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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: July 12, 2022) Case No.: PSH-22-0116
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Issued: September 29, 2022

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

On January 29, 2021, the Individual completed and signed a Questionnaire for National Security Positions (First QNSP) in connection with seeking access authorization. Exhibit (Ex.) 5 at 144. He checked a box marked “no” on the First QNSP in response to a question asking whether he had illegally used any drugs or controlled substances in the prior seven years. *Id.* at 137. On November 3, 2021, the Individual completed and signed a second QNSP (Second QNSP). Ex. 4 at 48. He checked a box on the Second QNSP to deny any illegal drug use in the prior seven years. *Id.* at 40.

An investigator interviewed the Individual on December 1, 2021, as part of an investigation of the Individual’s eligibility for access authorization. Ex. 5 at 68. During the interview, the Individual disclosed that, from 2014 to 2016, he had used marijuana, cocaine, and “sassafras.”² *Id.* at 68–70.

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.

² Sassafras oil can be used in the manufacture of 3,4-Methylenedioxyamphetamine (MDMA), commonly known as ecstasy. *NOTICE – Safrole and Sassafras Oil are used in the Illicit Manufacture of MDMA*, U.S. DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION DIVERSION CONTROL DIVISION, deadiversion.usdoj.gov/chem_prog/advisories/safrole.htm (last visited September 20, 2022).

The investigator's summary of the interview indicated that the Individual said that he intentionally provided false information on the QNSPs concerning his prior drug use because he feared that he would not be able to obtain access authorization if he disclosed his drug use. *Id.* at 70.

The local security office (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 five exhibits (Ex. 1–5). The Individual did not submit any exhibits. The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 8. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines 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 cited the Individual’s failure to disclose his illegal drug use on the First QNSP and Second QNSP, as well as his statement to the investigator that these omissions were intentional. Ex. 1. The LSO’s allegation that the Individual deliberately omitted derogatory information that he was required to disclose on the QNSP justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a).

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

On January 29, 2021, the Individual completed and signed the First QNSP.³ Ex. 5 at 144. He checked a box marked “no” on the First QNSP in response to a question asking whether he had illegally used any drugs or controlled substances in the prior seven years. *Id.* at 137. The Individual denied having used illegal drugs, despite having done so on multiple occasions within the prior seven years, because he “knew there was no paper trail” and he “did not think it would be brought up in any way if [he] put ‘[n]o.’” Tr. at 24. As part of completing the First QNSP, the Individual signed a form certifying that the contents of the First QNSP were “true, correct, and complete to the best of [his] knowledge and belief” and that he understood that “a knowing and willful false statement on this form can be punished by fine or imprisonment or both.” Ex. 5 at 144.

On November 3, 2021, the Individual completed and signed the Second QNSP. Ex. 4 at 48. He checked a box on the Second QNSP denying any illegal drug use in the prior seven years. *Id.* at 40. The Individual signed a form certifying that the contents of the Second QNSP were “true, correct, and complete to the best of [his] knowledge and belief” and that he understood that making false statements could result in criminal penalties. *Id.* at 48.

Several days after submitting the Second QNSP, the Individual requested to have the Second QNSP returned to him so that he could provide additional information. Ex. 2 at 2; Tr. at 25. The Individual was advised that the Second QNSP could not be returned and that he should disclose any additional information to the investigator. Ex. 2 at 2; Tr. at 25. The Individual requested to have the Second QNSP returned in order to disclose his prior illegal drug use because the illegal drug use had been raised during an interview for employment with United States Customs and Border Protection, he “knew that there was a potential paper trail,” and he believed that if he had “not attempted to switch it from [n]o to [y]es, that [he] would get flagged for the same thing.” Tr. at 26.

The Individual met with the investigator for an interview on December 1, 2021. Ex. 5 at 68. During the interview, the Individual disclosed that, on isolated occasions from 2014 to 2016, during which time he was serving in the United States Armed Forces, he smoked marijuana, consumed marijuana edibles, snorted cocaine, and used “sassafras.” *Id.* at 69–70; *see also* Ex. 4 at 34 (identifying the period of the Individual’s military service). The Individual told the investigator that he had intentionally provided false information on the QNSPs when he denied having used illegal drugs in the prior seven years “because he was afraid that he would not be able to obtain his current job . . . [or] be able to obtain a [s]ecurity [c]learance if he told the truth about his drug usage.” Ex. 5 at 70.

³ The Individual testified at the hearing that he completed the First QNSP in connection with an offer of employment from United States Customs and Border Protection. Tr. at 21, 23.

On June 22, 2022, the Individual submitted a statement to the LSO in which he represented that he accidentally failed to disclose his illegal drug use. Ex. 2 at 2. The Individual claimed that, because he had previously completed the First QNSP, “most of the information was auto filled” on the Second QNSP and that he “forgot to click yes on the drug portion” *Id.*

At the hearing, the Individual testified that his public service of more than one decade, including service in the United States Armed Forces, and lack of unlawful behavior outside of his illegal drug use, established that he was a reliable and trustworthy person. Tr. at 13–14. He also asserted that he had matured as a person and was no longer “being a sheep” as he was when he used the illegal drugs. *Id.* at 14–16. Moreover, he argued that his honesty to the investigator regarding his omission on the QNSPs mitigated the security concerns. Ex. 2 at 2.

V. ANALYSIS

The LSO’s allegation that the Individual deliberately failed to disclose illegal drug use that he was required to disclose on the QNSP justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a). Conditions that could 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).

The Individual asserted that his false responses on the QNSPs denying illegal drug use were isolated instances of untruthfulness and that he was otherwise a trustworthy, reliable person. He also cited his affirmative efforts to disclose his illegal drug use after submitting the Second QNSP

as evidence of mitigation of the security concerns. These arguments potentially implicate the first and third mitigating conditions under Guideline E.⁴

While the Individual disclosed his false responses on the QNSPs to the investigator, his disclosures were neither prompt nor in good faith. Approximately ten months elapsed between the Individual's completion of the First QNSP and the date he sought to correct his false response on the Second QNSP. Moreover, the Individual admitted that he only disclosed his illegal drug use after he became concerned about a "paper trail" emerging that would reveal his untruthfulness. *Supra* p. 3. Therefore, I find that the first mitigating condition under Guideline E is inapplicable. Adjudicative Guidelines at ¶ 17(a).

The Individual asserts that his failures to disclose his illegal drug use on the QNSPs were isolated incidents of untrustworthiness in his career of public service. *Supra* p. 4. While the only instances of untruthfulness by the Individual alleged by the LSO were on the QNSPs, the seriousness of the Individual's untruthfulness weighs more heavily than the small number of documented instances of untruthfulness. This is because the Adjudicative Guidelines indicate that failures to provide truthful answers during national security investigative or adjudicative processes are of special interest over and above other acts of untrustworthy conduct. Adjudicative Guidelines at ¶ 15. Moreover, the Individual admitted that he falsely denied having used illegal drugs because he perceived the circumstances of his illegal drug use to be of significant relevance to his eligibility for access authorization. Thus, I find that the Individual's false statements on the QNSPs cast serious doubt on his trustworthiness and reliability. Accordingly, I find that the third mitigating condition under Guideline E is inapplicable. *Id.* at ¶ 17(c).

For the aforementioned reasons, I find that the Individual's omissions on the QNSPs raise serious concerns as to his reliability and trustworthiness and that he has not established the applicability of any of the mitigating conditions. Accordingly, 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

⁴ The second mitigating condition under Guideline E is inapplicable in this case because the Individual did not assert that he relied on the advice of another person in completing the QNSPs. Adjudicative Guidelines at ¶ 17(b). The fourth mitigating condition is inapplicable because the Individual has not identified any underlying factors that contributed to his omissions and has not pursued counseling. *Id.* at ¶ 17(d). The fifth mitigating condition is inapplicable because the LSO did not allege that the Individual had engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is irrelevant because the LSO's allegations were not based on sources besides the Individual himself. *Id.* at ¶ 17(f). The final mitigating condition is inapplicable because the LSO has not alleged that the Individual associates with persons involved in criminal activities. *Id.* at ¶ 17(g).

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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals