

The Individual exercised his 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 Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of two witnesses and also testified on his own behalf. The LSO submitted ten exhibits, marked Exhibits 1 through 10.² The Individual submitted three exhibits, marked Exhibits A through C.

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.) 1 at 5–8.

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:

- (a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

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Id. at ¶ 16. The SSC cited numerous instances where the Individual withheld or provided conflicting information regarding his past marijuana use and the LSO's discovery of information in the Individual's military record that conflicted with his self-reported marijuana use. Ex. 1 at 5–7. The SSC also cited that the Individual was discharged from the military as a result of his failure to disclose marijuana use prior to entering service, and he failed to disclose the reasons for his discharge. Ex. 1 at 6–7. Finally, the SSC indicated that the Individual failed to disclose that he had been asked to seek drug related counseling or treatment and failed to disclose requested financial information, including various delinquent, collection, and charge off accounts. *Id.* at 6. The cited information justifies the LSO's invocation of Guideline E.

² References to the DOE Exhibits are to the Exhibit number and the bates number located in the top right corner of each exhibit page.

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 “[t]esting positive for an illegal drug . . .” *Id.* at ¶ 25(a) and (b). The SSC cited that the Individual had used marijuana several times between 2018 and 2019 while serving in the military, that he was discharged from the military after testing positive on a drug test for marijuana use, and he tested positive for marijuana use on drug tests administered by his employer on two separate occasions in 2021. Ex. 1 at 7. The above allegations justify the LSO’s 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 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

The Individual completed a Questionnaire for National Security Positions (QNSP) in 2022 as part of his request for a security clearance. Ex. 8. Therein, in response to a question whether, “[i]n the last (7) years,” he had “illegally used drugs or controlled substances,” he responded in the positive and disclosed that he had used “THC” or marijuana “once while at a party” in 2018 while serving in the military and, as a result, failed a random drug test. Ex. 8 at 84–85. During a following interview with an investigator as part of the security clearance investigation process, the Individual

again told the investigator that he had used marijuana one time in 2018 while serving in the military. Ex. 8 at 178. However, military records reflect that the Individual previously reported that he had used marijuana several times both before entering service and in 2018 and 2019; his admissions are corroborated by the statements of other individuals the military obtained as part of its investigation into his marijuana use after failing the drug test. Ex. 7 at 46–47.

In a Letter of Interrogatory (LOI) the Individual submitted in 2023, he confirmed the history of drug use reflected in the military records and disclosed that after he failed the 2019 drug test, and was consequently discharged, he did not use marijuana again until late April 2021 and then again in October 2021. Ex. 5 at 20. He said that both instances resulted in him again failing drug tests. *Id.* He also reported that both instances were unintentional because he was provided food items that, unbeknownst to him, contained marijuana. *Id.* He explained that in April 2021, he was given a gelatine “shot” that he later learned contained marijuana. *Id.* Then, in October 2021, he ate a cookie infused with marijuana at a “family reunion where food was laid out and nothing was labelled.” Ex. 5 at 35. He described both food items as “edibles.” *Id.* at 20–21. He stated in the LOI that “there is no excuse as to why I caved into the peer pressure of taking something that I didn’t know what it could have been.” *Id.* at 35.

Turning back to the 2022 QNSP, the Individual reported therein that he had never “been ordered, advised, or asked to seek counseling or treatment as a result of his illegal use of drugs or controlled substances[.]” Ex. 8 at 85. However, in the LOI he later revealed that he “was advised to take a substance abuse class” for marijuana use twice, in March 2019 and again in June 2021, which he successfully completed. Ex. 5 at 24. The Individual also did not report in his QNSP that he had been disciplined under the Uniform Code of Military Justice (UCMJ) as a result of his marijuana use. *Compare* Ex. 8 at 74 *with* Ex. 10 at 187 (indicating that he was given an “Article 15,” a reduction in rank, and separated from the military).

As for why he failed to accurately report his past drug use on the 2022 QNSP, the Individual reported in the LOI that he “thought that [he] had already mentioned it” and that he “did call [the investigator] back and tried to disclose the information . . . but it was already too late.” Ex. 5 at 30. The Individual further disclosed in the LOI that he chose not to disclose his 2016–2017 marijuana use at the time he entered the military because he did not want to negatively impact his chance of joining. *Id.* at 31. However, he denied that he had intentionally withheld the full extent of his drug use from his 2022 QNSP or the investigator *Id.* at 31–32.

The record also includes the Individual’s LOI response to questions regarding his failure to disclose in his 2022 QNSP a collection account for a gym membership, a charge off credit account with a bank, and delinquent student loans. Ex. 5 at 32. The Individual explained that he lost the card for the charged off credit account and stopped paying attention to the account. *Id.* He also explained that the gym membership was set for automatic payments on the card, which resulted in the unpaid membership going to collections. *Id.* His response did not address the delinquent student loans. *Id.*

At the hearing, the Individual’s supervisor testified on the Individual’s behalf. The supervisor stated that he agreed to testify because he believed that the Individual is trustworthy as demonstrated by the Individual’s work performance since they began working together in 2022.

Tr. at 18–19, 21. He also testified that he spoke with the Individual about the clearance investigation process and the importance of not withholding pertinent information. *Id.* at 17.

The Individual’s girlfriend also testified on his behalf. She stated that she and the Individual have dated for approximately fourteen months, and she has never observed the Individual use or possess marijuana. *Id.* at 29. She also testified that the Individual is trustworthy and reliable, and she provided the example of his dependability when working with children as a volunteer. *Id.* at 30.

At the hearing, the Individual did not deny the various allegations of him failing to disclose information. As for his failure to disclose his past drug use, he testified that the information was already filled-in from a previous QNSP, and he “skimmed through” it and, consequently, left the incorrect information he had previously provided. *Id.* at 47. He testified that he was discharged from the military because of his failed drug test and for “fraudulent entry” because he did not disclose his drug use prior to joining the military. *Id.* at 36–37. He also testified that his failure to disclose his military discipline for marijuana use on the 2022 QNSP was an honest mistake because he did not understand that his “Article 15” was under the UCMJ. *Id.* at 57. Turning to the QNSP, the relevant question therein, which the Individual responded to in the negative, asked specifically whether the Individual had been subject to disciplinary procedures under the UCMJ, “such as Article 15” Ex. 5 at 174.

He also confirmed that he was required to take a “substance abuse class” as a result of failing his employer’s drug test in April 2021. Tr. at 39. He confirmed that he also failed an October 2021 employer drug test as a result of ingesting a marijuana cookie at a family reunion. *Id.* at 40–41. When testifying, he stated that he intentionally ingested the first gelatine edible knowing it contained marijuana as opposed to when he ingested the marijuana cookie, which was an accident. *Id.* at 41, 43. He explained that the marijuana cookies were placed out by a family member as a prank at the family reunion and that he has “family members that do strange things” *Id.* at 42. He testified that he was disappointed in himself for allowing himself to be in that environment. *Id.* at 40. As a result of failing the second drug test in 2021, he decided not to take another substance abuse class because he did not feel ready for the sacrifices required by the position. *Id.* at 41.

The Individual also provided additional details regarding his attempt to contact the investigator to whom he failed to disclose his marijuana use. He testified that after the interview, he called the investigator to ask “if there was anything [he] could do to disclose more information.” Tr. at 53. He testified that he was told in response that he would have to instead go through the administrative review hearing. *Id.* To corroborate his testimony, the Individual submitted a screenshot that appears to be a text message to an unidentified number asking if he could disclose information that he “forgot to mention” during the interview. Ex. A. The screenshot does not contain a reply message. *Id.* He testified that he wanted to further disclose to the investigator, for example, that he had taken counseling or treatment as a result of using marijuana and the circumstances surrounding his collections and charge off accounts. *Id.* at 55. As for the delinquent student loan accounts, the Individual testified that he failed to report them because he was negligent and unaware of their status. *Id.* at 58. He testified that, going forward, he would “open up by being 100 percent truthful and honest” when responding to security questions regarding his past drug use. *Id.* at 64.

Finally, the Individual testified that he does not intend to ever use marijuana again because it would negatively impact his future, his romantic relationship, and the relationship he has with his son. *Id.* at 62. The Individual testified that he has remained abstinent from marijuana since ingesting the marijuana cookie in October 2021. *Id.* at 51. He testified he has since taken and passed random drug tests, but he did not submit any documentation of his test results into the record of this hearing.³

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.

³ The Individual's Exhibit C was submitted as a urinalysis drug test result from September 2022; however, upon inspection, it does not contain information from which I can conclude that he was tested for use of marijuana or any other controlled substances.

Adjudicative Guidelines at ¶ 17.

I conclude that none of the above mitigating conditions apply to resolve the Guideline E concerns. Paragraph 17(a) is inapplicable because although the Individual reached out to amend the information he reported, I do not conclude that his attempt is sufficient to demonstrate prompt, good-faith efforts to correct omitted or false information before being confronted with the facts. The outreach alone, in this case, is not sufficient because he did not actually provide any additional information, and it is not clear whether the Individual would have disclosed all of the information cited as concerning in the SSC. Thus, his efforts are not sufficient to mitigate the concerns raised by his repeated failure to provide full, accurate information regarding his past drug use before being confronted with the facts. In making my finding, I also note that he disclosed at the hearing conflicting information regarding his marijuana use. For example, he admitted for the first time at the hearing that he knew the gelatine edible contained marijuana at the time he ingested it, which contradicts his statement in the LOI that he only later learned that fact.

Paragraph ¶ 17 (b) is inapplicable because the Individual did not indicate that his omissions and concealment was caused or contributed to by advice of legal counsel or any other person.

As for ¶ 17(c), I conclude that the severity of the Individual's behavior, the passage of time, the frequency, and the circumstances surrounding it are not sufficient to indicate that it is unlikely to recur. His behavior reflects a pattern of failing to provide accurate information regarding his prior marijuana use, including when he entered the military, at the time of his 2022 QNSP, and during his investigation interview. There is also evidence in the record that on at least one instance, per the Individual's admission, the omission was deliberate: when he intentionally concealed his marijuana use in an attempt to better his chances of joining the military. The deliberate and repeated failure to provide accurate information in response to security questions is neither minor nor infrequent. There is also no evidence in this record from which to conclude that it occurred under unusual circumstances.

As for ¶ 17(d), there is no evidence that the Individual obtained counseling to address the Guideline E conduct. Instead, he testified that he realizes that he made mistakes in the past by providing inaccurate information, and he would be more careful in the future. However, given the repeated instances of concealing information, failing to fully disclose it, and providing contradictory versions of it, I do not conclude that his testimony regarding his future intentions is reliable or sufficient to establish that his behavior is unlikely to recur.

The remaining conditions are inapplicable for the following reasons. Paragraph 17(e) is inapplicable because there is no allegation in the SSC that the Individual's conduct created a security concern due to his particular vulnerability to exploitation, manipulation, or duress. Paragraph 17(f) is inapplicable because there is no evidence in the record to indicate that the information cited in the SSC is unreliable. Lastly, ¶ 17(g) is inapplicable because the Individual's association with persons involved in criminal activities is not at issue. 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;
- (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.

Adjudicative Guidelines at ¶ 26.

In this case, none of the mitigating conditions referenced above apply to resolve the Guideline H concerns. First, under ¶ 26(a) and ¶ 26(b), I do not find that the passage of time and change in circumstances since his last admitted use of marijuana are such that it is unlikely he will use marijuana in the future. The Individual's testimony has not persuaded me that he has been truthful regarding the circumstances of his two most recent admitted uses of marijuana. For both instances, prior to the hearing he stated that he accidentally ingested the marijuana. However, at the hearing, he stated that he knowingly ingested marijuana in April 2021. Additionally, the Individual did not provide convincing testimony to support a finding that he will not likely ingest marijuana at some time in the future because he has done little to demonstrate that he has taken precautions to avoid falling victim again to unintentional consumption. Further, I remain unpersuaded that the Individual only used marijuana twice in 2021, the same number of times he failed drug tests. I therefore find that neither ¶ 26(a) nor ¶ 26(b) apply to resolve the concerns.

I also find that ¶ 26(c) does not apply because there is no allegation that the Individual misused prescription drugs. Lastly, I find that ¶ 26(d) does not apply because the fact that the Individual completed a drug or substance abuse class on two occasions establishes that drug education is not likely to prevent him from continuing to ingest marijuana, and there is no evidence in the record of a favorable prognosis by a duly qualified medical professional.

Accordingly, I find that the Individual has not resolved the Guideline H security 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 and Guideline H 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