*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
)
Filing Date: August 7, 2023) Case No.: PSH-23-0117
)
____)

Issued: October 25, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 granted.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the investigation process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) on August 3, 2022. Exhibit (Ex.) 3. In the QNSP, the Individual disclosed that he had "smoked marijuana on several occasions[,]" and that more recently, in January and June 2022, he ingested an "edible." Ex. 3 at 48–49. He also indicated in the QNSP that, in June 2022, he resigned from previous employment after being notified that he would be terminated. *Id.* at 26. Following his submission of the QNSP, in October 2022, the Individual underwent an Enhanced Subject Interview (ESI). *Id.* at 66. During the ESI, the Individual disclosed additional information pertaining to his previous employment and substance use. *Id.* at 66–68, 70. The Local Security Office (LSO) instructed the Individual to complete a Letter of Interrogatory (LOI), which he submitted in March 2023. Ex. 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization.

[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.

In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information prohibited it from granting the Individual a security clearance under the Bond Amendment, 50 U.S.C. § 3343(b), and raised security concerns under Guidelines E (Personal Conduct), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 7. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. 9. The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf, presented the testimony of his current supervisor, and submitted seven exhibits, marked as Exhibits A through G. The DOE Counsel submitted twelve exhibits marked as Exhibits 1 through 12.

II. The Summary of Security Concerns

A. Bond Amendment

The Bond Amendment states, in pertinent part, that an agency may not grant or renew a security clearance for an individual "who is an unlawful user of a controlled substance or an addict." 50 U.S.C. § 3343(b).

As a basis for invoking the Bond Amendment, the LSO alleged that the Individual reported in the August 2022 QNSP and March 2023 LOI that he had consumed an edible candy containing tetrahydrocannabidiol (THC) in June 2022 and that he used a controlled substance in January 2022, knowing that the use of controlled substances was prohibited by his employer. Ex. 7 at 4. The LSO also alleged that the Individual had been aware of his employer's policy prohibiting the use of illicit substances since January 2022, but that the Individual admitted that he used such substances after that time on two separate occasions. *Id*. It additionally alleged that he stated that his use was "due to the thrill of using it" and "an impulse decision." *Id.* Because the Individual used illicit substances on two separate occasions within six months, knowing that he was placing his employment in jeopardy, the LSO determined that his use was not in his control. *Id.* The LSO's invocation of the Bond Amendment is justified.

B. Guideline E

Under Guideline E, "[c]onduct involving questionable judgement, 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying concern is the "[d]eliberate omission, concealment, or falsification of relevant facts from any . . . personal history statement, or similar form used to conduct investigations . . . determine national security edibility or trustworthiness, or award fiduciary responsibilities[.]" *Id.* at ¶ 16(a).

Under Guideline E, the LSO alleged that the Individual provided discrepant information during the investigation process regarding the January 2022 and June 2022 drug use; namely, the Individual indicated during the ESI that he had never purchased any controlled substances, but he admitted in the LOI that he had purchased THC edible candy in June 2022. Ex. 7 at 6. The Individual's spouse told the investigator that the Individual had been given the THC edible candy, but the Individual denied associating with anyone who uses controlled substances. *Id.*; *see* Ex. 3. The LSO further alleged that the spouse told the investigator that the Individual's June 2022 drug use was his only use of such substances. Ex. 7 at 6. Regarding the Individual's previous employment, the LSO alleged that the Individual failed to disclose a July 2016 termination due to excessive tardiness and the six months of unemployment that followed. *Id.* The LSO also alleged that the Individual failed to disclose a 2019 written warning on the August 2022 QNSP, but he later admitted to the fact during the ESI. *Id.* Lastly, the LSO alleged that the Individual's failure to "provide derogatory information" on the August 2022 QNSP "leads to concerns regarding [his] honesty[,]" and his failure to comply with his "employer's rules or requirements may be viewed as a pattern of conduct[.]" *Id.* at 6–7. The LSO's invocation of Guideline E is justified.

C. Guideline H

Under Guideline H,

> [t]he illegal use of controlled substances . . . that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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 concern under Guideline H include "[a]ny substance misuse[,]" and "[a]ny illegal drug use while . . . holding a sensitive position[.]" *Id.* at 25(a), (f).

Under Guideline H, the LSO alleged that the Individual admitted in the August 2022 QNSP that he used illicit substances in January and June 2022, knowing that the use of such substances was prohibited by his employer and while working in a field where the "use of illegal controlled substances is prohibited." Ex. 7 at 5. The LSO also alleged that the Individual indicated in his LOI that he used the substance "for the thrill of it" and that "these were impulse decisions." *Id*. Lastly, the LSO alleged that the Individual disclosed that he had used an illicit substance in June 2022 after he was asked to submit to a drug test by his employer, and that the Individual resigned prior to being terminated for his drug use. *Id*. The LSO's invocation of Guideline H is justified.

D. Guideline J

Guideline J states that "[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness" and that, "[b]y its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include "[e]vidence . . . of criminal

conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]" *Id.* at ¶ 31(b).

Regarding the Guideline J concerns, the LSO alleged the Individual used a THC product in January 2022 in violation of state law and that any use of THC products is illegal according to federal law. Ex. 7 at 5. The LSO's invocation of Guideline J is justified.

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 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 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.* § 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 and Hearing Testimony

During the ESI, the Individual admitted that he was terminated from the employ of a prior employer, Employer 1, in 2016 due to "excessive tardiness." Ex. 3 at 66. This information had not been disclosed on the Individual's QNSP, which the Individual indicated was an "unintentional oversight." *Id.* During the ESI, the Individual also indicated that he had been terminated without any previous warnings or written reprimands. *Id.* at 67. Despite his termination, the Individual was rehired with Employer 1 in 2017, and he ultimately left that position in March 2019 without suffering any disciplinary incidents following his rehire. *Id.* During the hearing, the Individual explained that he omitted the termination for excessive tardiness on his QNSP because, following his rehire, he "was led to believe that . . . the slate was clean." Transcript of PSH-23-0117 (Tr.) at 41; Ex. 8 at 1; Ex. D at 1. He stated that he had been told by Employer 1 that "[a]ll is going to be forgiven[,]" and that there would be no "bad blood going forward[.]" Tr. at 41. Accordingly, the Individual asserted that the omission of this information was not intentional, but rather, a mistake. *Id.*

The LSO alleged that following the Individual's 2016 termination, he experienced a period of unemployment for approximately six months, which also was not indicated in the QNSP. Ex. 3 at 65. When he was confronted with this fact by the investigator, the Individual indicated that information pertaining to his unemployment was unintentionally omitted. *Id*. However, in his request for a hearing, the Individual indicated that he was not unemployed for approximately six months. Ex. 8 at 1; Ex. D at 1. The Individual explained that he had taken other parttime employment while employed with Employer 1, and upon his termination, that employment became fulltime employment. *Id.* He stated that this information was supported by a QNSP he previously completed in February 2021.[2] *Id.*

The Individual indicated in the August 2022 QNSP that he was employed with Employer 2 for approximately eight months in 2019. Ex. 3 at 30. When asked on the QNSP whether he "received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace" in relation to his employment with Employer 2, the Individual marked "no." *Id.* at 29–30. However, the investigator learned from the Individual's spouse that the Individual had been "given a verbal warning" in 2019 because he had been "found sleeping on the job." *Id.* at 80–81. The Individual told the investigator that he had been "working nights" and that "there were no issues leading up to the write up except that [the Individual] was not sleeping enough during the day[.]" Ex. 3 at 73; Ex. F at 1. The investigator also learned that Employer 2 intended to issue a written reprimand following the verbal warning, but the Individual left employment with Employer 2 prior to receiving a written reprimand; however, the Individual stated that he did not leave Employer 2 because of the impending reprimand. Ex. 3 at 73, 80; Ex. F at 2. Regarding this matter, the Individual acknowledged in his written response to the SSC that he had received a verbal warning, but that he had not been made aware that the verbal warning had been documented, and he was answering the questions in the QNSP "to the best of [his] knowledge." Ex. 8 at 1; Ex. D at 1. At the hearing, the Individual testified that he was not aware that his employer intended to issue a written reprimand. Tr. at 62.

In the August 2022 QNSP and during the ESI, the Individual disclosed that, in June 2022, he had left employment with a previous employer, Employer 3, after being told that he was going to be terminated. Ex. 3 at 26. He indicated that, while he was employed with Employer 3, he was involved in a minor single vehicle accident while operating a government vehicle. Ex. 3 at 26, 67; Tr. at 24, 27–28. As a result, the Individual's employer asked him to submit to a drug and alcohol test, prompting him to disclose to his supervisor that he had consumed a THC candy the previous weekend in June 2022, while in another state for his wedding.[3] Ex. 3 at 26, 67; Ex. 8 at 1; Ex. D at 1; Tr. at 24, 27–28. During the ESI, the Individual told the investigator that he had "admitted to using the drug in an attempt to be transparent[.]" Ex. 3 at 67; Tr. at 24. Following the disclosure to his supervisor, he was notified by Employer 3 that he would be suspended "pending the results of drug screen." Ex. 3 at 26, 67–68. While suspended, the Individual learned that he would be

[2] An examination of the record reveals that this period of parttime then fulltime employment had been listed in a February 2021 QNSP but had been omitted in the August 2022 QNSP. Ex. 3 at 23–31,67, 109.

[3] The Individual was subject to two drug tests in late June 2022, one following the accident and one that was a preemployment drug test. Ex. 10; Ex. 11; Ex. 12; Ex. B; Ex. C. Both were negative for marijuana metabolites. Ex. 10; Ex. 11; Ex. 12; Ex. B; Ex. C. At the hearing, the Individual admitted that he "more than likely" would not have disclosed the substance use in June 2022 had the accident not happened. Tr. at 53.

terminated irrespective of the test results and accordingly, he resigned.[4] *Id.* at 26, 68; Tr. at 50. The Individual stated during the ESI that he decided to resign from the position because "he felt that he was being terminated for doing what he felt was right when [he] admit[ed] to the use of the drug after the incident." Ex. 3 at 68. The Individual denied receiving any written or verbal warnings or reprimands from this employer. *Id.*

The Individual disclosed during the ESI that, from June 2008 to June 2022, he "used THC" approximately four to five times by either smoking marijuana or ingesting the substance in the privacy of his home. *Id.* at 70; Tr. at 33. He told the investigator that he "would obtain the drug from people" and that he no longer associates with those individuals. Ex. 3 at 70. During the ESI, the Individual denied ever purchasing drugs for consumption and denied any substance dependence.[5] *Id.*; Tr. at 39.

In the March 2023 LOI, the Individual stated that he first used marijuana in 2007, and that he last used the substance in June 2022 when he ingested it in an edible containing THC. Ex. 6 at 2; Ex. A at 2. The Individual also stated that, between 2007 and June 2022, he had used marijuana approximately five to six times, "[e]ither in a party type setting or a spur of the moment use." Ex. 6 at 2; Ex. A at 2. The Individual indicated that he used the substance "to experiment and or 'see what [it is] all about.'" Ex. 6 at 2; Ex. A at 2. He stated in the LOI and at the hearing that he only purchased the substance once for consumption in June 2022, that the edible candy was purchased from a dispensary, and that he has never kept the substance in his home, sold it, or grown it. Ex. 6 at 3; Ex. A at 4; Tr. at 25–26. The Individual testified that he was initially "wishy-washy" about ingesting the edible, but he "got a little bit less cautious about it[]" after consuming some alcohol. Tr. at 25–26, 54. He testified that he ate just one edible candy and that the remainder were disposed of in the trash, because he "felt foolish about buying and taking it in the first place[.]" *Id.* at 26. The Individual also understood that it would be illegal to transport the item to his state of residence. *Id.* at 26–27.

The Individual also admitted in the March 2023 LOI that, in January 2022, he was given a single edible product containing THC for his birthday and decided to ingest the substance because he was curious. Ex. 6 at 3; Ex. A at 3; Tr. at 31–32, 38, 43, 59, 62. He admitted that he understood that his employer at the time had a "zero tolerance" policy when it came to the use of illicit substances but stated that he used marijuana twice since beginning his employment because he was experimenting and the experienced offered a "thrill." Ex. 6 at 4; Ex. A at 4; Tr. at 43–44. He stated he has "never been high at work[,]" denied using illicit substances prior to or during working hours, and denied using any other illegal substances that he failed to report on his QNSP. Ex. 6 at 5, 7; Ex. A at 5, 7. The Individual also denied being involved in any legal entanglements as a result of any substance use and stated that he has "never been a habitual user or an addict." Ex. 6 at 5–6; Ex. A at 5–6. The Individual restated that he no longer associates with anyone who uses illicit

[4] At this time, while employed with Employer 3, the Individual had already accepted another position with his current employer. Tr. at 21–23. The Individual testified that upon learning that he would likely be terminated regardless of the test results, he contacted his current supervisor to disclose that he had ingested an edible. *Id.* at 50, 54.

[5] At the hearing, the Individual was confronted with the fact that he admitted in his LOI that he had purchased an edible THC substance in June 2022, despite denying such an act to the investigator. Tr. at 40. The Individual indicated that he did not intend to mislead the investigator, but rather, he misspoke during the ESI. *Id.* In later testimony, he went on to explain that it was "entirely possible that [he] panicked[]" during the ESI. *Id.* at 42.

substances. Ex. 6 at 7; Ex. A at 7; Tr. at 59. During the hearing, he admitted that, in January 2022, he consumed the edible with his spouse in his home state, where marijuana is illegal under state law. Tr. at 31–33, 43–44. He also indicated in the LOI and confirmed in his testimony that he no longer had any interest in using THC again, as it is not "worth risking [his] family's livelihood[.]"[6] Tr. at 39, 42–43; Ex. 6 at 4; Ex. A at 4. At the hearing, the Individual admitted that he had not disclosed the January 2022 drug use at any point from the time he used the substance through June 2022. Tr. at 44–45. He also testified that he did not inform his current supervisor of the January 2022 drug use. *Id.* at 47.

The Individual's spouse was also interviewed as part of the Individual's background investigation. Ex. 3 at 91; Ex. G at 2. Regarding the June 2022 incident of drug use, the Individual's spouse told the investigator that the Individual had been given the edibles by his sister and that he believed the use of THC was permitted because he was in a state where such was legal. Ex. 3 at 91; Ex. G at 2; Tr. at 28–29. The Individual's spouse also indicated that the Individual "has not been involved in any other drug use and has not had any issues or problems related to the drug use except the potential termination from" employment. Ex. 3 at 91; Ex. G at 2. Regarding his spouse's interview, the Individual indicated in his testimony and in a written response to the SSC that his spouse had "panicked" and "lied about several details" with the belief that she had been protecting him.[7] Tr. at 29; Ex. 8 at 1; Ex. D at 1. The Individual described her acts as "foolish," stated that he had not instructed "her to respond in a certain way[]" during the interview, and confirmed that although his wife was with him when he purchased the edible in June 2022, he was the only person who had consumed the substance. Tr. at 30, 55–56.

The Individual testified that he began receiving one-on-one therapy at the beginning of 2023. *Id.* at 62–63. He attended a total of ten sessions, the last one being "[a] couple of months" prior to the hearing. *Id.* at 63. Although the Individual did not seek therapy for the specific purpose of discussing drug use, the Individual did provide the therapist with information regarding his substance use in an initial intake form, and accordingly, he discussed his prior use with the therapist "once or twice." *Id.* at 63–64. The Individual stated that the therapist provided him with some insights and gave him reading material, but there "[was not] enough time to really get in depth" regarding the matter. *Id.* at 65.

The Individual's current supervisor, who interacts with the Individual on a daily basis, testified that the Individual informed him that he had consumed an edible containing THC in June 2022, and that on this occasion, "there was a little bit of alcohol involved and a little peer pressure." *Id.* at 15–16, 28. He went on to testify that this incident did not concern him as the Individual had undergone drug testing in connection with his employment. *Id.* at 16. The Individual's supervisor also consulted "[Human Resources] and security and they told [him] it [would not] be a problem." *Id.* at 17. The Individual's supervisor stated that he believes the Individual is reliable, professional, honest, and "goes above and beyond." *Id.* at 17. He has never had any concerns that the Individual could be under the influence of any substances while at work. *Id.* at 19.

---

[6] At the hearing, the Individual stated this behavior is "not something [he is] willing to repeat[,]" and that he "would like to prove to [himself] and anyone who needs to know that [he is] not . . . a threat." Tr. at 53.

[7] The Individual learned that his spouse had provided inaccurate information to the investigator the same day she was interviewed by the investigator. Tr. at 56.

V. Analysis

A. Bond Amendment

The Bond Amendment provides that federal agencies "may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict." 50 U.S.C. § 3343(b); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022). DOE defines "an unlawful user of a controlled substance" and an "addict" as follows:

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

DOE Order 472.2A, Appendix C-1 at ¶ 2 (citing the Bond Amendment).

First, I consider whether the Individual is an "unlawful user of a controlled substance," as defined above. In the case at hand, the LSO alleged that the Individual lost his self-control as it pertains to the use of illicit substances because he used marijuana or THC products on two occasions while he knew he was under a direct obligation to refrain from using such substances. While there is evidence in the record that the Individual used controlled substances several times over the course of years, and that on at least two occasions, the Individual knew such use could place his employment in jeopardy, the record does not indicate that the Individual lost his self-control. There are several facts in the record that lead me to this conclusion. First, I have taken into account the fact that his use was relatively sporadic when compared to the rate of use one would expect from an active user. The Individual smoked or ingested marijuana or THC less than ten times over the span of approximately fourteen years, well below a rate of once per year, which does not, on its face, suggest a loss of control. Also, the evidence before me indicates that the Individual last used a controlled substance in June 2022, over a year prior to the hearing, and the record contains two subsequent negative drug tests since that time. Such evidence indicates that the Individual is not "actively engaged in such conduct." *Id.* Accordingly, I do not find the Individual to be a "person who uses a controlled substance and has lost the power of self-control over his use of that controlled substance." *Id.*

The evidence in the record also does not support a finding that the Individual is currently an "addict of a controlled substance." Not only does the evidence in the record fail to show that the Individual is a habitual user and has lost self-control, for the reasons stated above, but the SSC does not

contain any allegations that the Individual "uses any narcotic drug so as to endanger the public morals, health, safety, or welfare." There is no evidence linking the Individual to such things as criminal activity as a result of his past substance use. There is also nothing in the record to indicate that the Individual received or required treatment in connection with his use. Accordingly, since the Individual's prior marijuana/THC use does not cause him to meet the definition of either an "unlawful user" or "addict" of a controlled substance, I find that the Bond Amendment does not prohibit the DOE from granted the Individual's security clearance.

B. Guideline E

The Adjudicative Guidelines provide that 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.

As an initial matter, some of the LSO's allegations pertain to statements made by the Individual's spouse. The record reveals that the Individual was honest about those facts during the investigation process and that his spouse was dishonest with the investigator. Additionally, the SSC states that the Individual failed to report a written warning he received from Employer 2 in the QNSP. The record reveals that the Individual never received a written warning while employed with Employer 2, and that Employer 2 only intended to issue a written warning, which it failed to do prior to the Individual's departure. As the Individual is not responsible for his spouse's statements or reporting a written warning that was never issued to him, these specific matters are resolved and I shall not address them further.

With regard to the remaining allegations under Guideline E, while I believe the Individual was honest during the hearing, there are facts in the record that provide me with cause for concern and lead me to find that the Guideline E concerns have not been mitigated. First, the Individual failed to disclose his termination from Employer 1 on the QNSP when the QNSP specifically and unequivocally asked for this easily verifiable information. The Individual told the investigator that the omission was not intentional, and at the hearing, he explained that he believed his prior employer had given him a "clean slate" upon his rehire following his termination. Tr. at 41. Even supposing this explanation is true, it does not change the fact that he was terminated and should have reported this on the QNSP. Similarly, although the Individual later admitted to purchasing an illicit substance in the March 2023 LOI, the Individual failed to first provide this information to the investigator when he was specifically asked whether he ever made such purchases. At the hearing, the Individual explained that he provided the discrepant information because he likely panicked. However, the Individual also admitted that he likely would not have disclosed his June 2022 drug use to his employer had he not been asked to submit to a drug test. Tr. at 51. Accordingly, I cannot conclude that the Individual's reasons for the omissions and discrepancies were the only explanations for his behavior. Additionally, even assuming that I believe all of the omissions and discrepancies were unintentional, a QNSP is an important tool in establishing whether an individual is fit to hold a security clearance. Any individual "seeking a security clearance should be well aware of the need for complete, honest and candid answers to DOE questions. Therefore[,] when completing a QNSP such an individual should err on the side of providing too much rather than too little information." *Personnel Security Hearing,* OHA Case No. TSO-0023 at 30-31 (2003).

With respect to the omission regarding his termination by Employer 1, the Individual was confronted with this fact by the investigator during the ESI before acknowledging that he had been terminated. Accordingly, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at (a). Adjudicative Guidelines at ¶ 17 (a). The Individual also did not provide any information suggesting that the omissions during the investigation process were caused by the advice of counsel or a representative, and therefore, mitigating factor (b) is not applicable. *Id*. at ¶ 17(b).

As to the omission related to his 2016 termination and the misstatements he made during the ESI, I cannot conclude the behavior was minor. And as the conduct occurred in connection with the present clearance process and because the Individual is under a continuing obligation to report all derogatory information, I cannot conclude that enough time has passed or that the behavior occurred under unique circumstances, and I cannot conclude that the behavior is unlikely to recur

and does not cast doubt on his current reliability, trustworthiness, or good judgment pursuant to mitigating factor (c). *Id*. at ¶ 17(c).

While the Individual testified that he previously sought and received one-on-one therapy, I have no information indicating that the Individual sought the aforementioned therapy to address the behavior that gave rise to the Guideline E concerns, or that such matters were addressed during his therapy sessions. I also have no information allowing me to conclude that the tools he gained in therapy specifically alleviate the stressors, factors, or circumstances that contributed to his untrustworthy, unreliable, or other inappropriate behavior. Therefore, I cannot conclude that the Individual mitigated the stated concerns pursuant to mitigating factor (d). *Id*. at ¶ 17(d).

I have no information before me that indicates the information cited in the SSC came from a source of questionable reliability, and I have no allegation before me suggesting that the Individual is subject to exploitation, manipulation, or duress. Therefore, the mitigating factors at (e) and (f) are not applicable. *Id*. at ¶ 17 (e), (f).

For the foregoing reasons, I find that the Individual has not mitigated the Guideline E security concerns.

C. Guideline H

The Adjudicative Guidelines provide that conditions that could 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;

(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.

While the last time the Individual used an illicit substance was over a year ago, that is not enough to persuade me that the Individual has mitigated the stated concerns pursuant to mitigating factor (a). The Individual's pattern of consumption, less than ten times over the span of approximately fourteen years, suggests that even a span of over one year since the Individual's last use does not necessarily mean this behavior is unlikely to recur. In this context, not a lot of time has passed since the Individual's last use. The Individual accessed such substances on a number of occasions and there is nothing in the record to indicate that the circumstances under which he obtained these substances were so unique that they are unlikely to recur. Accordingly, I cannot conclude that he Individual has mitigated the stated concerns pursuant to mitigating factor (a). *Id*. at ¶ 26(a).

While the Individual has acknowledged his previous drug involvement, on balance, the record remains bereft of any evidence of concrete actions that the Individual has taken to overcome the problem of his drug involvement and that he has established a pattern of abstinence. While the Individual has testified that he no longer associates with the person who gave him an edible substance in January 2022, the Individual has shown that he is capable of obtaining such items without the assistance of others. The environments in which the Individual used these substances were ordinary, and his use of the substances took place in the context of normal and routine life events. He did not provide any information indicating that he avoids certain environments in order to avoid substance use. And although I have the Individual's testimony asserting that he will not partake in any such use again and that he acknowledges that such use could result in his dismissal, I do not have any evidence of tangible action in the record to help assure me of the Individual's commitment to refrain from further substance use, like a signed statement asserting the same. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (b). *Id*. at ¶ 26(b).

I have no allegation before me that the Individual suffered a prolonged illness resulting in a prescription for such substances, and accordingly, mitigating factor (c) is not applicable. *Id*. at ¶ 26 (c).

While the Individual testified that he was receiving one-on-one therapy and that he has discussed the matter of illicit drug use with his therapist, I have no information before me indicating that the therapy he was receiving was a drug treatment program and I have no information before indicating that he completed any such program. Therefore, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (d). *Id*. at ¶ 26(d).

For the foregoing reasons, I find that the Individual has not sufficiently mitigated the Guideline H security concerns.

D. Guideline J

The Adjudicative Guidelines provide that conditions that could mitigate security concerns 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; and

(d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

As the criminal behavior to which the SSC refers is the Individual's illicit substance use, I cannot conclude the Individual mitigated the stated concerns pursuant to mitigating factor (a) for the same reasons I stated in my analysis under Guideline H. Specifically, although more than a year has passed since the January and June 2022 incidents of drug use, and considering that the Individual admitted to using such substances intermittently over the span of fourteen years, in this context, not enough time has passed to reassure me that the behavior is unlikely to recur and does not cast doubt on his trustworthiness, reliability, and good judgment. Additionally, the most recent uses occurred under normal life circumstances, and therefore, the circumstances were not so unique to convince me of the same. As such, the Individual has not mitigated the stated concerns pursuant to mitigating factor (a). *Id*. at ¶ 32(a).

I have no evidence in the record before me that the Individual was coerced or pressured into committing the offence. To the contrary, the Individual admitted that it was a voluntary act done out of curiosity or a desire to experiment. Accordingly, mitigating factor (b) is not applicable. *Id*. at ¶ 32(b). Further, as the Individual admitted to committing the acts, mitigating factor (c) is not applicable. *Id*. at ¶ 32(c).

The matter of successful rehabilitation in this case is a difficult one to assess because, as indicated above, the record is bereft of concrete steps that the Individual has taken to evidence the fact that he will refrain from drug use. I appreciate the Individual's reassurances that he will not engage in this criminal conduct again because he understands the gravity of the consequences. But the concerns related to his illegal drug use and what that could mean for his livelihood, existed in January 2022. Accordingly, I cannot conclude that the Individual's assurances and understanding necessarily evidence successful rehabilitation in and of themselves. Again, as stated above, when considering the Individual's past pattern of use, not a lot of time has passed since the Individual's last use. While the Individual's supervisor testified that the Individual is a valuable member of his team, I have no information pertaining to any further job training or higher education that would evidence rehabilitation. And further, I have no evidence of community involvement or participation in therapy meant to target this specific criminal behavior. Therefore, I cannot

conclude that the Individual has mitigated the concerns pursuant to mitigating factor (d). *Id*. at ¶ 32(d).

For the foregoing reasons, I find that the Individual has not mitigated the Guideline J security concerns.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guidelines E, H and J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that while the Individual has brought forth sufficient evidence to show that the Bond Amendment does not apply, he has not brought forth sufficient evidence to resolve the Guideline E, H, and J security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals