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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: May 16, 2023) Case No.: PSH-23-0087
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Issued: July 10, 2023

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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’s access authorization should not be restored.

I. BACKGROUND

The Individual was first granted a DOE security clearance in 2010. Exhibit (Ex.) 11 at 43–44.² On September 29, 2020, the Individual completed a Questionnaire for National Security Positions (QNSP) in connection with a routine reinvestigation of his continued eligibility for access authorization. *Id.* at 48. The Individual disclosed on the QNSP that he had been arrested and charged with Assault and Battery in 2018, and that he subsequently pleaded guilty to Misdemeanor Disorderly Conduct. *Id.* at 39–40. The Individual also disclosed that he had been arrested and charged with Misdemeanor Domestic Assault in 2013, and that the charges related to that arrest had been dismissed. *Id.* at 40–41.

In his response to the QNSP, the Individual denied having illegally used any drugs or controlled substances in the prior seven years, ever having illegally used any drugs while possessing a security

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 numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, due to an unnumbered first page, the pagination of Exhibit 11 begins at “1” on the second page. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

clearance, or ever having sought counseling or treatment as a result of his use of illegal drugs or controlled substances. *Id.* at 42–43. The Individual also denied having failed to file or pay federal or state taxes in the prior seven years or having fallen into delinquency on routine financial accounts in the prior seven years. *Id.* at 44–46.

On November 17, 2020, an investigator (Investigator) interviewed the Individual as part of the investigation into the Individual’s continued eligibility for access authorization. *Id.* at 54. The Investigator confronted the Individual with a copy of the Individual’s credit report which showed that he had fallen into delinquency on numerous routine accounts on which he owed over \$20,000. *Id.* at 58–61, 325–29. The Individual also admitted that he failed to file federal or state personal income tax returns, or to pay federal or state personal income taxes, for the 2018 and 2019 tax years. *Id.* at 61–62. The Individual responded in the negative when asked by the Investigator whether he had used illegal drugs, or sought treatment related to illegal drug use, in the prior seven years. *Id.* at 58.

The Investigator subsequently obtained medical records establishing that the Individual: had used heroin and cocaine, and misused prescription Percocet, while possessing a DOE security clearance; was diagnosed with Substance Abuse and Substance Dependence under the *Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DSM-4)*; was prescribed Suboxone;³ and relapsed after having obtained drug-related treatment from multiple facilities. *Id.* at 71–85, 103–304. The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the information obtained through the investigation. Ex. 12 at 1–2. In his response, the Individual admitted that he had engaged in daily illegal drug use for years and that he intentionally failed to disclose his illegal drug use and treatment on the QNSP due to “fear and shame.” *Id.* at 9. On December 20, 2022, the Individual’s employer notified DOE that it had discovered the Individual’s use of Suboxone, which the Individual had not disclosed to his employer, after a drug test following a workplace accident. Ex. 13, Attachment (Att.).

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 4 at 1–2. 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), Guideline F (Financial Considerations), Guideline H (Drug Involvement and Substance Misuse), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines, and prohibited the LSO from granting or renewing the Individual’s security clearance under 50 U.S.C. § 3343(b) (Bond Amendment). *Id.* at 4–8.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 6. 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 thirteen exhibits (Exs. 1–13) and the Individual submitted four

³ Suboxone is the brand name of a form of Buprenorphine, a medication prescribed to treat opioid use disorder. *Buprenorphine*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (June 9, 2023), samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/buprenorphine (last visited June 16, 2023).

exhibits (Exs. A–D). The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 14. The LSO did not call any witnesses to testify. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E of the Adjudicative Guidelines as the first basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 4–5.

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 and substance misuse, or his drug-related treatment, on the QNSP or to the Investigator; work-related discipline due to being absent from work and unable to report his absence while in drug-related treatment; and failure to disclose his Suboxone prescription to his employer as required. Ex. 4 at 4–5. The LSO’s allegations that the Individual deliberately omitted or concealed his illegal drug use, substance misuse, and drug-related treatment justify its invocation of Guideline E.⁴ Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline F of the Adjudicative Guidelines as the second basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 5. “Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 18. The SSC cited the Individual’s delinquent debts revealed through the background investigation, which the LSO calculated totaled \$21,798, and the Individual’s failure to file federal or state personal income tax returns or to pay federal or state personal income taxes for the 2018 tax year.⁵ Ex. 4 at 5. The LSO’s allegations that the Individual demonstrated an inability or unwillingness to satisfy his debts, and failed to file federal and state personal income tax returns or pay federal and state personal income taxes as required, justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(b), (f).

The LSO cited Guideline H of the Adjudicative Guidelines as the third basis for its determination to suspend the Individual’s access authorization. Ex. 4 at 5–7. “The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, . . . can raise questions

⁴ The LSO’s allegation concerning the Individual having been disciplined by his employer on one occasion for being absent from work without leave while receiving drug-related treatment does not, in of itself, raise security concerns under Guideline E.

⁵ The LSO did not cite the Individual’s failure to timely file personal income tax returns or to pay personal income taxes for the 2019 tax year in the SSC.

about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 24. The SSC cited the Individual's: illegal use of heroin, cocaine, and Percocet; drug-related treatment at numerous facilities; failure to complete drug-related treatment; relapse following drug-related treatment; and diagnosis with a substance abuse disorder (SUD). Ex. 4 at 5–7. The LSO's allegations that the Individual illegally possessed and used illegal drugs, including while having been granted access authorization, diagnosis with SUD, and failure to successfully complete a drug treatment program justify its invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c)–(f).

The LSO also cited Guideline I as the fourth basis for its determination to suspend the Individual's access authorization. Ex. 4 at 7. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline." *Id.* at ¶ 27. The SSC cited the Individual's diagnosis with SUD and drug-related treatment. Ex. 4 at 7. The LSO's allegations that the Individual was diagnosed with a condition that may impair his judgment, stability, reliability, or trustworthiness, and that the Individual failed to follow a treatment plan prescribed to manage the condition, justifies its invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b), (d).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the fifth basis for its determination to suspend the Individual's access authorization. Ex. 4 at 7–8. "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The SSC cited the Individual's illegal drug use and arrests for Assault and Domestic Violence. Ex. 4 at 7–8. The evidence that the Individual committed criminal offenses justifies the LSO's invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

The LSO cited the Bond Amendment as the final basis for its determination to suspend the Individual's access authorization. Ex. 4 at 8. Pursuant to the Bond Amendment, "a Federal agency may not grant or renew a security clearance for a [] person who is an unlawful user of a controlled substance or an addict." 50 U.S.C. § 3343(b). According to DOE policy:

[a]n 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.

Memorandum from David M. Turk, Deputy Sec'y. of Energy, to Kathleen Hogan, Acting Under Sec'y. for Sci. & Energy, et al., Revision of DOE Policy Regarding Application of the Bond Amendment at 6 (April 23, 2021) (Revised Bond Amendment Policy). An addict is "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or

welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.” 21 U.S.C. § 802(1).

Heroin, cocaine, and Percocet are controlled substances. 21 U.S.C. § 812; 21 C.F.R. § 1308.12. The SSC cited the Individual’s admission to having used these substances on a daily basis for several years while possessing access authorization and to having relapsed even after receiving drug-related treatment in support of its invocation of the Bond Amendment. Ex. 4 at 8.

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) (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 or her 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. *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.

IV. FINDINGS OF FACT

In 2009, the Individual was arrested and charged with Misdemeanor Domestic Violence and Assault after a physical altercation with a girlfriend over his relations with another woman. Ex. 11 at 91; Ex. 12 at 6; Tr. at 32 (admitting that he “broke her [home’s] back window and she ended up getting burned accidentally”). The Individual pleaded guilty to Disorderly Conduct, and was sentenced to pay a fine and serve one year of probation. Ex. 11 at 91.

The Individual was granted a DOE security clearance in 2010 in connection with his employment by a DOE contractor. *Id.* at 43–44; *see also* Ex. D (indicating that the Individual has demonstrated skill and a positive work ethic in his employment with the DOE contractor). That same year, the Individual was prescribed Percocet after undergoing surgery. Ex. 11 at 63. After the Individual’s prescription for Percocet expired, he began purchasing Percocet illegally from acquaintances because he “liked how the medication made him feel . . .” *Id.* The Individual used the illegally-purchased Percocet on an approximately daily basis. *Id.*; Ex. 12 at 9.

In September 2013, the Individual was arrested and charged with Misdemeanor Domestic Violence and Assault after the Individual physically restrained his domestic partner during a dispute over the Individual's refusal to give her money to buy drugs. Ex. 11 at 40–41, 91; Ex. 12 at 6; Tr. at 33 (reflecting the Individual's testimony that he "restrained her" after she initiated the altercation and that he "didn't assault her"). The charges were dismissed after the Individual's domestic partner refused to cooperate with the prosecuting agency. Ex. 11 at 91.

In 2014, the Individual began purchasing and using heroin and cocaine when he was unable to obtain Percocet. *Id.* at 63. By 2015, the Individual was using heroin on a nearly daily basis, and cocaine on days when he was unable to obtain heroin or Percocet. *Id.* at 63, 72; Ex. 12 at 9. In July 2015, the Individual was charged with Contempt of Court after failing to appear as a witness in a judicial proceeding. Ex. 11 at 90. The Individual paid a fine to resolve the matter. *Id.*

In September 2016, the Individual voluntarily admitted himself to an inpatient facility for drug-related treatment. *Id.* at 72, 104. Clinicians diagnosed the Individual with Opioid Use Disorder, Severe, and Cocaine Abuse, Uncomplicated, under the *DSM-4*. *Id.* at 110. The clinicians prescribed the Individual medication to control symptoms of withdrawal and recommended that he remain in the facility for thirty days in order to "detox" and participate in Narcotics Anonymous (NA) following discharge. *Id.* at 136. The Individual was absent from work while receiving treatment from the facility, and was unable to communicate the reason for his absence from work due to the facility's "blackout" policy on outside communications by patients. *Id.* at 128; Ex. 12 at 20. The Individual's employer disciplined him for failing to timely communicate his absence from work. Ex. 11 at 26; Ex. 12 at 20. The Individual checked himself out of the facility after twelve days of treatment in order to return to work and did not participate in NA. Ex. 11 at 146.

The Individual resumed using illegal drugs after his 2016 treatment, and admitted himself to a second inpatient facility for drug-related treatment in 2017. *Id.* at 64. The Individual participated in treatment for approximately three weeks, but relapsed soon after his discharge from the facility. *Id.* The Individual returned to the facility several months later, and completed a thirty-day course of treatment in June 2017. *Id.* at 64, 103. The Individual relapsed again soon after his completion of the treatment. *Id.* at 64.

In May 2018, the Individual was arrested and charged with Misdemeanor Domestic Violence and Assault after a dispute with his domestic partner escalated to a physical altercation. *Id.* at 87–88 (indicating that the Individual's domestic partner alleged to the law enforcement officers who responded to her emergency call that the domestic dispute began after she confronted him about resuming use of crack cocaine, and that both the Individual and his domestic partner alleged to the officers that the other had initiated the physical assault); *but see* Tr. at 33–34 (reflecting the Individual's testimony at the hearing that he restrained his domestic partner after she struck him over his communications with another woman). The Individual pleaded guilty to Disorderly Conduct and was ordered to undergo counseling and pay a fine. Ex. 11 at 89–90.

In November 2018, the Individual enrolled in treatment with a Medical Doctor (MD) who diagnosed him with Drug Abuse Disorder and prescribed him Suboxone to manage his cravings. *Id.* at 81–82, 148. The Individual transferred to another treatment provider (Outpatient Program) after the facility at which the MD was employed closed. *Id.* at 82. The Individual has attended the

Outpatient Program on an ongoing basis since 2020. Ex. B. The Outpatient Program prescribed the Individual Suboxone, provided him with substance abuse counseling, and required him to undergo periodic drug testing. *Id.*; *see also* Ex. 11 at 205–304 (reflecting notes prepared by clinicians employed by the Outpatient Program concerning the Individual’s treatment and progress); Ex. A (reflecting the results of drug testing administered by the Outpatient Program from 2020 to 2023 showing no traces of drug use, except for substances attributable to the Individual’s prescribed Suboxone).

On September 29, 2020, the Individual signed and submitted the QNSP. Ex. 11 at 48. As part of submitting the QNSP, the Individual certified that its contents were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* The Individual checked boxes marked “No” on the QNSP in response to questions concerning whether he had illegally used any drugs or controlled substances in the prior seven years, ever illegally used any drugs while possessing a security clearance, or ever sought counseling or treatment as a result of his use of illegal drugs or controlled substances. *Id.* at 42–43. The Individual also checked boxes marked “No” on the QNSP in response to questions asking whether he had failed to file or pay Federal or state taxes in the prior seven years or had fallen into delinquency on routine financial accounts in the prior seven years. *Id.* at 44–46.

The Investigator interviewed the Individual on November 17, 2020, concerning the Individual’s continued eligibility for access authorization. *Id.* at 54. The Investigator asked the Individual each of the questions on the QNSP concerning illegal drug use and illegal drug involvement, and the Individual denied any illegal drug use or drug involvement. *Id.* at 58. The Individual admitted that he had received counseling in September 2016, but represented that it was for depression instead of illegal drug use. *Id.* at 54. The Investigator confronted the Individual with a copy of the Individual’s credit report which showed that he had fallen into delinquency on numerous routine accounts on which he owed over \$20,000. *Id.* at 58–61, 325–29. The Individual also admitted that he failed to file federal or state personal income tax returns, or to pay federal or state personal income taxes, for the 2018 and 2019 tax years. *Id.* at 61–62.

On November 23, 2020, the Investigator obtained records of the Individual’s drug-related treatment. *Id.* at 71. The Investigator conducted another interview of the Individual on May 11, 2021. *Id.* at 62. During the interview, the Individual admitted that he had falsely denied illegal drug use and treatment on the QNSP and in the prior interview with the Investigator “because he was scared he could lose his job.” *Id.* at 63.

The LSO issued the LOI to the Individual on October 25, 2022. Ex. 12 at 1. In his response, the Individual admitted that he had engaged in daily illegal drug use for years while possessing access authorization and that he intentionally failed to disclose his illegal drug use and treatment on the QNSP due to “fear and shame.” *Id.* at 9. Regarding his financial situation, the Individual said that he “believe[d] [he] did file taxes in 2018” and represented that he had paid \$7,000 to the IRS. *Id.* at 15–16. The Individual indicated that he had not yet taken action to resolve his unpaid taxes for the 2019 tax year or any of his delinquent debts. *Id.* at 15. On December 20, 2022, the Individual’s employer notified DOE that it had discovered the Individual’s use of Suboxone, which the Individual had not previously disclosed to his employer, through a mandatory drug test following a workplace accident earlier that month. Ex. 13, Att. Documentation provided by the employer

indicated that the Individual was suspended without pay and warned that any further misconduct could result in termination of his employment. *Id.*

At the hearing, the Individual testified that he had not engaged in illegal drug use or substance misuse since 2019, and that he had not experienced any cravings to use illegal drugs for over one year. Tr. at 19, 39. He represented that he had disassociated from persons with whom he previously used illegal drugs. *Id.* at 19. The Individual acknowledged that he had “made mistakes,” but represented that he “turn[ed] [his] life around and correct[ed] the issues that [he] had in the past.” *Id.* at 12; *see also* Ex. C (reflecting the opinion of a former school counselor of the Individual that he had demonstrated significant personal development in his life); Ex. E (reflecting the opinion of a state court judge that the Individual had made “significant changes in his life”). The Individual represented that his desire to “be there for [his children]” motivated him to abstain from illegal drug use and maintain his lifestyle changes. Tr. at 31.

The Individual testified that he lives “paycheck to paycheck.” *Id.* at 21. He denied having resolved any of the financial delinquencies set forth in the SSC. *Id.* at 21–22. He has not taken any action concerning his tax situation since responding to the LOI and does not know the outstanding balance of his unpaid personal income taxes. *Id.* at 22–23, 40.

V. ANALYSIS

A. Bond Amendment

Pursuant to the Bond Amendment, “a Federal agency 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). Thus, if the Individual is an unlawful user of heroin or cocaine or an addict, his access authorization may not be restored based on a meritorious waiver or mitigation of the security concerns associated with his drug use. Adjudicative Guidelines at app. B, ¶ 1.

The Individual represented that he has not used illegal drugs or engaged in substance misuse since 2019 and produced the results of drug testing conducted on an approximately monthly basis since November 2020 to corroborate his claims. The voluminous drug testing records provide substantial support for the Individual’s claimed abstinence from illegal drug use and substance misuse. Moreover, the Individual denied having experienced cravings or desires to use illegal drugs for over one year and expressed the intention to refrain from illegal drug use in the future. As the Individual has not used illegal drugs for over three years, I find that he is not an unlawful user of a controlled substance. Revised Bond Amendment Policy at 6. In light of the Individual’s ability to avoid relapse for such a significant period of time, and his denial of any urges to use illegal drugs, I find that he is not an “addict” under the Bond Amendment.

Having concluded that the Individual is not an unlawful user of a controlled substance or an addict, I find that he is not barred from holding access authorization pursuant to the Bond Amendment.

B. Guideline E

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.

The Individual only admitted his illegal drug use and treatment to the Investigator after being confronted with information obtained during an investigation into the Individual's eligibility for access authorization, and the Individual admitted that he intentionally withheld the information because he feared losing his job. Moreover, the Individual's employer did not learn of his illegal drug use and treatment until two years after the Investigator when the Individual's prescription Suboxone was detected on a drug test following a workplace accident. For these reasons, the first mitigating condition is inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is inapplicable because the Individual did not assert that he relied on the advice of another person when he failed to disclose his illegal drug use and treatment. *Id.* at ¶ 17(b).

The Individual repeatedly failed to disclose information material to his eligibility for access authorization as required by DOE and indicated that he did so intentionally to avoid negatively

impacting his career. Moreover, the Individual continued to hide his illegal drug use and treatment from his employer for years after it was discovered by the Investigator. In light of the significance of the information that the Individual sought to conceal to his eligibility for access authorization, and his failure to demonstrate changed behavior by disclosing his illegal drug use and treatment following the uncovering of the information by the Investigator, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The Individual received treatment for several years, and reportedly had not used illegal drugs for one year, prior to completing the QNSP. As the Individual had been abstaining from illegal drugs and receiving treatment for some time prior to his failure to disclose his illegal drug use and treatment on the QNSP, I find that the Individual's dishonesty was likely not the product of his addiction and therefore is not amenable to resolution through treatment for drug addiction. Moreover, in light of the Individual's failure to come forward to his employer and disclose his illegal drug use and treatment even after admitting it to the Investigator, I find that he did not take positive steps to alleviate the factors giving rise to the security concerns when he had the opportunity. For these reasons, I am not convinced that the Individual will come forward with derogatory information as required in the future. Thus, the fourth mitigating condition is inapplicable. *Id.* at ¶ 17(d).

The fifth mitigating condition is inapplicable because the LSO did not allege that the Individual's conduct created a special vulnerability to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the LSO's allegations did not rely on unsubstantiated information or information from sources of questionable reliability. *Id.* at ¶ 17(f). The LSO did not allege that the Individual associated with persons engaged in criminal conduct, and thus the seventh mitigating condition is inapplicable. *Id.* at ¶ 17(g).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline E are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

C. Guideline F

Conditions that could mitigate security concerns under Guideline F include:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income; and,
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

The Individual remains, by his own description, significantly financially burdened and living paycheck to paycheck despite years of steady employment and abstinence from illegal drugs, and the Individual has presented no information to suggest that this situation is likely to improve in the near future. As the Individual's financial difficulties are ongoing and show no signs of abatement, I find the first mitigating condition inapplicable. *Id.* at ¶ 20(a).

The second mitigating condition is inapplicable because the Individual's financial situation is not the product of an external event outside of his control and he has not demonstrated evidence that he has acted responsibly to resolve his delinquent debts since beginning his recovery from illegal drug abuse. *Id.* at ¶ 20(b). The third mitigating condition is inapplicable because the Individual has not received financial counseling. *Id.* at ¶ 20(c).

The fourth mitigating condition is inapplicable because the Individual has not entered into any arrangements to resolve his debts. *Id.* at ¶ 20(d). The fifth mitigating condition is inapplicable because the Individual does not dispute the legitimacy of his debts. *Id.* at ¶ 20(e). The sixth mitigating condition is inapplicable because the LSO did not allege that the Individual displayed unexplained affluence. *Id.* at ¶ 20(f). The final mitigating condition is inapplicable because the Individual has not presented evidence to corroborate his belief that he filed personal income tax returns for the 2018 tax year, and admits that he is unaware of the extent of his unpaid personal income taxes and has taken no action to resolve them. *Id.* at ¶ 20(g).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline F are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

D. Guideline H

Conditions that may mitigate security concerns under Guideline H include:

- (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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (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.

Id. at ¶ 26.

The Individual denied having used illegal drugs since 2019 and has produced robust corroborating evidence of this claim via years of drug testing from the Outpatient Program. Moreover, the Individual has received drug-related treatment on a continuous basis for approximately five years and reports having disassociated from persons with whom he used to use illegal drugs. Cumulatively, I find that this positive record of treatment and abstinence from illegal drugs indicates that the Individual's reliability, trustworthiness, and judgment are no longer impaired by drug use and that the Individual's illegal drug use is unlikely to recur. Thus, I find the first mitigating condition applicable. *Id.* at ¶ 26(a).⁶ On the basis of this evidence, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline H.

E. Guideline I

Conditions that could mitigate security concerns under Guideline I include:

⁶ Some of this evidence implicates the second and fourth mitigating conditions under Guideline H. I find the second mitigating condition inapplicable because the Individual did not provide the signed statement of intent to abstain from all drug involvement referred to therein. Adjudicative Guidelines at ¶ 26(b). The third mitigating condition is not applicable because the Individual did not experience a severe or prolonged illness before he began abusing prescription drugs. *Id.* at ¶ 26(c). The fourth mitigating condition is inapplicable because the Individual relapsed multiple times following treatment and no medical professional has provided a prognosis for the Individual's recovery. *Id.* at ¶ 26(d).

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the 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;
- (c) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and,
- (e) there is no indication of a current problem.

Id. at ¶ 29.

The Individual has received treatment for SUD for approximately five years and has provided nearly three years of drug testing results to support his claim to have abstained from illegal drug use since 2019. In light of the Individual's lengthy treatment and abstinence from illegal drugs, as well as his commitment to abstaining from illegal drug use in the future, I find that there is no indication of a current problem. *Id.* at ¶ 29(e).⁷ In light of the evidence that the illegal drug use that led to the Individual's diagnosis with SUD is no longer a problem, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline I.

F. Guideline J

Conditions that could mitigate a security concern under Guideline J include:

- (a) so 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;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; or,
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with

⁷ While some of the other mitigating conditions under Guideline I might be applicable, I cannot make such a determination without testimony or documentation from a treatment provider concerning the details of the Individual's participation in treatment and prognosis for recovery. Absent such information, I find the first four mitigating conditions under Guideline I are inapplicable. Adjudicative Guidelines at ¶ 29(a)–(d).

the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Id. at ¶ 32.

The Individual's last alleged act of domestic violence was in 2018, approximately five years prior to the hearing. Although this is a lengthy period of time without alleged criminal activity, similar periods of time elapsed between the Individual's alleged acts of domestic violence in 2009, 2013, and 2018. Given the Individual's history of having been accused of domestic violence after lengthy periods of time without such accusations, I am not convinced that the passage of time mitigates the security concerns presented by the Individual's arrests. The Individual argued that his alleged criminal activity was unlikely to recur in light of his separation from his former domestic partner and discontinuation of illegal drug use; I am not convinced that these circumstances resolve the security concerns because the Individual's 2009 offense involved a woman other than his former domestic partner and pre-dated his illegal drug use. Accordingly, I am not convinced that the Individual's alleged criminal conduct will not recur and therefore find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because the Individual did not assert that he was pressured or coerced into committing any of the offenses cited by the LSO. *Id.* at ¶ 32(b). Although the Individual denied that he committed the acts of alleged domestic violence involving his domestic partner in 2013 and 2018, the investigative report compiled by the Investigator documenting the Individual's arrest and charges provides evidence that he committed the offenses and, given the record in this case, the Individual's denial is insufficient in of itself to carry his burden of proof in the absence of corroborating evidence that the Individual was falsely accused. *Id.* at ¶ 32(c).

The Individual argued that his employment record, volunteerism, character references, and passage of time without having allegedly committed criminal offenses as considerations warranting restoration of his access authorization. However, the Individual did not provide documentation concerning the extent of any volunteerism in which he engaged, the Individual's employer has suspended him without pay and threatened his termination within the past year for misconduct, and I am not convinced that the passage of time mitigates the security concerns related to the Individual's criminal conduct. I find that the evidence of mitigation provided by the Individual's character references are insufficient to overcome the concerns raised by his history of unlawful conduct. For these reasons, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 32(d).

Having concluded that none of the mitigating conditions under Guideline J are applicable in this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

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, Guideline F, Guideline H, Guideline I, and Guideline J 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns concerning Guidelines H and I, and to demonstrate that he is not prohibited from holding access authorization pursuant to the Bond Amendment. However, the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns concerning Guidelines E, F, and J. Accordingly, I have determined that the Individual's access authorization should not be restored. 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