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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: April 6, 2023)	Case No.: PSH-23-0069
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Issued: June 23, 2023

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of Sara Lynn Everson (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (“Adjudicative Guidelines”), I conclude that the Individual should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. In July 2022, the Individual submitted a Questionnaire for National Security Positions (QNSP), and the Local Security Office (LSO) later determined that the Individual had omitted information therein regarding her illegal use of controlled substances. The LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding her eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline E and Guideline H of the Adjudicative Guidelines.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the

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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of four witnesses and also testified on her own behalf. The Individual submitted five exhibits, marked Exhibits A through E. The LSO submitted eleven exhibits, marked Exhibits 1 through 11.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct) and Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 2 at 4–5.

Guideline E provides that “[c]onduct 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.” Adjudicative Guidelines at ¶ 15. “Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* Conditions that could raise a security concern include “[d]eliberate omission . . . of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .” and “[d]eliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator, security official, . . . or other official government representative” *Id.* at ¶ 16(a) and (b). The SSC cited the following: (1) the Individual reported a history of marijuana use in her QNSP, during a later investigatory interview, and in her written responses to Letters of Interrogatory (LOI) that conflicted with information contained in her medical records; (2) in providing her aforementioned responses, she had consistently denied any other illegal drug use; and (3) she subsequently admitted that she had underreported her marijuana use. Ex. 2 at 4–5. The cited information justifies the LSO's invocation of Guideline E.

Guideline H provides that “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 at ¶ 24. Conditions that could raise a security concern include “any substance misuse . . . ,” which includes “illegal use of controlled substances,” and “[i]llegal possession of a controlled substance” *Id.* at ¶ 25(a) and (c). The SSC cited the same information listed above, which justifies its invocation of Guideline H.

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

² The LSO's exhibits were combined and submitted in a single, 120-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

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 or her 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. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In the July 2022 QNSP, the Individual reported that she had used marijuana from approximately April 2021 to February 2022 in response to the question whether in the last seven years she had illegally used any drugs or controlled substances, to include “injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.” Ex. 3 at 54–55. She explained that she had “consumed marijuana in edible form once it became legalized in [her] state . . . at night before bed to see if it would help with [her] sleep issues due to Fibromyalgia pain[,]” and she “used it a few nights a week” as needed to manage pain for “almost a year.” *Id.* at 55. After disclosing the above information, the Individual responded in the negative to a following question that asked whether she had “an additional instance(s) of illegal use of a drug or controlled substance to” report for the same seven-year timeframe. *Id.*

The record includes a report produced by an investigator who conducted an Enhanced Subject Interview (ESI) of the Individual in September 2022. Ex. 5 at 103. The record of that interview indicates that the Individual again disclosed her above use of marijuana, but this time she reported that she took “daily dosages” of “one edible per night.” *Id.* at 103–04. She also reported that she had never used marijuana or any other illegal drugs previously. *Id.* at 103. In addition to the interview record, the report contains medical records created in 2017; those records indicate that the Individual disclosed during an initial assessment at a hospital that year that she had occasionally used marijuana “over a year” before the date of the assessment. Ex. 6 at 106.

In November 2022, the LSO sent the Individual the first LOI. Ex. 7. The LOI noted that there was a discrepancy between the information she provided in the QNSP and during the ESI and the information developed during the investigation. *Id.* The LOI requested that she provide, among other things, the starting date, amount, and frequency of her drug usage. *Id.* The final question of the LOI asked “[h]ave you ever used any other illegal drug or controlled substance[,]” and, if so,

“provide a **complete drug history.**” *Id.* at 107 (emphasis original). The Individual responded that the period of her drug usage was approximately April 2021 to February or March 2022, and to the final question she responded “No.” *Id.* at 109. She provided the same responses to a follow-up December 2022 LOI. Ex. 9 at 111. Notably, the preamble to the December LOI explicitly states that she was being asked to report “a complete drug history” of “all illegal drugs . . . to include marijuana, regardless of whether use was more than seven (7) years ago.” *Id.* at 113.

After she provided her December response, the LSO sent the Individual a third LOI dated December 15, 2022. Ex. 10 at 117. It disclosed that the LSO had discovered information regarding the Individual’s use of marijuana prior to April 2021; it then asked why she failed to provide a complete drug history in her two prior LOI responses. *Id.* In response, the Individual apologized, stated that her failure to report the information was not intentional but rather resulted from her misunderstanding “what information was being requested” because she defined “drug usage” as “habitual, chronic use” instead of sporadic or occasional use, and asserted that she had reported the former consistent with her understanding. *Id.* at 119. She then disclosed that she first “experimented” with marijuana in approximately 2009 and estimated that she used it every five to six months between 2009 and 2019. *Id.*

At the hearing, the Individual’s manager, the Individual’s supervisor, and one of the Individual’s coworkers testified on the Individual’s behalf. All three testified that they had no concerns for her reliability in handling sensitive information. Tr. at 20, 30, 53. The manager also testified that he recruited her for her present position because they had worked together for a different employer, and the Individual was exceptionally trustworthy in her work performance. *Id.* at 56, 61–62. The supervisor testified that the Individual had never exhibited dishonesty. *Id.* at 34. The supervisor also testified that during discussions with the Individual, the Individual expressed that she should have done things differently by asking questions when completing the QNSP to better understand how to respond. *Id.* at 41–42. The supervisor testified that the Individual stated that she stopped using marijuana, in part, because she wanted to apply for a position that required a security clearance. *Id.* at 39, 43. The coworker testified that the Individual is very conscientious with regard to following their jobsite’s security rules and protocols. *Id.* at 19–20.

The Individual’s boyfriend, whom she presently lives with, testified that they had been in a ten-year relationship and that he had observed the Individual use marijuana only two or three times. *Id.* at 69–70. The boyfriend estimated that the Individual stopped using marijuana in April 2022 and that she did so, in part, “for job-related” reasons. *Id.* at 79. He testified that she had stated that “she is done with it” and “doesn’t really want to use it again.” *Id.* The boyfriend testified that he did not assist the Individual in responding to any of the questions throughout the security clearance application process. *Id.* at 82, 91.

The Individual testified that she was actively recruited by the manager for her present position, which she started in June 2022. *Id.* at 100. In reference to the 2017 hospital intake assessment where she reported occasional marijuana use, the Individual testified that the doctor or nurse practitioner who questioned her asked “specifically about any chronic use or even experimentation, like even just using it like one time.” *Id.* at 106. She explained that they were very clear to not just ask “are you a drug user[,]” but rather they asked whether she had “ever even experimented with marijuana.” *Id.* The Individual testified that her responses to the November 2022 and first

December 2022 LOI were “based on [her] definition of drug usage versus experimentation.” *Id.* at 109. She then testified to the following:

So because the question is drug usage, to me, I was defining that as from, probably from my medical training, of chronic, habitual use. So, for me, it was, I was getting confused. I was like, okay, are they asking me for when I started using regularly, chronically, habitually, which is how I define drug usage, versus are they asking me for when I was -- have I ever experimented with?

Id. She confirmed that she had defined “sporadic or occasional drug consumption [a]s experimentation.” *Id.* at 109–10. She testified further: “So that’s kind of where my confusion came in was with the definitions, which in hindsight seems ridiculous now. . . . I should have reached out . . . for clarification between the two.” *Id.* at 110–11. When directed to the wording of the question in the QNSP which references “experimenting” in relation to types of drug use, the Individual testified that she “either just missed that or completely forgot” about the instances she disclosed in the 2017 assessment. *Id.* at 111–12. She explained that her failure to report the drug use was a misunderstanding of the definition of drug usage, the timeframe of her usage, and being “extremely anxious and flustered by being sent these LOIs asking for dates going back years, wanting specific instances.” *Id.* at 112. She testified that she takes full responsibility for any confusion or “what appears to be discrepancies” in her answers to the LOIs. *Id.* at 124. She testified that, going forward, she would do a “stronger due diligence” and “reach out and seek clarification on definitions and specifics” if she had the “slightest question on” anything. *Id.* at 130. She also explained that at the time she was completing the QNSP she was dealing with a difficult work environment and personal issues, including grieving the loss of family members. *Id.* at 138.

Lastly, the Individual testified that she has no plans to ever use marijuana again, even if it becomes federally legal. *Id.* at 125. She testified that while she used it to address medical conditions, she decided that she feels “much more clear mentally” without it. *Id.* at 126. The record includes a May 2023 urine drug test result that indicates a negative result for “marijuana metabolite.” Ex. B at 1.

V. ANALYSIS

A. Guideline E Considerations

Conditions that can mitigate security concerns based on personal conduct include the following:

- (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.

I conclude that none of the above mitigating conditions apply to resolve the Guideline E concerns. Several of the conditions can be addressed summarily. Paragraph 17(a) is inapplicable because the record is clear that the Individual did not come forward and provide an accurate history of her drug use until after she was confronted with information the LSO had uncovered which contradicted her reported marijuana use. Paragraph 17(b) is inapplicable because there is no evidence in the record that the Individual relied on the advice of legal counsel or anybody else, including her boyfriend, in crafting her responses to the security questions. Paragraph 17(f) is not applicable because there has been no claim that the information listed in the SSC is unsubstantiated or unreliable. Lastly, ¶ 17(g) is inapplicable because the Individual's association with persons involved in criminal activities is not an issue in this case.

The remaining conditions are inapplicable for the following reasons. Regarding ¶ 17(c), I do not find that the concerns are mitigated by the relative severity of her offense, the passage of time, the frequency of her conduct, nor the circumstances of her conduct. First, her offense is not minor. Guideline E specifically highlights "any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes" as concerning conduct, and the record demonstrates that the Individual, by her own admission, failed to provide truthful answers throughout the national security investigative process. In making my finding, I have considered and rejected the Individual's explanation that she provided accurate answers based on her interpretation of the question regarding drug use. I need only look to the language of the question itself to dismiss her explanation that she failed to disclose her prior drug use because she thought that the questions did not cover experimental or occasional use: the question in both the QNSP and

LOIs explicitly states that drug use includes “experimenting with or otherwise consuming any drug or controlled substance.” After rejecting her explanation for her behavior, I further conclude that the circumstances surrounding her conduct do not mitigate the concern. The Individual’s alleged anxiety around completing security clearance paperwork, a difficult work environment, and personal issues such as the loss of family members, if true, do not excuse her failure to provide truthful and accurate information. Further still, I find that her conduct was not infrequent because she failed to disclose accurate information on four separate occasions in a relatively short span of time between her written and interview responses. Lastly, given the severity of her repeated conduct and the fact that less than a year has passed since she submitted the QNSP, I find that the concerns that stem from her behavior are not mitigated by the passage of time.

Finally, I find that ¶ 17(d) and ¶ 17(e) do not apply to resolve the security concerns. Because I rely upon the same information in reaching my finding, I will analyze the two conditions together. While the Individual has acknowledged her behavior by stating that she mistakenly misinterpreted the questions and consequently omitted information that she should have disclosed, I do not conclude that she has obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to her concerning conduct such that the untrustworthy behavior is unlikely to recur. There is no evidence in the record that indicates that the Individual has obtained counseling. Furthermore, the Individual’s dubious explanation for the motivation behind her conduct does not remove my concern that the behavior is unlikely to recur. I am not persuaded that she has accepted full responsibility for her conduct.

Accordingly, I find that the Individual has not resolved the Guideline E concerns.

B. Guideline H Considerations

Conditions that can mitigate security concerns based on drug involvement and substance misuse include the following:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility

Adjudicative Guidelines at ¶ 26.

In this case, both mitigating conditions referenced above apply to resolve the Guideline H concerns. First, under ¶ 26(a), I find that the passage of time and change in circumstances since her use of marijuana are such that it is unlikely she will use marijuana in the future and her past marijuana use, separate from the considerations outlined in the section above, does not cast doubt on her current reliability, trustworthiness, or good judgment. The Individual's testimony that she used marijuana from 2021 to early 2022 to treat a medical condition is consistent with the statements she made to her supervisor and the observations of her boyfriend. I also find that her motivation for ceasing the conduct was because she understood that it was inconsistent with possessing a security clearance, which is why she stopped in anticipation of applying for her present position; the testimony of her supervisor indicated that they discussed the same. Thus, I find that she has a powerful motivator to remain abstinent from marijuana. Furthermore, the record indicates that she had not used marijuana for approximately fourteen months. There is no evidence or indication that she has consumed marijuana since she indicated she stopped, and she submitted a recent drug test result that corroborates her claimed abstinence. Thus, in addition to the passage of a significant period of time, the circumstances are different: the Individual is now in a position that requires her abstinence from the substance, she has successfully ceased that use, she testified she feels better mentally after stopping its use, and there is no indication that she desires to use it in the future.

Furthermore, under condition ¶ 26(b), I first find that she acknowledged her involvement with marijuana by admitting her most recent use and then later disclosing her full history of use. She also, as indicated above, provided evidence of actions taken to overcome this problem by ceasing use, obtaining a position that is inconsistent with marijuana use, and realizing that she feels better without using the substance. Finally, her period of over one year of successfully maintaining abstinence combined with the above factors demonstrates an established pattern.

Accordingly, I find that ¶ 26(a) and ¶ 26(b) apply to resolve the Guideline H concerns.

VI. CONCLUSION

For the reasons stated above, I find that there is sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E and Guideline H of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve Guideline E security concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals