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In the Matter of: Personnel Security Hearing )  
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Filing Date: September 1, 2023 ) Case No.: PSH-23-0135  
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Issued: December 12, 2023

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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."<sup>1</sup> 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 employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in January 2023. Exhibit (Ex.) 6. When asked if he had "illegally used any drugs or controlled substances" in the past seven years, the Individual marked "no." *Id.* at 74. When asked whether he had purchased "any drug or controlled substance" in the past seven years, the Individual marked "no." *Id.*

In February 2023, the Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator, and the Individual made follow up contact with the investigator the same month. Ex. 7. The Local Security Office (LSO) subsequently asked the Individual to complete and sign a Letter of Interrogatory (LOI), which the Individual submitted in May 2023. Ex. 5.

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. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the

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<sup>1</sup> 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.

derogatory information raised security concerns under Guideline E of the Adjudicative Guidelines. Ex. 1. 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). 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. *See* Transcript of Hearing, OHA Case No. PSH-23-0135 (Tr.). He also submitted one exhibit, marked as Exhibit A. The DOE Counsel submitted seven exhibits marked as Exhibits 1 through 7, and did not call any witnesses to testify.

## II. Notification Letter

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[,]” and “[d]eliberately providing false or misleading information . . . or omitting information, concerning relevant facts to an . . . investigator, security official . . . involved in making a recommendation relevant to a national security eligibility determination[.]” *Id.* at ¶ 16(a)–(b).

Under Guideline E, the LSO alleged that the Individual failed to disclose any illicit substance use within the prior seven years on the January 2023 QNSP, but that he admitted to the investigator during the ESI that he had used marijuana and cocaine until July 2021. Ex. 1 at 1. The LSO went on to allege that in a February 2023 follow up contact with the investigator, the Individual admitted that he had continued using marijuana and cocaine until November 2022. *Id.* Further, the Individual admitted in the May 2023 LOI that he used marijuana and cocaine from 2012 to November 2022, which he “deliberately failed to disclose on his QNSP[.]” *Id.* The LSO also alleged that during the follow up February 2023 contact with the investigator, the Individual admitted that he had also used MDMA (Ecstasy) within the past seven years and admitted in the May 2023 LOI that he used Ecstasy from 2012 to 2018. *Id.* He admitted that he “deliberately failed to disclose” this information on the QNSP. *Id.* The LSO also alleged that the although the Individual certified on his QNSP that he had “not been involved in the illegal purchase of any drug or controlled substance” in the past seven years, he admitted during the ESI that he had purchased cocaine, and that he deliberately omitted this information from the QNSP. *Id.* at 2. The Individual also admitted that he had purchased Ecstasy approximately fifteen times from 2012 to 2018, information which he deliberately omitted on the QNSP. *Id.* Lastly, although the Individual told the investigator during the ESI “that he no longer associates with an individual who he used illegal drugs with[,]” the Individual admitted in a subsequent contact that he continues to have ongoing contact with the aforementioned individual. *Id.* The LSO's invocation of Guideline E 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**

As indicated above, the Individual omitted his illicit drug use during the past seven years from the 2023 QNSP. Ex. 6 at 74. However, during the February 2023 ESI, as the investigator reviewed the QNSP with the Individual question by question, the Individual voluntarily disclosed that he had used illicit substances in the past seven years. Ex. 7 at 145; Tr. at 28–29, 43. The investigator noted that the Individual stated that “he wanted to take this security clearance seriously and wanted to be truthful in his answers surrounding his drug use.” Ex. 7 at 145. The Individual informed the investigator that he first “took a puff from a marijuana cigarette” when he was in high school, and that he “used [it] at parties off and on when it was offered to him.” *Id.* Although the Individual could not provide the dates of use, he “indicated he used more frequently from 2017 to 2021.” *Id.* The Individual told the investigator that he stopped using marijuana in in 2021. *Id.* at 146.

The Individual also disclosed to the investigator during the ESI that “he would use cocaine on some of the weekends he also used marijuana.” *Id.* at 145. He told the investigator that he first used cocaine in 2013 while at a party, and although the Individual could not recall how frequently he used cocaine, he estimated that he was using it on a monthly basis. *Id.* The Individual also disclosed the purchase of cocaine to the investigator, stating that he would purchase approximately \$200 worth of cocaine every month to share with friends at parties. *Id.*

In February 2023, approximately one week after the ESI, the Individual sent the investigator a letter providing further information regarding his past drug use. Ex. 7 at 151; Ex. 2 at 5; Tr. at 37. He admitted that he had not been completely honest with the investigator during the early February 2023 ESI. Ex. 7 at 151; Ex. 2 at 5. The Individual told the investigator in the letter that he had discontinued using illicit substances in October or November 2022. Ex. 7 at 151; Ex. 2 at 5. He

went on to state in the letter that when he was asked questions regarding his friends with whom he would use such substances, he began to “unintentionally descend[] into a spiral of dishonesty.” Ex. 7 at 151; Ex. 2 at 2, 5; Ex. 5 at 9, 11; Tr. at 28. In his May 2023 LOI, he stated that he felt like his “decision to work for the DOE should not affect anyone else in [his] life.” Ex. 5 at 9. In his testimony, the Individual further explained that as soon as the investigator began asking questions about his friends, he “kind of felt like [he] was throwing them under the bus just so [he could] elevate [his] position.” Tr. at 28, 32–36. The Individual was concerned that his friends would go “to jail because of [him].” *Id.* at 36–37. He also stated in the February 2023 letter that he was dishonest about his most recent contact with one particular friend and that he “forgot to disclose two other drug usages.” Ex. 7 at 151; Ex. 2 at 5; Tr. at 29. Specifically, he stated that he also failed to disclose his 2017 and June 2018 use of Ecstasy during the ESI, and another substance he believed was cocaine at the time he consumed the substance, but later surmised was not cocaine. Ex. 7 at 151; Ex. 2 at 5; Tr. at 29. When asked during the hearing why he did not disclose his other drug use during the ESI, the Individual said that he was nervous and was “still trying to find a way of survival[,]” even though he began the ESI with every intention to fully disclose his past drug use. Tr. at 30–31.

In the May 2023 LOI, he stated that he began using marijuana in August 2012 and that his last use was late October 2022. Ex. 5 at 2. From the time of his first use to his last use, he used marijuana “less than or equal to 40 times.” *Id.* Toward the end of this ten-year period, he would consume marijuana in the form of an edible to help him sleep after he had used cocaine earlier in the day. *Id.* He was primarily given the marijuana but purchased edibles once to consume over time. *Id.* The Individual estimated that his first use of cocaine occurred in either late 2012 or early 2013, and he last used the substance in either late October 2022 or November 2022. Ex. 5 at 1. He estimated that from the time he started using the substance to late 2018, he used cocaine approximately “40 times per year.” *Id.* Beginning in 2019 or 2020, the Individual would use cocaine approximately eight to ten times per year. *Id.* He went on to state that he only used cocaine four times at the end of 2020, and from 2021 to 2022, he used cocaine “no more than [five] times within those years.” *Id.* He was occasionally given the substance without charge, but he usually purchased the substance. *Id.* Regarding his use of Ecstasy, the Individual indicated in the May 2023 LOI that he first used the substance in 2012 and last used the substance in either mid 2017 or 2018. *Id.* at 3. The Individual indicated that he was in college at the time, and “this was something that was normally done” at raves and other venues where music is traditionally enjoyed. *Id.* He estimated that he used the substances approximately 20 to 23 times, and that he purchased the substance 15 times. *Id.*

The Individual told the investigator during the ESI that he began distancing himself from the people with whom he would use drugs. Ex. 5 at 8–9; Ex. 7 at 146. The Individual indicated in the May 2023 LOI that he associated with these people from 2012 to 2022, specifying that he saw them approximately five times in 2021. Ex. 5 at 7. At the time of the hearing, he stated, he “message[s] [them] every now and then” to do such things as “wish them a [h]appy [b]irthday.” Ex. 5 at 8; Tr. at 53.

In the LOI, the Individual denied any negative impact on his life as a result of his drug use, as he “worked full time[,] went to school full time, did [his] job well[,] and got good grades.” Ex. 5 at 1–3. When asked in the LOI whether “anyone ever expressed concern to [him] about [his] use of

illegal drugs[,]” the Individual simply stated, “no.” *Id.* at 4. He did, however, notice a decline in his “mental and emotional health[,]” but stated that he “proactively captured this decline[] and was able to stabilize [his] mental and emotional health on his own.” *Id.* The Individual told the investigator and stated at the hearing that he stopped using illicit substances because “[h]e was tired of waking up with headaches.” Ex. 7 at 146; Tr. at 51.

The Individual stated in the May 2023 LOI that “there was no guidance as to what the [QNSP] was or how important it is.” Ex. 5 at 10–11; Tr. at 22–23, 34. The Individual testified that he did not know that the QNSP would ask about past drug use until he “saw the question on the questionnaire[,]” and he marked “no” when answering those question simply out of “self-preservation.” Tr. at 25–26. The Individual also testified that he was not aware that an ESI would be conducted after he submitted his QNSP. *Id.* at 42. He feels that he could have “possibly gotten away with” the omissions he made on the QNSP, but he “chose to do the right thing.” Ex. 5 at 10–11; Tr. at 27. The Individual reiterated these sentiments in a statement he submitted with his request for a hearing, and in that statement, he went on to say that he “recognized that ethical integrity was more important than expedience[,]” resulting in the decision to disclose the omitted facts. Ex. 2 at 1. He indicated in the same statement that his “commitment to honesty” is why he sent a letter to the investigator providing the information that he omitted during the ESI. *Id.* at 2. In his testimony, the Individual stated that he took “some time to ponder and wonder[] . . . trying to find the bravery to actually correct again for a second time, which [was] a lot harder than the first time.” Tr. at 38. He felt that if he wrote the investigator a letter, it would prevent him from feeling nervous, and took the fact that the investigator reached out for documents as a sign that he should submit a letter. *Id.* at 39–41. He also testified that although he “[does not] have a drug problem” he did feel that it was something he probably should have addressed” when he was “in the early stages” of the process, after a friend of his was interviewed. *Id.* at 23–24. He acknowledged that his failure to initially disclose the information was the result of poor judgment and reiterated his “commitment to truth and integrity.” Ex. 2 at 3.

In an effort to allay any concerns about his ability to provide complete and honest answers in the context of any future clearance process, the Individual explained that he has been practicing his public speaking skills, as the nervousness he feels while speaking publicly is similar to the nervousness he felt during the clearance process. Tr. at 45. By practicing, he will be able to maintain control over his emotions. *Id.* at 45–46. The Individual stated his belief that he had mitigated the stated concerns pursuant to mitigating factor (a) and indicated that he believes that his decision to come forward and correct the deliberate omissions was indicative of his good judgment. *Id.* at 48–49, 54–55. The Individual’s supervisor submitted a letter indicating that based on his observations, the Individual “has demonstrated expected behaviors in and out of the workplace[]” and that the supervisor has not “observed [anything] in [the Individual’s] demeanor, character, behavior, or communications . . . that would cause . . . his peers to question his integrity or character.” Ex. A at 1.

## V. Analysis

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.

*Id.* at ¶ 17.

Based on the information before me in the record, the Individual disclosed his past cocaine and marijuana use to the investigator during the ESI before the investigator had presented the Individual with any information regarding his past use. By the Individual's own account of what transpired, he intended to disclose the full breadth of his prior drug involvement to the investigator during the ESI, but he failed to do so when the investigator began asking questions about the friends with whom he would use illicit substances, causing him to become nervous and "unintentionally descend[] into a spiral of dishonesty." Ex. 7 at 151. It is precisely because the Individual omitted necessary and pertinent information on two separate occasions, despite the subsequent disclosure via a letter to the investigator, that I cannot determine that he has mitigated the stated Guideline E concerns. While I do believe that the Individual formed a desire to be honest with the investigator following a time of reflection, his failure to be fully truthful evidenced poor

judgment, not just once, but twice. Nor can I consider his letter to the investigator a prompt effort to disclose omitted information, as he had the opportunity to make such disclosures at the time of the ESI or before. Although I believe the Individual made good faith efforts to disclose the omitted information, I cannot conclude that the disclosures were prompt, as the Individual failed to disclose the full extent of his drug usage in the QNSP, prior to the ESI, and during the ESI, only disclosing it by letter after the fact. Therefore, I cannot conclude that the Individual has mitigated the stated concerns pursuant to factor (a). *Id.* at ¶ 17(a).

I have no indication before me that the Individual's failure to disclose information on the QNSP was the result of advice dispensed by an attorney or some other person tasked with professional responsibilities for advising or instructing the individual regarding the security process. Accordingly, the mitigating factor at (b) is not applicable. *Id.* at ¶ 17(b).

As the omissions occurred in the context of a standard clearance process that began in 2023, and because every individual has an ongoing duty to report information, I cannot conclude that the behavior was minor, that it happened under unique circumstances, or that enough time has passed, so as not to cast doubt on the Individual's current reliability, trustworthiness, or good judgment. Therefore, the Individual has not mitigated the stated concerns pursuant to mitigating factor (c). *Id.* at ¶ 17(c).

The Individual failed to disclose a substantial amount of illicit substance use and purchase that occurred over a number of years on his 2023 QNSP. Although the Individual offered in the LOI to obtain counseling to change his behavior, the record is bereft of any evidence indicating that he has done so. While I understand that the Individual is practicing his public speaking to reduce the feelings of nervousness that he testified caused him to make the omissions, this is not counseling, nor am I persuaded that such practice will fully alleviate the factors that led to his untrustworthy behavior. Accordingly, mitigating factor (d) is not applicable. *Id.* at ¶ 17(d).

The record before me does not indicate that the derogatory information was unsubstantiated or from a questionable source, and the SSC does not contain any allegation that the Individual is vulnerable to exploitation, manipulation, or duress. Accordingly, mitigating factors (e) and (f) are not applicable. *Id.* at ¶ 17(e), (f).

The Individual's association with the individuals with whom he used illicit substances was not unwitting and has not ceased, as the Individual maintains contact with them. While the Individual testified that he has reduced his contact with this particular set of friends, I have no corroborating evidence, like witness testimony, to assure me that he has done so. And further, the LSO did not cite the Individual's drug use as giving rise to the stated security concerns, but rather, his failure to disclose the drug use. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (g). *Id.* at ¶ 17(g).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E 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 the Individual has not brought forth sufficient evidence to resolve the Guideline E concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and security 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