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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: August 24, 2022) Case No.: PSH-22-0134
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Issued: January 6, 2023

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as 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’s access authorization should be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On November 16, 2021, the Individual self-reported to the Local Security Office (LSO) that from August 2021 to November 2021, he smoked Methamphetamine (meth) after experiencing “some intense personal stress,” and subsequently enrolled in an outpatient drug treatment program. Exhibit (Ex.)² 6 at 2.

As a result of this disclosure, the LSO issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information about his drug use and subsequent treatment. Ex. 7. In his response to the LOI, the Individual explained that from August 2021 to November 2021, while holding a security clearance, he purchased and smoked meth after he had been sexually assaulted. Ex. 7 at 1-2. The Individual also explained that, since November 2021, he has been meeting with

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 The internal pagination of the exhibits submitted by the DOE do not always correspond to the number of pages within the exhibit. Throughout this decision, I will cite to DOE exhibit pages in the order in which they appear within each exhibit.

a drug treatment counselor, he has been meeting with a psychologist with his employers Employee Assistance Program (EAP), and he enrolled in an intensive outpatient program (IOP). Ex. 7 at 5-6.

Due to the security concerns raised by the Individual's LOI response, the LSO requested that the Individual undergo an evaluation by a DOE consultant psychologist (DOE Psychologist). Ex. 8. On March 2, 2022, the DOE Psychologist interviewed the Individual and had the Individual undergo laboratory drug testing.³ Ex. 8 at 3. On March 15, 2022, the DOE Psychologist issued a report of her findings (the Report). Ex. 8.

The Report indicates the DOE Psychologist determined that the Individual met the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) criteria for “Stimulant Use Disorder (methamphetamine), Mild, in Early Remission.” Ex. 8 at 9. Regarding treatment, the DOE Psychologist recommended the Individual continue in, and successfully complete, an aftercare program with his IOP.⁴ Ex. 8 at 10. The DOE Psychologist also recommended the Individual undergo drug testing “on a monthly, unannounced basis, with negative results.” Ex. 8 at 10.

The Report also indicates the DOE Psychologist deferred diagnosing the Individual with a psychological disorder. Ex. 8 at 10. The Report indicates the Individual displayed a “myriad of symptoms” found in several psychological diagnoses during his clinical interview: Unspecified Dissociative Disorder; Autism Spectrum Disorder; Generalized Anxiety Disorder; Unspecified Obsessive-Compulsive and Related Disorder; and Insomnia Disorder. Ex. 8 at 10. The DOE Psychologist opined that the Individual's “most serious” symptoms were “dissociative episodes (when time passes and he is unsure of what occurred; when he ‘spaces out’),” his “continuing to engage in high-risk sexual behaviors,” and his “manifestations of poor reality testing and possible psychotic symptoms (e.g., hallucinations, delusions).” Ex. 8 at 10. The DOE Psychologist opined the Individual's prognosis “could only be determined from the outcome of his engagement in psychotherapy and medication management. Without these interventions, his prognosis is poor.” Ex. 8 at 10-11.

In June 2022, the LSO informed the Individual, in a Summary of Security Concerns, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1. Specifically, the LSO informed the Individual that the derogatory information raised security concerns under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), Guideline H (Drug Involvement and Substance Misuse), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1 at 1-4. The LSO also informed the Individual that he was subject to the Bond Amendment, which may disqualify him from holding a security clearance. Ex. 1 at 1.

Upon receipt of the Summary of Security Concerns, the Individual exercised his right to request an administrative hearing, pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of

³ During the evaluation, the DOE Psychologist also reviewed the Individual's personnel file and administered the Minnesota Multiphasic Personality Inventory – Third Edition (MMPI-3), a psychometric written test.

⁴ The Individual completed the Intensive Outpatient Program and as of the date of the hearing was participating in the associated less intensive outpatient program. Hearing Transcript (Tr.) at 39-40, 42.

Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, counsel for the DOE submitted eleven (11) numbered exhibits (Ex. 1-11) into the record and presented the testimony of the DOE Psychologist. The Individual introduced one (1) lettered exhibit (Ex. A) into the record and presented the testimony of six witnesses, including himself. *See* Transcript of Hearing, Case No. PSH-22-0134 (hereinafter cited as “Tr.”).

II. The Security Concerns

Guideline D (Sexual Behavior)

Guideline D addresses sexual behavior that involves a criminal offense, reflects a lack of judgment or discretion, or subjects an individual to undue influence of coercion, exploitation, or duress. Adjudicative Guidelines at ¶ 12. Conditions that could raise a security concern under Guideline D include: “sexual behavior of a criminal nature, whether or not the individual has been prosecuted;” “a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;” and “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.” Adjudicative Guidelines at ¶ 13(a)-(c). No adverse inference concerning the standards of Guideline D may be raised solely based on the sexual orientation of an individual. Adjudicative Guidelines at ¶ 12.

In citing Guideline D, the LSO relied upon the findings of the DOE Psychologist in her Report, which indicated that “despite being sexually assaulted in August 2021, [the Individual] continues to meet men online for sexual encounters, [and put] himself in dangerous situations.” Ex. 1 at 1. The LSO also relied upon the DOE Psychologist’s opinion that the Individual continued “to demonstrate poor judgment by engaging in high-risk sexual behaviors.” Ex. 1 at 1.

Guideline E (Personal Conduct)

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct “can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15.

Conditions that could raise a security concern under Guideline E include: the “deliberate omission, concealment, or falsification of relevant facts” from any personnel security questionnaire or similar form used to conduct investigations or determine employment qualifications; “deliberately providing false or misleading information” to a DOE employer or investigator; and “association with persons involved in criminal activity.” Adjudicative Guidelines at ¶ 16(a), (b), and (g). In addition, any “credible adverse information in several adjudicated issue areas” received by the DOE which, “when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information” may raise a security concern under Guideline E. Adjudicative Guidelines at ¶ 16(c).

In citing Guideline E, the LSO relied upon two instances of the Individual’s conduct, which it determined questioned his reliability and trustworthiness. Ex. 1 at 2. First, the LSO cited the

Individual's admission that he smoked meth daily from August 25, 2021, to August 28, 2021, and "once a weekend" from August 28, 2021, to November 7, 2021, and failed to report this drug use "within two working days as required in DOE Order 472.2." Ex. 1 at 2. Second, the LSO noted that, in his LOI response, the Individual stated he never used any other illegal drugs, but the Individual's treatment records reflected that he admitted to using marijuana twice, and lysergic acid diethylamide (known as LSD or acid) once, while in high school. Ex. 1 at 2. Lastly, the LSO cited the Individual's disclosure in his LOI that, in August 2021, "an acquaintance provided him with methamphetamine" to support a finding that he associates with someone involved in criminal activity. Ex. 1 at 2.

Guideline H (Drug Involvement and Substance Misuse) and the Bond Amendment

The relevant provision of the Bond Amendment provides that "the head of a [f]ederal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance⁵ or an addict." 50 U.S.C. § 3343(b). Under Guideline H of the Adjudicative Guidelines, the illegal use of controlled substances "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 ¶ 24. Conditions that could raise a security concern under Guideline H include a "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder" and "any illegal drug use while granted access to classified information or holding a sensitive position." Adjudicative Guidelines at ¶ 25(d) and (f).

In invoking the Bond Amendment and Guideline H of the Adjudicative Guidelines, the LSO noted the DOE Psychologist diagnosed the Individual with Stimulant Use Disorder (methamphetamine), Mild, in Early Remission. Ex. 1 at 1-2. The LSO also cited the Individual's admission, in his LOI response, that he smoked meth from August 2021 to November 2021 while holding a security clearance and used marijuana twice, and acid once, while in high school. Ex. 1 at 1-3.

Guideline I (Psychological Conditions)

Under Guideline I, certain "emotional, mental, and personality conditions" can impair one's judgment, reliability, or trustworthiness. Adjudicative Guidelines ¶ 27. Among the conditions that can raise a security concern under Guideline I is "an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 28(b). However, "[a] formal diagnosis of a disorder is not required for there to be a concern under this guideline." Adjudicative Guidelines at ¶ 17. In its Summary of Security Concerns, the LSO cited the DOE Psychologist's opinion that the Individual "manifested a number of emotional, mental, and personality symptoms which can, and have, impaired his judgment, stability, reliability, and trustworthiness." Ex. 1 at 3. The DOE Psychologist found the Individual displayed symptoms of "Acute Stress Disorder, Major Depressive Disorder, Moderate, Recurrent, and Attention Deficit/Hyperactivity Disorder,

⁵ "Controlled substance" is defined in the Bond Amendment as any substance listed as a controlled substance by 21 U.S.C. § 802. *See*. 50 U.S.C. § 3343(a). The methamphetamine smoked by the Individual is a controlled substance, as defined by 21 U.S.C. § 802(6) and 21 U.S.C. § 812(b)(3).

combined type," along with "dissociative episodes," and "thought-disordered experiences." Ex. 1 at 3.

Guideline J (Criminal Conduct)

Guideline J addresses criminal activity, which can create doubts about a person's judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. Furthermore, it calls into question a person's ability or willingness to comply with laws, rules, or regulations. Adjudicative Guidelines at ¶ 30. Conditions that can raise a security concern under Guideline J include "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Adjudicative Guidelines at ¶ 31(b). In citing Guideline J, the LSO noted the Individual's admission that he smoked meth from August 2021 to November 2021 and noted that the Individual's treatment records reflected that the Individual admitted to using marijuana twice, and acid once, while in high school. Ex. 1 at 3-4.

Considering the admitted conduct described above, I find the LSO's determination that the Individual's conduct has raised security concerns under Guidelines D, E, H, I, and J of the Adjudicative Guidelines is justified. Further, I find that the LSO's invocation of the Bond Amendment is also justified.

III. Regulatory Standard

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 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).

At the hearing, the Individual must come forward with evidence to convince the DOE that restoring his 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, the Individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact

In his LOI response, the Individual disclosed that he smoked meth to get “short-term relief” from the stress of the sexual assault and “forget about [his] issues.” Ex. 7 at 1. He disclosed that he obtained the meth from an acquaintance, who offered him “less than half a gram” of meth, “enough to light and smoke once.” Ex. 7 at 1. The Individual also disclosed that each subsequent use of meth required that he pay his acquaintance \$20.00 to obtain the same amount of the drug. Ex. 7 at 1. The Individual disclosed he smoked meth once a day, from August 25, 2021, to August 28, 2021, and “on average[,] once each weekend,” through November 7, 2021. Ex. 7 at 1. In the LOI, the LSO asked the Individual to describe his use of “any other drugs or controlled substances” within “the last seven years.” Ex. 7 at 10. In response to this question, the Individual disclosed he has not used any other drugs before August 25, 2021. Ex. 7 at 10.

The DOE Psychologist’s Report indicates that on August 19, 2021, the Individual went to work and displayed signs of “possible depression, insomnia, and thought disturbance.” Ex. 8 at 4. The Individual’s employer referred him to a medical provider for a Fitness for Duty Evaluation. Ex. 8 at 4.

On August 24, 2021, the Individual began counseling sessions with a psychologist from his employer’s EAP (the “EAP Counselor”), who noted the Individual had “identity issues.” Ex. 8 at 5.

On August 26, 2021, the Individual met with an Occupational Psychologist, who noted that the Individual complained of experiencing “sleep disturbance, restlessness and hypervigilance since the [sexual] assault.” Ex. 8 at 5. The Occupational Psychologist also noted that the Individual described feeling like “someone was watching him, which he experienced as ‘very disturbing.’” Ex. 8 at 5. The Occupational Psychologist also interviewed the Individual’s supervisors, who reported that the Individual was “not performing well,” was “nodding off on several occasions,” and had “difficulties interacting with coworkers and supervisors.” Ex. 8 at 5. The Occupational Psychologist indicated the Individual was diagnosed with ADHD in high school and was prescribed Adderall to treat the condition. Ex. 8 at 5. The Occupational Psychologist recommended the Individual consult with a psychiatrist. Ex. 8 at 5.

On September 21, 2021, the Individual met with a psychiatrist (the Psychiatrist). Ex. 8 at 5. The Psychiatrist opined that the Individual’s complaints of sleep disturbance were not “indicative of sleep issues.” Ex. 8 at 5. He found the Individual experienced hallucinations and believed “he was being watched when he was attempting to sleep.” Ex. 8 at 5. The Psychiatrist also opined it was “difficult to be sure what is going on with [the Individual] due to his being at an age at which psychiatric illness associated with disorders of thought form or content are likely to emerge,” and prescribed the Individual an anti-psychotic medication, Seroquel. Ex. 8 at 5.

Pursuant to recommendations from his parents and his employer, on November 22, 2021, the Individual enrolled in the IOP. Ex. 8 at 5-6.

V. Hearing Testimony

The Individual's Father

The Individual's father testified that, before the Individual's sexual assault, he displayed "some autistic characteristics" and may have been seen as "socially awkward" by others. Tr. at 18. He stated the Individual had difficulty making eye contact while speaking with others and "verbalizing some of his thoughts and ideas." Tr. at 18. He testified that, when the Individual was in high school, he had difficulty focusing and was prescribed Adderall. Tr. at 19. He also stated he has never observed the Individual having any type of hallucinations or delusions. Tr. at 27.

The Individual's father testified that, after the sexual assault, the Individual became withdrawn, missed work, and did not seem like a happy person. Tr. at 15, 21. He also stated that besides the Individual's use of meth he has not known the Individual to engage in criminal activity. Tr. at 16-17. He also stated he did not know the Individual tried marijuana and acid in high school until he read the DOE's Summary of Security Concerns. Tr. at 17.

He also stated that since the Individual has been enrolled in an IOP, he is more positive, has more energy, spends more time with him and his mother, regularly works out at a gym, and is more focused on his career. Tr. at 19-20, 26-27. He stated the Individual has worked very hard to "correct some of his past behavior" and earn his trade license. Tr. at 20. He stated the Individual's judgment and reliability has greatly improved since he has received treatment. Tr. at 28. He believes that the Individual sticks to a schedule, pays union dues, and "is on top of everything that he needs to do." Tr. at 28. He also stated he believes the Individual accepts the fact that he needs treatment and will continue to go to therapy. Tr. at 30.

The Individual's Brother

The Individual's brother testified that he learned about the Individual's sexual assault a couple of weeks after it occurred. Tr. at 106. He stated he knew the Individual used online sites to meet people but told the Individual he should not be using online dating apps for "flings" and "random hookups." Tr. at 106. He stated that since the sexual assault, he believes the Individual stopped using online dating sites. Tr. at 107, 114. He stated he does not see the Individual "on his phone swiping left or right or anything like that," the Individual "seems more responsible," and he is "more in tune with their family." Tr. at 107.

He also stated that prior to the Individuals' use of meth in 2021, he has never known the Individual to use illegal drugs, and he has never known the Individual to hallucinate, have delusions, or engage in compulsive behavior. Tr. at 107-108. He stated he would know if the Individual resumed using illegal drugs because he "wouldn't look healthy," but he admitted he was not aware of the Individual's meth use until his mother told him about it. Tr. at 113. He testified that since August 2021, he has not seen any indication the Individual has used any illegal drugs. Tr. at 113.

The Individual's Supervisor

The Individual's supervisor testified that he has worked with the Individual for the past year and a half and has contact with the Individual daily. Tr. at 117. He stated the Individual's work performance has been above average. Tr. at 118. He also stated he has never seen the Individual "disoriented" at work. Tr. at 118. He believes that the Individual shows very good judgment, is very reliable, and is trustworthy. Tr. at 119-120. He stated the circumstances the Individual is going through are "unfortunate," but it takes a significant effort for a person to take the steps to seek help, report it to their employer, and discuss it with others. Tr. at 123. He also stated the Individual has a "good overall character." Tr. at 124.

The Individual's IOP Therapist

The Individual's IOP Therapist testified that the Individual initially engaged in intensive outpatient therapy five days a week for three hours a day. Tr. at 39. He stated he was the Individual's primary therapist at the IOP and met with the Individual once a week. Tr. at 39-40. He also stated the Individual successfully completed the IOP in February 2022. Tr. at 41.

The IOP Therapist explained that the IOP also includes an outpatient program, which is less intensive, and requires attendance an hour and a half per day for a minimum of 30 days. Tr. at 39-40, 42. He stated that the Individual began the outpatient therapy program on February 7, 2022, and successfully completed the program on May 19, 2022. Tr. at 42. He also stated he continues to have treatment sessions with the Individual. Tr. at 42-43.

In his testimony, the IOP Therapist opined that the Individual has "progressed considerably" through therapy. Tr. at 45. He stated that when the Individual started therapy, he was still experiencing trauma from the sexual assault, and was "a little reluctant" to engage during the meetings. Tr. at 45. He stated that "over the course of a couple of months, [the Individual] began to open up a little bit, a little bit more . . . and talk about the traumatic events that had happened." Tr. at 45-46.

Regarding the Individual's stimulant use disorder, the IOP Therapist opined that the Individual does not, currently, have a stimulant use disorder. Tr. at 47. He stated the IOP requires "total abstinence" from drugs and alcohol while participating in the program and usually employs random drug testing. Tr. at 48, 50, 71. He stated he did not see any evidence the Individual underwent drug testing at the IOP, and if the Individual "had been presenting as a risk of using, that would have been absolutely something that would have occurred." Tr. at 71-74. He stated he has been trained to recognize signs of substance use, and, although he is not always correct, he has not seen any indications the Individual used meth, or any other illegal drugs, during the past year. Tr. at 47-48, 50-51. He stated the Individual's personality was not "addictive by nature." Tr. at 61. He further stated the Individual's meth use was "a very isolated event" and "a more situational way of him coping with trying to adapt" to the experience of his sexual assault in August 2021. Tr. at 48, 61-62. The IOP Therapist also opined the Individual's prognosis for avoiding future substance use is excellent. Tr. at 51.

Regarding the Individual's major depressive disorder, the IOP Therapist stated the therapy sessions gave the Individual the opportunity to belong, to "be noticed," and to talk about his feelings. Tr.

at 62. He also stated he believes the Individual is still struggling with “mild depression” because he continues to navigate his sexual identity and his individuation from his family. Tr. at 51-53.

Regarding the Individual’s acute stress disorder, the IOP Therapist opined the Individual no longer meets the criteria for this diagnosis. Tr. at 53. He stated the IOP provided the Individual with educational tools and ways of achieving “self-relaxation.” Tr. at 62. Regarding the Individual’s ADHD, the IOP Therapist opined the Individual has this disorder under control because he is “very aware” of it, takes medication for it, and has discussed taking his medication regularly during treatment sessions. Tr. at 53. The IOP Therapist also stated that based on what he has heard during the hearing, he thinks the Individual functions “within normal limits.” Tr. at 54.

Regarding the Individual’s engagement in high-risk sexual behaviors, the IOP Therapist stated the Individual has navigated his experience after the sexual assault, which “outed him” to his family. Tr. at 55. He stated he and the Individual discuss the Individual’s choices, and the Individual recognizes that he is responsible for putting himself into “those sort[s] of situations.” Tr. at 67. He also stated the Individual told him he is trying to connect with other men “in a meaningful fashion” and is looking for relationships that are consistent with his own values. Tr. at 55.

Regarding the Individual’s other symptoms, the IOP Therapist stated the Individual displayed “possible features” of dissociative disorder, but the IOP Therapist thought they might be related to the Individual’s ADHD and do not impair his daily function. Tr. at 58. He stated the Individual displays symptoms of sleep disturbance, but he did not think it was “pathological to the point of being a disorder.” Tr. at 59. Regarding the Individual’s manifestations of poor reality and “psychotic symptoms,” he stated he did not see symptoms of those behaviors during his therapy sessions with the Individual; he stated the Individual did not “bring” those issues to the therapy sessions, so those issues were not addressed. Tr. at 69.

The IOP Therapist opined that the Individual’s future plan of treatment should include finding a support group or mental health organization, focused on “gender and trans issues,” to help him navigate his sexual identity. Tr. at 70. He also recommended the Individual undergo counseling on a regular basis and that continued treatment would help strengthen his overall prognosis. Tr. at 70-71, 76.

The Individual’s Occupational Psychologist

The Occupational Psychologist testified that her role in conducting the Individual’s Fitness for Duty Evaluation was to work with the Individual to get a general understanding of “areas that might be contributing to the workplace difficulties that were being reported” about him and help connect the Individual with treatment resources in his community. Tr. at 80-81. She stated that at the start of the evaluation, the Individual reported feeling agitated, restless, and “finding it hard to manage” at work. Tr. at 91.

She stated she recommended the Individual seek personal counseling and a psychiatrist, to address his sleep issues, and she recommended the Individual see a medical provider to address his illicit drug use. Tr. at 81-82. She stated the Individual followed all treatment recommendations. Tr. at 83. She stated she received “positive reports” about the Individual’s functioning in the workplace from his manager. Tr. at 83.

She stated she did not see signs the Individual was engaging in substance use until he reported it to her. Tr. at 92-93. She stated the Fitness for Duty Evaluation process does not include regular drug testing. Tr. at 97. She explained that in cases of substance use, testing is “suspicion based,” and not random. Tr. at 97. She stated that in the Individual’s case, “no behaviors were observed by me or reported to me by others that triggered – that would have triggered suspicion-based drug testing.” Tr. at 98. She stated that, during the Individual’s evaluation, he was participating in an IOP and working, so there were “lots of opportunity for concerns to be identified and raised and reported.” Tr. at 101.

She opined that the Individual has grown, in terms of his ability to advocate for himself in the workplace, and has developed healthy habits that improve his ability to function in the workplace. Tr. at 89-90. She also stated that at the conclusion of the Individual’s evaluation, she found “no significant concerns about [the Individual’s] ability to work safely or reliably,” and closed his case in June 2022. Tr. at 84-85, 93.

The Individual

Regarding the Guideline D concerns, the Individual testified that he identifies as a gay man, and during college, he learned the dating app was “a good way to meet people who were also gay males.” Tr. at 133-134. He stated that when he started using the app, he found there were many gay males in his area that he had not known before. Tr. at 134. He stated that in using the dating app, his interactions with others were consensual, and none of his encounters involved violence Tr. at 137-138.

He stated that one weekend in August 2021, he rented a hotel room for the weekend, and, as soon as he arrived at the hotel, he “went through a process of shaving [his] body and cross-dressing, makeup, everything.” Tr. at 131, 138. He stated he then went on to the app and started talking to people. Tr. at 138. He stated he met a man on the app and invited him to his hotel room. Tr. at 138. He stated that during the encounter he was drugged and sexually assaulted. Tr. at 139. He stated he stopped using the online dating app a year ago after he was advised that using the app was not good for him and he was not going to meet anyone. Tr. at 141.

Regarding the Guideline E concerns, the Individual testified he knew he should not have used illegal drugs while holding a security clearance and stated he was not aware of the two-day reporting requirement for drug use contained in DOE Order 472.2. Tr. at 141, 158. Regarding his representations of additional drug use in his LOI response, the Individual testified the LOI instructions indicated responses should be limited to the past seven years. Tr. at 143. He stated his use of marijuana and acid occurred while he was in high school, more than seven years ago, from 2012 to 2013, so he did not disclose his use of those drugs in his LOI response. Tr. at 143-144. The Individual also stated he smoked meth with an acquaintance, daily, from August 25, 2021, to August 28, 2021. Tr. at 144. He stated the last time he associated with the acquaintance was over a year ago, and he has no intention of association with the acquaintance in the future. Tr. at 144.

Regarding the Guideline H and Bond Amendment concerns, the Individual testified that he used meth “[a]s a way to cope and forget about the [sexual assault].” Tr. at 146. He stated that after the sexual assault, he did not want to get his family involved; he just wanted to be alone or with

someone just like him. Tr. at 157. He also stated that after he started smoking the meth, he started feeling like someone was watching him while he slept, and he felt paranoid. Tr. at 175-176. He testified that his meth use “started to affect [him] to the point that [he] was taking so many days off, that [he] knew that [his] life was going to start crumbling down” if he did not talk to someone about it. Tr. at 157. He asserted that apart from his use of marijuana and acid during high school, and his use of meth from August 2021 to November 2021, he has not used any illegal drugs. Tr. at 144-145. He stated that when he initially stopped using meth, in November 2021, he had “cravings for the drug” a few times, but he has not had any cravings this year. Tr. at 145, 153-154. He also stated his feelings of paranoia and sleep disturbance ended when he stopped the meth use. Tr. 175-176. He testified that since he reported his drug use to the LSO, he has not undergone any drug testing. Tr. at 172. He stated that in the future, if he has a traumatic event, he will use counseling and therapy to help him cope, not drugs. Tr. at 146, 154-155.

Regarding the Guideline I concerns, the Individual testified that at the start of therapy, the treatment sessions “sounded bland and rehearsed,” but as time went on, he realized the therapists cared about him and wanted to see him succeed and excel in life. Tr. at 146-147. He stated he has benefitted from his treatment, is more open with his family, and tries to stay healthy. Tr. at 147-148. He also stated the IOP told him about a lesbian, gay, bisexual, transgender, and queer (LGBTQ) community in his town, which he did not know about. Tr. at 148. He stated that after his sessions with the IOP Therapist end, he will try getting a new therapist that he can afford. Tr. at 170.

He testified that he no longer takes the Seroquel prescribed by his psychiatrist because the psychiatrist stopped prescribing it. Tr. at 149. He stated he is still taking a prescription medication, Adderall, to treat his ADHD. Tr. at 149-150. He also stated he started seeing a new psychiatrist, three months ago, who prescribed an anti-depressant drug, Wellbutrin, which he takes once a day. Tr. at 165. He asserted that the Wellbutrin, in combination with the Adderall, makes his feel “a little more focused” and “better about the day.” Tr. at 168.

Regarding the Guideline J concerns, the Individual testified that apart from the drug involvement that was previously discussed during the hearing, he has never been involved in any type of criminal conduct. Tr. at 151. He stated he has never been arrested, never been charged with a crime, and never sold drugs. Tr. at 151.

The DOE Psychologist

The DOE Psychologist testified that at the time of the evaluation, the Individual displayed a “broad spectrum of symptoms, some of them quite serious and quite concerning, in the direction of psychotic symptoms.” Tr. at 183. However, in her testimony, she testified as to her opinion that the symptoms “were induced by the [the Individual’s use of] methamphetamine.” Tr. at 190.

The DOE Psychologist testified that she had recommended that the Individual treat his stimulant use disorder by completing the aftercare program at his IOP and have an additional six months of participation in the less intensive outpatient aftercare program after his graduation from the IOP. Tr. at 180. She also stated the Individual would need to abstain from meth use and “it would be helpful to have monthly unannounced drug tests.” Tr. at 180.

The DOE Psychologist opined that the Individual “has done as much as and more than I noted in my report would be necessary” to demonstrate rehabilitation or reformation from the stimulant use disorder. Tr. at 181. She agreed with the IOP Therapist in finding that abuse of drugs was not in the Individual’s “nature” and that the Individual did not “have a propensity to abuse drugs.” Tr. at 181. She stated the Individual’s meth use was “circumscribed” over the course of three months. Tr. at 181.

Regarding her recommendation for drug testing, she stated she was “not uncomfortable with the fact that those kinds of tests are not available at this point.” Tr. at 181-182. She stated she no longer believed drug testing was necessary for two reasons: first, the Individual’s stimulant use disorder “was a secondary diagnosis,” and second, “as [the Occupational Psychologist] mentioned, [the Individual] hasn’t manifested any indications of continued use of methamphetamine.” Tr. at 182.

Regarding the acute stress disorder, she stated this disorder “usually [is] not present for more than six months” and “has resolved.” Tr. at 185. As to the Individual’s major depressive disorder, she stated the Individual is being treated with both Wellbutrin and counseling, along with Adderall for his ADHD, so she thinks the Individual’s additional symptoms are being addressed. Tr. at 186. She stated the Individual’s psychiatric symptoms, dissociative episodes, and poor reality testing “are best explained now and best understood now as part of the substance-induced psychotic episode that [the Individual] was experiencing from his use of meth.” Tr. at 186.

Regarding the concerns related to the Individual’s high-risk sexual behavior, she noted the Individual testified that he “changed his ways about that.” Tr. at 186-187. She also stated that, during her clinical interview with the Individual, he “didn’t really have any real friends” and interacted with other via the internet, but now he has a very supportive family and “genuine, in-person relationships that he [can] trust.” Tr. at 187.

The DOE Psychiatrist opined that the Individual’s prognosis was “very good to excellent” if he continues his current treatment plan. Tr. at 182, 188. She recommended the Individual continue seeing his new psychiatrist and continue to have his medications monitored. Tr. at 187-188. She also recommended the Individual continue to have bi-weekly individual counseling sessions and meet with someone in the LGBTQ community “with whom he can say and talk about anything and know that it’s confidential.” Tr. at 188.

VI. Analysis

The Bond Amendment

After considering all the relevant information, including the testimony and other evidence presented at the hearing, I find that the Bond Amendment does not act as a bar to granting the Individual a security clearance.

The Bond Amendment provides that federal agencies “may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10,

2022). The Bond Amendment defines “an unlawful user of a controlled substance” and an “addict” as follows:

- a. An unlawful user of a controlled substance is any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of the controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate the individual is actively engaged in such conduct.
- b. An addict of a controlled substance is as defined in 21 U.S.C § 802(1), which is any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare; or is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his or her addiction

DOE Order 472.2A, Appendix C at ¶ 2 (citing the Bond Amendment).

The Individual is not an “unlawful user” or an “addict” of a controlled substance, as defined by the Bond Amendment. There is no dispute that the Individual illegally purchased and used meth, from August 2021 to November 2021, but there is no evidence to suggest he has lost the power of self-control. Ex. 7 at 1. The Individual creditably testified that he voluntarily stopped using meth in November 2021, and with the use of intensive therapy, no longer has cravings for the drug. In addition, the IOP Therapist, with whom the Individual had individual counseling sessions for over one year, and the Occupational Psychologist, with whom the Individual met for about ten months, concurred in finding the Individual’s meth use was an isolated incident. Both psychologists opined that the Individual used meth as a way to cope with the stress of, and try to forget about, the sexual assault and that the Individual’s character is not addictive by nature. There is also no evidence to suggest the Individual’s use of meth endangered the health or safety of the public.

Furthermore, although the Individual was not subject to random drug testing, the IOP Therapist, the Occupational Therapist, and the DOE Psychologist all testified that the Individual did not display signs of illegal drug use during their interactions with him. So, there was no reasonable suspicion of drug use to trigger drug testing. Lastly, the Individual’s IOP Therapist testified that the Individual’s prognosis for avoiding future substance use was excellent. Therefore, since I find that the evidence before me establishes that the Individual is not an unlawful user, or an addict, of a controlled substance, the Bond Amendment does not bar the Individual from holding a security clearance.

The Adjudicative Guidelines

In this case, the Individual was sexually assaulted after having been drugged in a hotel room. The sexual assault resulted in the Individual’s sexual orientation being unintentionally disclosed to his family. The sexual assault also, in large part, precipitated the Individual’s drug use and efforts to obtain drug and mental health treatment, which raised security concerns for the LSO and led to the Individual’s security clearance being suspended. I find that the Individual’s sexual assault was a

unique and highly unusual circumstance for the purpose of analyzing the application of the mitigation factors described in the Adjudicative Guidelines.

Guideline H

Under Guideline H of the Adjudicative Guidelines, in relevant part, an individual can mitigate security concerns related to their drug involvement 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; or

....

(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.

Adjudicative Guidelines at ¶ 26.

Regarding factor ¶ 26(a), the Individual provided credible testimony that his use of marijuana and acid occurred around ten years ago, while he was in high school, and there is no evidence to suggest the Individual used marijuana or acid more recently. As discussed above, the Individual used meth to cope with the trauma of the sexual assault, which was a unique and an unusual circumstance. The Individual's IOP Therapist testified that the Individual's use of meth was not habitual and that he voluntarily stopped using the drug a year ago. In addition, the Individual also credibly testified he stopped using the dating app, which he used to meet his attacker, a year ago. The Individual also testified he no longer associates with the acquaintance who provided him the meth. Lastly, the Individual stated he will use therapy, not drugs, to cope with his stressors, in the future. Therefore, I find the mitigating factor under Adjudicative Guideline at ¶ 26(a) is applicable in this case.

With regard to factor ¶ 26(d), the Individual submitted a certificate of completion, which indicated he completed an IOP in May 2022. The Individual's IOP Therapist testified the Individual also completed the outpatient aftercare program, and as of the date of the hearing, continued to have treatment sessions with the Individual. As discussed above, the Individual's IOP Therapist and Occupational Therapist both testified they did not see signs of recurrent drug use by the Individual. Lastly, the DOE Psychologist gave the Individual an excellent prognosis in his treatment for substance use disorder. Given the evidence before me, I find that the mitigating factor described under Adjudicative Guidelines at ¶ 26(d) is also applicable in this case. Considering the applicable mitigating factors described above, I find that the security concern raised under Guideline H are resolved.

Guideline D

Under Guideline D of the Adjudicative Guidelines, in pertinent part, an individual can mitigate security concerns related to their sexual behavior if “the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and

consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.” Adjudicative Guidelines at ¶ 14(e).

The testimony presented by the Individual and the IOP Therapist supports that after the sexual assault, the Individual began the process of resolving his sexual identity. The Individual testified that when he completed the IOP, he discovered that there were LGBTQ organizations in his community where he could seek therapy and meet people. The Individual testified he stopped using the dating app which led to the sexual assault a year ago. In addition, the DOE Psychologist gave the Individual a favorable prognosis after finding the Individual has a supportive family and in-person relationships he can trust. Lastly, the IOP Therapist stated the Individual recognizes his responsibility for placing himself in certain situations and is trying to connect with other men in a more meaningful way. Further, the Individual’s openness regarding his sexual identity to his family as well as his new awareness of LGBTQ community resources reduce the risk of exploitation. Therefore, I find that the Individual, through his participation in the IOP, has stopped engaging in high-risk sexual behaviors and is better able to resolve issues regarding his sexual identity. Considering the evidence before me, I find that mitigating factor ¶ 14(e) is applicable because of the Individual’s successful participation in the IOP and the favorable testimony of the DOE Psychologist and IOP therapist regarding the Individual’s future behavior. Consequently, I find that Guideline D security concern has been resolved.

Guideline E

Under Guideline E of the Adjudicative Guidelines, an individual may mitigate security concerns related to their personal conduct by showing that:

- (a) the offense was “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,” or
- ...
- (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.

As discussed above, I find the Individual’s sexual assault was a unique and unusual circumstance. The Individual’s failure to report his meth use within two working days, as required by the DOE, occurred while the Individual was managing the traumatic effects of the sexual assault, and therefore, does not in itself cast doubt on his trustworthiness or judgment. Regarding the Individual’s omission of his use of marijuana and acid in his LOI response, I find the Individual credibly testified that the LOI’s question regarding his prior drug use suggested the responses should be limited to the past seven years, so he did not believe he was required to mention his use

of marijuana and acid from nearly ten years ago. Significantly, as discussed above, the Individual's IOP Therapist and Occupational Therapist both testified they did not see signs of recurrent drug use by the Individual. Further, the DOE Psychologist gave the Individual an excellent prognosis in his treatment for substance use disorder. Consequently, I find that the Individual will likely not be involved with any criminal activity associated with illegal drugs.

As to the Individual's association with others involved in criminal activity, I find the Individual's association with the individual who provided him with meth was directly caused by the trauma of the Individual's sexual assault. The sexual assault was a unique and unusual circumstance that led the Individual to seek meth to cope and forget about the assault. The Individual also established he successfully completed an IOP and aftercare program, no longer craves meth, and received an excellent prognosis regarding substance use from the DOE Psychologist. Lastly, the Individual credibly testified that he no longer associates with the individual who provided him meth and does not intend to do so in the future. Therefore, I find that the mitigating factors described under ¶ 17(a) and (g) are applicable in this case and that the Guideline E security concerns have been resolved.

Guideline I

Under Adjudicative Guideline I, an individual may mitigate security concerns related to their psychological condition if "[t]he individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional." Adjudicative Guidelines at ¶ 29(b).

Regarding the Individual's Stimulant Use Disorder, he voluntarily entered an IOP in November 2021 to address his meth use and successfully completed the program after six months, in May 2022. The Individual also successfully completed an aftercare program and continued to have individual therapy sessions with the IOP Therapist as of the date of the hearing in December 2022. The IOP Therapist testified the Individual progressed considerably through therapy and opined the Individual no longer displayed symptoms of a Stimulant Use Disorder as of the date of the hearing. Similarly, the DOE Psychologist testified the Individual exceeded her recommendations to demonstrate rehabilitation or reformation from the Stimulant Use Disorder and complied with her treatment recommendations, even in the absence of random drug testing. Lastly, the DOE Psychologist opined the Individual's prognosis was excellent if he continues his current treatment plan.

Regarding the Individual's remaining psychological symptoms, the Individual is currently treating those conditions with a combination of medication and counseling.

As for the Individual's major depressive disorder, the Individual's IOP Therapist testified the Individual has been able to talk about his feelings and feel a sense of belonging since engaging in therapy. In addition, the DOE Psychologist opined the Individual's symptoms of depressive disorder are being sufficiently addressed with the Individual's use of Adderall and Wellbutrin.

Regarding the Individual's symptoms of acute stress disorder, the Individual's IOP Therapist testified the Individual no longer suffers from this disorder and the Individual has been educated

on how to achieve self-relaxation. Similarly, the DOE Psychologist testified this disorder is usually not present for more than six months and determined the disorder was resolved.

The record establishes that the Individual has been treating his ADHD with Adderall since high school. Although the ADHD is a chronic condition, the IOP Therapist testified the Individual is more aware of this condition and takes his medication regularly. The DOE Psychologist also opined that the Individual's symptoms related to his ADHD are being sufficiently addressed by his use of Adderall. Lastly, the Individual's brother and father testified that the Individual has a more positive attitude and is more focused on his career.

Regarding the Individual's remaining symptoms of sleep disturbance and paranoia, the DOE Psychologist opined these symptoms were a consequence of the Individual's use of meth and were no longer a concern. The Individual was treating those symptoms with Seroquel and, more recently, Wellbutrin. Lastly, the Individual's father and brother testified that they interact with the Individual on a regular basis and have not observed the Individual having any hallucinations or delusions. Therefore, I find that the Guideline I mitigating factor described by ¶ 29(b) is applicable and that the Individual has resolved the Guideline I security concerns related to his diagnosed psychological conditions.

Guideline J

Under Guideline J of the Adjudicative Guidelines, an individual may mitigate security concerns related to their criminal conduct if “[s]o much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Adjudicative Guidelines at ¶ 32(a).

The Individual acknowledges that his purchase and use of meth, from August 2021 to November 2021, was illegal conduct. However, as discussed above, I find the Individual used meth to cope, and try to forget about, the traumatic experience of being sexually assaulted in August 2021. The sexual assault was a unique and unusual circumstance that does not cast doubt on the Individual's trustworthiness or judgment. In addition, the testimony of three psychologists, each of whom met with the individual, supports that the Individual's limited use of meth was triggered by an isolated incident, and the Individual has not resumed use of the drug. Lastly, I find that so much time has elapsed since the Individual's use of marijuana and acid, which occurred nearly ten years ago, that the Individual's limited use of those drugs does not cast doubt on the Individual's trustworthiness or good judgment. Therefore, I find the mitigating factor described by ¶ 32(a) is applicable in this case and that the Individual has resolved the Guideline J security concerns.

Conclusion

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 have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guidelines D, E, H, I, and J of the Adjudicative Guidelines. In addition, I found the applicable provisions of the Bond Amendment do not bar the Individual from holding an access authorization. Accordingly, I have determined that the Individual should have his access authorization restored. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals