases and use of controlled substances, and his theft of opioids from his father. This information adequately justifies the LSO’s invocation of Guideline J. Guideline J provides that “[c]riminal activity creates doubt about a person’s judgement, 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 Guideline J at ¶ 30.

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 eligibility for an access authorization. The Part 710 regulations are drafted 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

At the hearing, the Individual did not dispute the derogatory information cited in the Summary of Security Concerns. Nor did the Individual attempt to mitigate all this derogatory information. Instead, the Individual contended in his opening statement:

I do not agree that I pose a risk to security to my country. I believe that despite my history of struggling with addiction and dependency, I’m exactly the kind of person that anyone would consider an asset to their organization. And I believe that the original clearance investigation concerning my character that was performed in 2016 found this to be the case also.

Tr. at 10-11.

In his hearing testimony, the Individual frankly and openly recounted his extensive history of illegal drug abuse which included his abuse of opioids, cocaine, LSD, and marijuana. Tr. at 16-34. He has not engaged in any illicit opioid use since January 2019, when he began Suboxone therapy. Tr. at 35, 62. He is still undergoing Suboxone therapy, which he described as “a great help.” Tr. at 44. The Individual further testified that he receives individual counseling on a weekly basis. Tr. at 45. Concerning his decision to begin treatment, he testified: “I knew at the time that eventually the facts and my history would come out, and it would be problematic. It would probably be costing me my job. It was something that I understood when I entered treatment, but I decided I needed to do it anyway.” Tr. at 18. The Individual testified that he “was not 100 percent forthcoming” during his initial clearance investigation, because he was “in denial.” Tr. at 38. The Individual subsequently admitted that he had intentionally concealed the full extent of his illegal drug use from the LSO in order to obtain and maintain his security clearance. Tr. at 40-43. The Individual testified that he no longer uses illegal drugs, but further testified “I struggle with my alcoholism. . .” Tr. at 44. He believes that his substance abuse was the root cause of his criminal activity. Tr. at 48. The Individual admitted that he still uses alcohol on a weekly basis and usually gets “a pretty decent buzz off of that.” Tr. at 48-49, 64. He realizes that it is dangerous to consume alcohol while on Suboxone therapy. Tr. at 49-50, 54, 63, 66. He stopped drinking in the middle of 2019 after testing positive for alcohol and went six months without using alcohol, but then resumed drinking. Tr. at 50-52. At that point he realized that he had an alcohol problem. Tr. at 63-64. The Individual testified that he wants to stop using alcohol. Tr. at 56. He plans to attend AA meetings in the future but has not done so yet. Tr. at 57. The Individual admitted that he still associates with friends who use illegal drugs. Tr. at 20-21.

The Psychologist testified at the hearing after observing the testimony of the Individual. He testified that the Individual's OUD was "well controlled" and that he was no longer concerned about the Individual's OUD because the Individual has not misused opioids for three years and he considers it to be in remission, however he further testified that the Individual's AUD is "severe" and not well controlled. Tr. at 73, 75, 77, 87-88.⁵ He testified that the Individual should be receiving counseling focused specifically on his AUD; should become involved in AA; and should attend an IOP to address his AUD. Tr. at 78-79 85, 89. The Psychologist opined that the Individual has recently been very honest, in contrast to his past. Tr. at 73-74, 79.

V. Analysis

The Individual has a longstanding history of severe multi-substance abuse. The drug tests results in the record showing that the Individual has been able to abstain from illicit opioid use since January 2019 and the favorable opinion of the Psychologist have mitigated the security concerns arising from his OUD. Moreover, the drug test results submitted by the Individual corroborate his assertion that he has been abstaining from the illegal use of other controlled substances. While the Individual has successfully discontinued his use of opioids and other controlled substances, he has turned to a substitute substance, alcohol, which, as of the date of the hearing, he was still actively abusing. Therefore, the security concerns raised by his AUD remain unmitigated.

The Individual has an especially egregious and longstanding history of failing to provide truthful, complete, and candid answers during national security investigative or adjudicative processes and engaging in omission and falsification in order to conceal his illicit drug use from the LSO. The Individual has a history of illegal drug after signing a DOE Drug Certification in which he promised to discontinue all illegal drug use. Further, the Individual waited almost two and a half years to report his enrollment in the TP, thereby violating his reporting obligations. The Individual claimed that this delay resulted because he did not realize he was obligated to report his enrollment, even though he previously testified that he knew his enrollment in the TP would cause problems with his security clearance and had been advised of the necessity to report substance abuse treatment during his yearly security briefings.

Although the Individual appears to have been very forthright during the CI, in the LOI Response B, and in some of his hearing testimony, in which he candidly admitted that he continues to struggle with his AUD, his candor during other parts of his hearing testimony was somewhat suspect. He initially testified that his dishonesty during the investigative process was due to him being in "denial," however, he subsequently admitted that his dishonesty resulted from his concern that the truth would cost him his job. Moreover, as I have discussed above, the Individual's claim that his two-and-a-half-year delay in reporting his enrollment in the TP was due to his ignorance of the reporting requirements is difficult to believe. Given the Individual's lengthy history of untrustworthiness and untruthfulness, these current examples of less than complete candor indicate that the security concerns raised by the Individual's history of deception remain unresolved.

⁵ The Psychologist testified that the amount of alcohol that the Individual reported he presently consumes on a weekly basis would result in the Individual becoming significantly intoxicated. Tr. at 76.

The Individual's history of criminal activity is directly linked to his OUD. Because I have found that the Individual no longer uses illegal drugs and is reformed and rehabilitated from his OUD, I find that he has resolved the security concerns raised by his history of criminal activity.

Finally, I note that the record raises an overarching concern about the Individual's honesty and his willingness or ability to abide by rules and laws under the "whole person" concept. *See* Adjudicative Guidelines at ¶2(a). First, the Individual exhibited a disregard for rules and the law by engaging in illegal drug use. Then the Individual ignored rules and regulations by repeatedly providing false information to the LSO that was adjudicating his application for a security clearance. Then the Individual signed a DOE Drug Certification and proceeded to violate the promises he made in that agreement by continuing to engage in illegal drug use. The Individual also exhibited a disregard for rules and the law by continuing to use illegal drugs after receiving his security clearance. The Individual's dishonesty and disregard for the rules and the law continued when he falsely stated in his June 2, 2021, Self-report that he stopped using all illegal drugs, other than opioids, on June 7, 2002. Finally, the Individual's longtime concealment of his drug use made him vulnerable to extortion, and therefore a heightened security risk.

Guideline E

Three conditions (in relevant part) may mitigate Personal Conduct security concerns arising under Guideline E. Adjudicative Guideline E at ¶ 17(a), (c), and (d).⁶

Paragraph 17(a) provides that mitigation can occur if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Here, the Individual did not make prompt, good-faith efforts to correct the omissions, concealments, or falsifications before being confronted with the facts. While the Individual eventually supplied the information that he originally omitted from or falsified in his QNSP, his investigation, LOI A, and his June 2, 2021, Self-report, for the most part he did not do so until the LSO repeatedly confronted him. Moreover, in addition to being deceptive, his Self-report was clearly not prompt, having occurred almost two and a half years after he began the TP. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 17(a).

Paragraph 17(c) provides that mitigation can occur if "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." The Individual's omissions are not minor; they served to conceal significant derogatory information about his illegal drug use and criminal history over a long period of time. This behavior occurred as recently as the hearing and has been repetitive in nature. It therefore casts doubt on the Individual's present reliability, trustworthiness, and good judgment. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 17(c).

Paragraph 17(d) provides that mitigation can occur if "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate

⁶ An additional condition, found at Section 17(b) applies to circumstances in which an individual refused to cooperate with a security clearance investigation, a circumstance that is not present in the instant case.

the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” While the Individual appears to have become much more forthcoming recently, perhaps as a result of his individual counseling, he still has not fully acknowledged his untrustworthy behavior.⁷ While the Individual has taken positive steps to alleviate the OUD and AUD that contributed to his untrustworthy and unreliable behavior, his AUD remains in an active state. Moreover, the Individual’s lack of candor at the hearing raises the concern that this behavior might be likely to recur. Therefore, he has not satisfied the mitigating conditions set forth in ¶ 17(d).

Accordingly, the Individual has not resolved the security concerns raised under Guideline E by his multiple omissions from and falsifications in his QNSP, investigative interview, his LOI Response A, and his Self-report.

Guideline G

Four conditions may mitigate security concerns arising under Guideline G. Adjudicative Guidelines at ¶ 23(a)-(d).

Paragraph 23(a) provides that an individual may mitigate security concerns under Guideline G if “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.” The condition set forth in ¶ 23(a) is not present. The Individual’s AUD has not been controlled and he continues to abuse alcohol. Accordingly, I am unable to find that his AUD is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or judgment. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 23(a).

Paragraph 23(b) provides that an Individual may mitigate security concerns under Guideline G if 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.” The conditions set forth in ¶ 23(b) are not present. While the Individual acknowledges his pattern of maladaptive alcohol use and has provided evidence of actions taken to overcome this problem, he has not sufficiently demonstrated a clear and established pattern of abstinence from alcohol consumption since he continues to regularly consume alcohol to the point of intoxication and against the advice of the PA. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 23(b).

Paragraph 23(c) provides that an individual may mitigate security concerns under Guideline G if 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.” The condition set forth in ¶ 23(c) is not present. While the Individual is currently participating in an alcohol counseling and treatment program, since he continues to use alcohol he is clearly not making

⁷ To the contrary, during his opening statement, the Individual claimed “I’m exactly the kind of person that anyone would consider an asset to their organization. And I believe that the original clearance investigation concerning my character that was performed in 2016 found this to be the case also.” Tr. at 10-11.

satisfactory progress in that treatment program. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 23(c).

Paragraph 23(d) provides that an Individual may mitigate security concerns under Guideline G if 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.” The condition set forth in ¶ 23(d) is not present. The Individual had not completed an IOP for his AUD at the time of the hearing and had not demonstrated a clear and established pattern of abstinence from alcohol use. Accordingly, he has not satisfied the mitigating conditions set forth in ¶ 23(d).

Therefore, I find that the Individual has not provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline G by his AUD.

Guideline H

The Adjudicative Guidelines set forth four conditions which may provide mitigation of security concerns arising under Guideline H. Adjudicative Guidelines at ¶ 26. Paragraph 26(d) provides that security concerns raised under Guideline H can be mitigated by “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.” In the present case, the Individual has completed the TP and, as the laboratory test results he has submitted indicate, his Suboxone treatment protocol has been successful for over three years. Moreover, the Individual has been subjected to regular urine testing for an extended period. The results of that testing indicate that the Individual has not been using illegal drugs during this period. Finally, the Psychologist’s hearing testimony provided him with a favorable prognosis by a duly qualified medical professional. Accordingly, the mitigating condition set forth at ¶ 26(d) is sufficiently present in the instant case.

For the reasons set forth above, I conclude that the Individual has mitigated and resolved the security concerns set forth in the Notification Letter under Guideline H.

Guideline J

Under the Adjudicative Guidelines, an individual may mitigate security concerns under Guideline J if “[t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity . . .” Adjudicative Guidelines at ¶ 32(d). In the present case, the Individual’s criminal activity concerns are inextricably linked to his OUD and illegal drug use. Since the Individual has convincingly shown that he is rehabilitated or reformed from his OUD, and that he has not been using illegal drugs, the Individual has shown that the root cause of his criminal activity has been successfully addressed.

For the reasons set forth above, I conclude that the Individual has mitigated and resolved the security concerns set forth in the Notification Letter under Guideline J.

V. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E, G, H, and J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guidelines H and J, but has not mitigated the security concerns raised under Guidelines E and G. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals