



## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E and H of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline E states that:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. 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;
- (c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;
- (d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
  - (2) Any disruptive, violent, or other inappropriate behavior;
  - (3) A pattern of dishonesty or rule violations; and
  - (4) Evidence of significant misuse of Government or other employer's time or resources;
- (e) Personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:
- (1) Engaging in activities which, if known, could affect the person's personal, professional, or community standing;
  - (2) While in another country, engaging in any activity that is illegal in that country;
  - (3) While in another country, engaging in any activity that, while legal there, is illegal in the United States;
- (f) Violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and
- (g) Association with persons involved in criminal activity.

*Id.* at ¶ 16.

Guideline H states that:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other 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. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed [below].

*Id.* at ¶ 24. Conditions that may cause a security concern include:

- (a) Any substance misuse (see above definition);
- (b) Testing positive for an illegal drug;

- (c) Illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) Diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder;
- (e) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional;
- (f) Any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) Expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

*Id.* at ¶ 25.

With respect to Guidelines E and H, the LSO alleges that the Individual:<sup>2</sup>

1. Omitted relevant facts from his Questionnaire for National Security Positions (QNSP) (Guideline E):
  - a. On his May 2022 QNSP, the Individual answered “No” as to whether he had illegally used any drug or controlled substance in the last seven years, but during a June 2023 evaluation with a DOE consultant psychologist (the Psychologist), he disclosed that he used marijuana monthly as a freshman in college about six years earlier, with his last use in early 2022.<sup>3</sup> In his response to July 2023 Letters of Interrogatory (LOI), the Individual admitted to using marijuana beginning in June 2016 with his last use in February 2021. He wrote that he did not list the drug use on the QNSP because he was worried that it would affect his clearance. He also wrote that he did not list the drug use because he had not used it in a long time and had never been in trouble from it and, therefore, it was the same as if he had never used it.
  - b. The Individual also omitted his drug use on an August 2018 QNSP that he completed in connection with a position in the U.S. Navy. Furthermore, the Individual’s disclosure to the Psychologist that he stopped using marijuana in 2019 indicated that he was actively using marijuana during the course of that security clearance investigation.

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<sup>2</sup> The Guidelines invoked in connection with each allegation are included parenthetically.

<sup>3</sup> In a sworn statement, the Individual certified that he misspoke when providing the year 2022 and that he meant to say 2021. Ex. B.

2. Has a history of the illegal use of controlled substances (Guideline H) and consumed an illegal drug while holding a sensitive position and while granted access to classified information (Guideline E); and
  - a. The Individual disclosed in his June 2023 psychological evaluation that he used marijuana from 2017 to 2019, which included the time during which he held a secret security clearance, beginning October 27, 2018. In his LOI response, he admitted to using marijuana at a party in June 2016.
3. Demonstrated a pattern of dishonesty and rule violations (Guideline E).
  - a. The Individual used marijuana while under the age of 21 from 2016 to 2019, which was illegal in the states in which he used it.
  - b. In his June 2023 psychological evaluation, the Individual reported first using alcohol during his senior year of high school in 2016 and reported binge drinking in college twice per week, which was illegal until he turned 21 in 2019.

Accordingly, the LSO's security concerns under Guidelines E and H are 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 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines at ¶ 2(a). The protection of the national security is the paramount consideration. 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. 10 C.F.R. § 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

At the hearing, the Individual presented the testimony of a friend. The friend testified that he had met the Individual in high school and had been a close friend of the Individual and his family for several years. Tr. at 14. The friend had observed the Individual following rules closely and behaving with honesty and integrity. *Id.* at 14–15. He described a time when the Individual tended bar for a friend’s wedding and testified that the Individual asked for identification from every guest who ordered alcohol and did not overserve anyone. *Id.* at 15. He believed the Individual had never lied to him; he also believed the Individual had not used marijuana since leaving the Navy in 2020. *Id.* at 16, 18. The friend had not observed the Individual using marijuana in high school. *Id.* 20–21. During college, the friend only saw the Individual in person on holiday breaks, but they spoke regularly and had regular game nights online multiple times per week. *Id.* at 22–23.

The friend testified that he believed occasional marijuana use or underage alcohol use—when done in a manner that kept the user out of physical danger—was not an indicator of untrustworthiness. Tr. at 16–17, 25. He testified that he was not aware that the Individual had falsified his QNSPs and that he believed that falsifying or providing inaccurate information on a QNSP was an indicator of untrustworthiness. *Id.* at 26–27.

The Individual testified that he first used marijuana in June 2016 when he was 17 years old and that he used the drug once every one to two months during his freshman year of college. Tr. at 57–58. He testified that after his freshman year, in 2018, he used marijuana once every two to three months. *Id.* The Individual testified that after joining the Navy in 2018, he did not use marijuana until after his discharge. *Id.* at 45–46, 48–49. He further testified that he misspoke when telling the Psychologist that he used marijuana in 2019 because he could not remember the date when he joined the Navy exactly, so he just used the date when he swore his Navy oath, which was in 2019. *Id.* at 45–46. He testified that he was subject to random drug testing with 24 hours’ notice while in the Navy. *Id.* at 46. He testified that he did not use marijuana again until 2021 when he no longer had a security clearance. *Id.* at 50–51. He verified that his last use was in February 2021. *Id.* at 60.

The Individual acknowledged that he was wrong to omit information on his QNSP. Tr. at 41. He testified that he had rationalized his omission by telling himself that because his use was “responsible” and he was no longer using marijuana, it was almost as if he had never used it at all. *Id.* at 41–42. He acknowledged that this assumption was incorrect. *Id.* The Individual testified that because both QNSP omissions were the same, it was “an isolated incident and not a pattern of happenings.” *Id.* He testified that his omission was atypical for him and that he usually was very forthcoming. *Id.* at 42. He further testified that the two QNSP omissions were the only examples of his lack of candor and that he had answered every other question honestly. *Id.* at 43. He testified that he would call the omissions “an exception rather than a pattern especially when extrapolated into the rest of my life[. T]hat claim can be easily proven wrong that I have a pattern of these behaviors.” *Id.* at 52.

The Individual admitted that experimentation with a drug would have required an affirmative response to the QNSP question asking if he had used an illegal drug in the preceding seven years. Tr. at 62. He testified that, regarding his “No” answer in 2018, he “didn’t think it would affect the yes or no, but I did think that it would unduly slow down the process for something that at the end of the day[,] in my opinion at the time[,] really didn’t matter.” *Id.* at 65. He testified that if the

Navy had asked him about his prior drug use, he would have been honest, just as he was doing in the hearing. *Id.* When asked if it was fair to state that the question had been asked on the QNSP, the Individual stated, “Yeah. The question was asked and I said no, and I was wrong.” *Id.* at 65–66. The Individual later testified that, in 2018, there was no evidence that he had used marijuana so—even though he knew at the time that his marijuana use was criminal—he believed then that the government did not need to know about it. *Id.* at 79–80. He testified that he now knows that the government is entitled to make its own decisions about whether his drug use mattered. *Id.* at 81. He testified that he first realized this when he received the Notification Letter that started the administrative review process; he testified that he had never before experienced adverse consequences from his marijuana use because he had been able to conceal it. *Id.* at 81, 83.

The Individual admitted that in May 2022, prior to completing his 2022 QNSP, he signed a security acknowledgment acknowledging that prior use of controlled substances was considered derogatory information for purposes of security. *Id.* at 69–70. When asked if his February 2021 marijuana use was clearly within the seven years preceding his 2022 QNSP, in which he answered that he had not used an illegal drug in that time, the Individual responded, “Yes. Within seven years I was wrong and I made a mistake and I will reiterate that plenty.” *Id.* at 70. The Individual also reiterated that he did not see the two falsified QNSPs as a pattern and considered it one isolated incident. *Id.* at 71.

The Individual testified that he falsified the 2022 QNSP because he did not want to have to explain that he had never been in trouble for marijuana use and had not used in a long time, and he did not want to “deal with the potential of losing out on my job because that’s something I hadn’t participated in for years.” *Id.* at 73. He further testified that he had worried that disclosing his marijuana use would “make the process much longer over something that at the time I believed did not matter.” *Id.* at 73–74. The Individual later admitted that his last marijuana use occurred just over one year prior to his 2022 QNSP falsification. *Id.* at 76–77. The Individual testified that he felt like it had been years since his use because he had only used marijuana one time, in February 2021, since he stopped being a regular user in 2018. He testified that, if the 2021 use was excluded, it would have been five years since he used marijuana. *Id.* The Individual added that he disclosed his marijuana use to the Psychologist because “he was not there to deny me.” *Id.* at 95.

The Individual pointed to his friend’s testimony as evidence that “to the average person[,] having engaged in underage drinking isn’t something that dooms someone for life.” Tr. at 52. The Individual testified that his marijuana use was behind him, that he had no interest in using it in the future, and that his past use was “in line with the kind of guidelines for what would be considered an okay use by the [friend who testified].” *Id.* at 55–56. He testified that he never used the drug in public or drove a car while under the influence and that he never purchased the drug himself. *Id.* at 56. He further testified, “I don’t think anyone would be happy with the verdict if they were judged on how they acted at the age of 18 that was seven years ago.” *Id.* at 52. He testified that he had grown and matured and had different “world views.” *Id.* Though he knew the government made no distinction between marijuana and other illegal drugs when asking about illegal drug use on the QNSP, the Individual testified to his current belief that it “would be proper to make a distinction because I think anyone would judge someone differently if they said, hey, I have used Marijuana in the past versus, hey, I was addicted to heroin in the past. Those are two very different

things.” *Id.* at 86. He testified that he believed “times change” and that the issue of marijuana legalization had been “a large contention in the White House.” *Id.* at 87.

The Individual testified that the extent of his rule-breaking in daily life was speeding on an empty highway and that he followed all rules and regulations in the Navy and while working as a student research assistant and intern. Tr. at 53–54. He testified that the administrative review process had been “a huge learning experience” for him, particularly in terms of what DOE expected in terms of candor from those working at its sites. *Id.* at 97. He testified that he had learned that, “when it comes to paperwork[,]” he should not put his “own spin on things.” *Id.* He also testified that, in his personal life, he might break some rules if his actions could be done in “a completely safe and sanitary matter where no one would be a detriment and nothing bad would come of it.” *Id.* at 104.

## V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

As an initial matter, I note that at the hearing and in the sworn statement the Individual submitted as Exhibit B, the Individual provided more information about the timeline of his drug use, which I find credible. Although the Individual told the Psychologist that he last used marijuana in 2019, a time at which he was serving in the Navy and held a security clearance, the evidence supports the Individual’s claim that this was a misstatement, and he actually stopped his use in 2018, before joining the Navy. The Individual testified multiple times that he stopped using marijuana because he was subject to testing requirements as soon as he signed up for the Navy, indicating that joining the Navy is the temporal marker in his memory for when he stopped using marijuana. In that case, I believe the Individual’s testimony that he mistakenly used the date he was sworn in, January 2019, as the date that he joined the Navy during his interview with the Psychologist. Therefore, I find that the Individual used marijuana only up until he signed up for the Navy in late 2018, remained abstinent from 2018 until February 2021—when he used marijuana once—and did not use marijuana after that. I further



find that, pursuant to this timeline, he did not use marijuana while holding a security clearance in the Navy.

#### **A. Guideline E**

Conditions that could mitigate Guideline E security concerns 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.

None of the conditions are applicable in this case. The Individual gave various and conflicting statements about the reasons for his omissions on the QNSPs and how he had changed since making them, but even if accepted, they would not be sufficient to mitigate the Guideline E security concerns raised.

Regarding condition (a), the Individual did not correct his omission from the 2018 QNSP at any time while he held a secret clearance. As for the omission from the 2022 QNSP, the Individual did correct the omission at his June 2023 psychological evaluation. But he testified that he only told the Psychologist about his marijuana use because the Psychologist "was not there to deny" his security clearance, not because he realized his omission from the 2022 QNSP was wrong. In fact, he testified that he only learned that he was wrong to falsify his

paperwork upon receiving the Notification Letter. I cannot find, therefore, that his disclosure to the Psychologist was a good faith attempt to correct the record.

Regarding condition (b), the Individual did not rely on the advice of others when making his omissions. As such, this mitigating condition is not applicable.

Regarding condition (c), neither the omission from the 2018 QNSP nor the omission from the 2022 QNSP was a minor offense. In 2018, the Individual deliberately concealed his prior drug use in order to obtain a security clearance that he feared he may not have received had the government had accurate information. His decision to falsify national security paperwork is serious. Moreover, he repeated his actions four years later on his 2022 QNSP. Though he testified that he has grown and matured since his 2022 falsification, it has only been one year; presumably he had been growing and maturing for four years prior to that and still chose to repeat his offense. Even after learning that his omissions were a serious problem, and acknowledging he was wrong to omit his drug use from the QNSPs, he still could not assure me that he would not break rules in the future despite being asked multiple times. The Individual also appeared to rationalize his omissions by framing them in the context of the nation's shifting stances on marijuana legalization. I note that the law remains the same regardless of the Individual's opinions on legalization and the security clearance investigation process is not an appropriate venue to challenge it. For all these reasons, I find that the Individual's failure to disclose his drug use on the 2018 and 2022 QNSPs still casts doubt on his judgment, trustworthiness, and reliability.

Regarding condition (d), the Individual did not obtain counseling to address his lack of candor. He also refused to acknowledge that he had a pattern of violating rules and being dishonest, maintaining instead that the instances of dishonesty and rule-breaking cited by the LSO, while wrong, were "isolated" incidents. He also gave several reasons why he omitted his drug use from the QNSP, many of which revolved around his belief that his marijuana use did not matter. The Individual appeared to believe that it was reasonable to pretend that his 2021 drug use had never happened, insisting that if the 2021 drug use weren't counted, it would have been over five years since he last used marijuana. The Individual also introduced testimony from his friend that was intended to show that his illegal behavior, including his underage drug use and consumption of alcohol, was normal and should be an acceptable part of growing up. These rationalizations remain concerning because, while the Individual now understands that he cannot falsify paperwork, he did not persuade me that he would no longer rationalize breaking other rules. As such, I find that the Individual has not acknowledged his behavior sufficiently for me to find that the behavior is unlikely to recur.

Condition (e) is inapplicable to this case, as the LSO has not alleged that the Individual's conduct makes him vulnerable to exploitation, manipulation, or duress.

Condition (f) is inapplicable, because the Individual admitted that he falsified the QNSPs and used marijuana.

Regarding condition (g), it is not alleged that the Individual's associations with those involved in criminal activity played a role in his rule-breaking, and the Individual did not suggest otherwise in his testimony. As such, this mitigating condition is not applicable.

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

## **B. Guideline H**

Conditions that could mitigate Guideline H security concerns include:

- (a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) The individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
  - (1) Disassociation from drug-using associates and contacts;
  - (2) Changing or avoiding the environment where drugs were used; and
  - (3) Providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) Satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Adjudicative Guidelines at ¶ 26.

Condition (a) is applicable to this case. The Individual used marijuana one time in the last several years. This use came shortly after his Navy discharge. At that time, he was no longer subject to random drug screenings and faced few potential consequences for marijuana use. Even so, after the February 2021 use, the Individual chose not to continue using marijuana and has stated that he does not intend to use it in the future. While there is still doubt about the Individual's ability and willingness to follow rules, as described in my analysis of the Guideline E concerns above, I do not have doubts that the Individual's drug use is unlikely to recur. Accordingly, I find that because almost all of the Individual's past drug use occurred more than five years ago, occurring only one time in the years since, it no longer casts doubt on his judgment, trustworthiness, or reliability.

For the foregoing reasons, I find that the Individual has mitigated the Guideline H concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines E and H of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving the concerns under Guideline H, but not the concerns under Guideline E. Therefore, I cannot conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual.

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

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals