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Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
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Filing Date: January 2, 2024) Case No.: PSH-24-0043
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Issued: March 8, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

I. Background

In March 2016, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with his service in the military. Exhibit (Ex.) 4. In the March 2016 QNSP, the Individual disclosed the fact that he was employed with a gym and had been since December 2015. *Id.* at 112. When asked if he had "ever been charged with an offense involving alcohol or drugs[,]" the Individual marked "no," but disclosed that he had used marijuana in the last seven years, with his first use occurring November 2013 and his last use occurring in December 2015. *Id.* at 120–21. He stated that he used marijuana forty-seven times within that period. *Id.* at 121. He indicated his intention to discontinue using marijuana, stating that he "[did not] want that life." *Id.* He also denied any involvement with drug activity, like purchasing illicit substances, in the past seven years. *Id.* at 122.

As part of the clearance process, the Individual submitted to an Enhanced Subject Interview (ESI), which was conducted by an investigator in March and July 2016. *Id.* at 132–36. A copy of the Individual's criminal record was obtained by the investigating agency in March 2016. *Id.* at 142. The Individual's criminal record revealed drug-related charges from March 2015, which included Possession of a Controlled Substance, Delivery of a Controlled Substance, Possession of Drug

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.

Paraphernalia with Intent to Use, and Frequenting a Place where Controlled Substances are Used. *Id.* at 148. The Individual was granted access authorization in September 2016. Ex. 8 at 1–2; Ex. 4 at 80.

The Individual is currently seeking employment with a DOE contractor in a position that requires him to hold an access authorization. Accordingly, the Individual signed and submitted a QNSP in January 2023. Ex. 4 at 47. In the January 2023 QNSP, the Individual failed to disclose his employment with the aforementioned gym, and he did not disclose any terminations or reprimands. *Id.* at 24–29. The Individual disclosed that he was on active duty in the military from August 2016 through August 2020, and that he was currently in inactive reserve. *Id.* at 30. He denied the use of any illicit substances within the last seven years. *Id.* at 41. When asked if he had ever used illicit substances while possessing an access authorization, the Individual marked “no.” *Id.* The Individual subsequently underwent ESIs conducted by an investigator in June and July 2023. *Id.* at 53–56. As part of the security clearance investigation, a military discharge check was performed, revealing that the Individual’s service was terminated in August 2020. *Id.* at 87.

The Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in August 2023. Ex. 6. The Individual provided a clarification to his LOI in November 2023. Ex. 7.

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 a substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct) and H (Drug Involvement) 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, presented the testimony of his cousin, and submitted twelve exhibits, marked Exhibits A through L. The DOE Counsel submitted eight exhibits marked as Exhibits 1 through 8.

II. Notification Letter

A. 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 eligibility or trustworthiness, or award fiduciary responsibilities[.]” and “[c]redible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself to an adverse determination, but which . . . supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with the rules and regulations.” *Id.* at ¶ 16(a), (d). This adverse information “includes, but is not limited to . . . [a] pattern of dishonesty and rule violations[.]” *Id.* at ¶ 16(d)(3).

Under Guideline E, the LSO alleged the following:

- (a) Although the Individual failed to disclose his marijuana use on the 2023 QNSP, he did disclose his prior use in an August 2023 LOI, stating that he had used marijuana from June 2014 through March 2016 and again from July 2020 to July 2022. Ex. 1 at 1. The Individual stated in the 2023 LOI that he did not disclose this information in the 2023 QNSP because “he used it as a child and was unsure if it would affect him” and further, he smoked marijuana in a state that has legalized the use of the substance, making him believe “it was okay not to list it.” *Id.* at 1.
- (b) The Individual asserted in his 2023 QNSP that he had not used marijuana while holding an access authorization. *Id.* at 2. However, the record indicates that the Individual was granted an access authorization in September 2016 in connection with his military service, and although the Individual was discharged in August 2020 and placed in the inactive reserves, the record does not contain a termination date for the Individual’s access authorization. *Id.*
- (c) The Individual indicated in his August 2023 LOI that he used marijuana from June 2014 to March 2016, but stated in his 2016 QNSP that he used marijuana from November 2013 to December 2015. *Id.*
- (d) Although the Individual stated in his 2016 QNSP and ESI that he had no intention of using marijuana in the future, he admitted in the August 2023 LOI that he continued to use marijuana from July 2020 to July 2022. *Id.*
- (e) The Individual failed to disclose the March 2015 drug-related charges on his 2016 and 2023 QNSPs and asserted on the 2023 LOI that he did not have any drug-related charges. *Id.* When the Individual was confronted with a police record that revealed that he had been charged with drug-related offenses, the Individual indicated that “he was told the charge was reduced and thought it was okay to explain it when it was brought up.” *Id.*
- (f) The Individual failed to disclose his termination from employment at a gym on the 2023 QNSP and during the 2023 ESI. *Id.* However, during the 2016 ESI, the Individual admitted that he had been terminated for “mishandling company equipment.” *Id.* at 2–3. During a 2023 ESI, the Individual “stated [that] he [did not] recall anything about mishandling equipment” and that he was terminated after “calling off work.” *Id.* at 3. The Individual indicated in his 2023 LOI that he had

been using weights in a “loud” manner and told the investigator that “he did not list this employment and subsequent termination on his 2023 QNSP because he did not understand it needed to be listed.” *Id.* at 2–3.

- (g) The Individual failed to disclose his employment at a sandwich shop on the 2023 QNSP, and when he admitted to the investigator that he worked there from May 2016 to August 2016, he stated that he failed to list this employment “because it was for a short period of time” and he simply forgot. *Id.* at 3.
- (h) The Individual also failed to disclose in the 2023 QNSP that he had been employed at a chicken wing shop from July 2015 through October 2015, and he told the investigator that he failed to disclose the aforementioned information because his employment was short-lived and he worked at two different wing shop locations. *Id.*
- (i) The Individual had been counseled while he was in the military for, among other things, “failing to be at an appointed place of duty.” *Id.* The Individual told the investigator that he was counseled following “a disagreement with an officer.” *Id.*
- (j) An investigator interviewed a source, the Individual’s former coworker, in 2023 who indicated that the Individual “was rude, would not listen to instructions at work, and that he failed to do his job[,] resulting in the store being robbed.” *Id.* The source also stated that the Individual was “egotistical, would brag about his military service, and did not appear to be the type of person that could keep his mouth shut for any reason.” *Id.*
- (k) The Individual marked “no” on the 2016 QNSP when asked whether “he was involved in the illegal purchase of any drug or controlled substance in the last seven (7) years.” *Id.* However, it was determined during a subsequent ESI that the Individual had purchased marijuana prior to his arrest in March 2015. *Id.*

Based on the foregoing, the LSO’s invocation of Guideline E is justified.

B. Guideline H

Under Guideline H of the Adjudicative Guidelines, “[i]llegal use of controlled substances . . . can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. Conditions that could raise a concern under Guideline H include “[a]ny substance misuse[,]” and “[a]ny illegal drug use while granted access to classified information or holding a sensitive position[.]” *Id.* at ¶ 25(a), (f). Under Guideline H, the LSO alleged the following:

- (a) The Individual told the investigator during a 2023 ESI that he “used marijuana a few times and worked for both a local marijuana distributor and at a marijuana farm[.]” Ex. 1 at 4. In his August 2023 LOI, the Individual stated that he “first used

marijuana in June 2014 until March 2016,” and that he used the substance one to three times every week “from July 2020 until July 2022, to aid in sleep and depression.” *Id.*

- (b) The Individual stated in his March 2016 QNSP that he used marijuana from November 2013 to December 2015 and indicated in a 2016 ESI that he “used the drug once a month when he went to parties and used it [two to three] times at his residence.” *Id.* In the August 2023 LOI, the Individual indicated that he was using marijuana on a weekly basis prior to joining the military. *Id.*
- (c) During a 2016 ESI, the Individual disclosed to the investigator that he had been arrested and charged with drug-related offenses in March 2015. *Id.* The Individual was arrested after law enforcement personnel discovered marijuana and an implement to smoke the substance on his person. *Id.*
- (d) The Individual indicated in the August 2023 LOI that he had “used marijuana from July 2020 to July 2022 and claimed that he did not use marijuana while holding a security clearance.” *Id.* However, the Individual was granted a clearance in 2016 while serving in the military, and although the Individual was discharged from active duty in 2020, there is no indication that his clearance was terminated. *Id.*

Based on the foregoing, the LSO’s invocation of Guideline H 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

A. 2016 ESIs

When interviewed by investigators in 2016, regarding the March 2015 incident, the Individual indicated that he had been “arrested but not transported to jail” after purchasing “\$20 worth of marijuana” while attending a friend’s party.² Ex. 4 at 134. After a neighbor called law enforcement to make a noise complaint, the Individual was questioned and searched when law enforcement responded to the scene. *Id.* Law enforcement located marijuana and a pipe on the Individual’s person. *Id.* When the Individual was arrested, he was placed in a patrol vehicle so that law enforcement could question him further. *Id.* At that point, law enforcement issued a citation to the Individual and he was released. *Id.* The Individual told the investigator that the citation he received for Frequenting a Place where Controlled Substances are Used, was ultimately reduced to Disturbing the Peace and the Individual paid a fine when he appeared in court in April 2015. *Id.* at 134–35. The Individual also told the investigator that he failed to list the March 2015 arrest on his 2016 QNSP due to a simple oversight. *Id.* at 135. He assured the investigator that “something like this will never happen again since [he] does not like that kind of behavior.” *Id.* Regarding marijuana use in general, the Individual told the investigator that he began smoking marijuana in November 2013 and “continued to use it once a month when he went to parties . . . until 2015.” *Id.* He stated that he had no intention of using marijuana again, as he “does not like that lifestyle and the feelings that he has when using the drug.” *Id.*

The Individual told the investigator that he had been terminated from employment at a gym in May 2016 “for [mishandling] company equipment[.]” *Id.* at 136. He explained that he suffered a cramp while exercising, and as a result, he dropped the equipment that he was using, banging the equipment. *Id.* An observer reported this incident to the Individual’s supervisor, who terminated him “without any prior warnings.” *Id.*

B. 2023 ESIs

During the June 2023 ESI, the Individual confirmed his employment with a wing shop from July 2015 through August 2015, and again at a different location from August 2015 through October 2015. Ex. 4 at 53–54. He told the investigator that he failed to list this employment on his QNSP because the employment was short-lived, and further, he worked at two separate wing shop locations. *Id.* at 54. He also told the investigator that he worked at a sandwich shop from May 2016 through August 2016, and that he failed to list this employment on his QNSP “because it was for a short period of time.” *Id.* Regarding his employment at a gym from December 2015 through May 2016, the Individual told the investigator during the June and July 2023 ESIs that he had omitted this information from the 2023 QNSP because he was employed for “less than [six] months and [he] did not understand” that he was required to list it. *Id.* at 54, 56. During the July 2023 ESI, the investigator confronted the Individual with the fact that he previously admitted that was terminated from employment at the gym due to mishandling company equipment. *Id.* at 56. The Individual denied that this was the reason for his termination, and stated that “he was let go because he called off of work[.]” *Id.*

² The police report indicates that after the Individual was read his Miranda rights, he told law enforcement officers that he had purchased “two baggies of weed.” Ex. 7 at 162. The Individual rejected this version of events at the hearing. Tr. at 45–46.

During the June 2023 ESI, the Individual was confronted with the fact that he had been counseled while he was in the military. Ex. 4 at 54. The ESI indicates that the Individual received the counseling for, among other things, a failure “to be at the appointed place of duty.” *Id.* The Individual told the investigator that he did not agree with that information, as he was reprimanded following a disagreement with a commanding officer. *Id.*

Regarding his marijuana consumption, the Individual notified the investigator during the June 2023 ESI that “he worked for a marijuana distributor” and cultivator for a time, and that as a result, he “was exposed to smoking marijuana recreational[ly] because it was legal.” *Id.* at 54–55. He specifically stated that he had smoked marijuana “a few times” while living in a state where the substance was legal. *Id.* at 55. The investigator confronted the Individual with several social media posts depicting the Individual engaged in marijuana use with other people. *Id.* The ESI report indicates that the person who made the social media post “used marijuana with the [Individual] on numerous . . . occasions while they worked together[,] as well as while [the Individual] was employed with [the marijuana distributor].” *Id.* In response, the Individual acknowledged that he “did some marijuana for a time in his life,” and emphasized the fact that he used the substance in a state where it was legal. *Id.*

The Individual denied any drug-related arrests, charges, or citations during the June 2023 ESI. *Id.* at 55. He was confronted with the March 2015 drug-related arrest and charges, which included Possession of a Controlled Substance, Delivery of a Controlled Substance, Possession of Drug Paraphernalia with Intent to Use, and Frequenting a Place where Controlled Substances are Used, during the July 2023 ESI, and he stated that he omitted this information from the QNSP because “he had forgotten about the incident because it was so long ago.” *Id.* at 57.

A source who worked with the Individual at the marijuana dispensary told the investigator that the Individual was “egotistical” and would brag about his military service. *Id.* at 66. The source went on to state that the Individual “did not appear to be the type of person that could keep his mouth shut for any reason.” *Id.* The source also indicated that the Individual was “rude, would not listen to instructions, was unorganized and failed” as a “floor manager” at the marijuana dispensary. *Id.* Specifically, the source indicated that the Individual did not follow established procedure, which “likely would have prevented [a] robbery.” *Id.*

C. 2023 LOI and Clarification

Regarding his failure to disclose his prior employment at a sandwich shop, the Individual stated that he had simply forgotten that he had worked there prior to his enlistment. Ex. 6 at 1. The Individual also stated that he failed to disclose his employment at a gym in the 2023 QNSP because he was employed there “for a short period of time.” *Id.* He indicated that he “realized” his failure to disclose his employment at the gym after he had submitted the 2023 QNSP. *Id.* He said that he was terminated from his employment with the gym because he had been accused of “lifting in a loud fashion,” which was behavior that “[was not] the standard of the club.” *Id.*

He stated that he used marijuana “periodically” from June 2014 through March 2016. Ex. 6 at 1. The Individual also described his use as “experimental” and “social” and indicated that his use

continued in July 2020 following his departure from the armed services in 2020. *Id.* He used marijuana until July 2022 “to aid in sleep and depression when needed.” *Id.* He indicated that he has not used marijuana since July 2022. *Id.* Following his departure from the military, the Individual was using marijuana approximately one to three times per week, and before he enlisted in the armed forces, he was using marijuana “maybe once a week” while he was in high school. *Id.* Now, the Individual copes with sleep and depression symptoms through exercise and counseling. *Id.*

Regarding his failure to disclose his marijuana use on his 2023 QNSP, the Individual indicated that because he “used it experimentally as a child and was unsure if it would affect [him]” and because he was using the substance in a state where it is legal, he thought that it was appropriate not to list his use. Ex. 6 at 1.

He also indicated that he failed to disclose his March 2015 arrest and drug-related charges on his 2023 QNSP because he had been “told [that] the charges [were] reduced and [that he did not] have to worry about it throughout [his] military career[.]” *Id.* Accordingly, he believed it was “okay to explain” his March 2015 arrest and charges as they were came up during the security clearance process. *Id.*

D. Hearing Testimony

The Individual’s cousin, an active-duty member of the armed forces, testified that the Individual looked up to him, and as a result, decided to join the military. Tr. at 15. The Individual lived with his cousin for several months prior to joining the military and frequently sought advice from his cousin. *Id.* at 15–17. The Individual told his cousin that he was completing a QNSP in 2016, and as his cousin had some experience with the form, he advised the Individual “to just be forthcoming with everything[.]” *Id.* at 17–19. The Individual’s cousin testified that based on his knowledge, the Individual’s drug use is “the only thing” that could cause concern under the Adjudicative Guidelines. *Id.* at 20. He stated that although he was never concerned that the Individual was using drugs while they lived together, he regrets his failure to advise his cousin to stay away from illicit substances following his military service. *Id.* at 20–22. The Individual’s cousin testified that to his knowledge, the Individual never used any illicit substances while they lived together in the five months preceding the Individual’s active duty in the military. *Id.* at 22.

The Individual clarified that he lived with his cousin from approximately early July 2015 through November 2015. *Id.* at 29–31. The Individual returned to live in his mother’s home in November 2015. *Id.* at 31–32. In his testimony, the Individual confirmed that he received his access authorization while he was in the military, and that he was on active duty from August 2016 to August 2020. *Id.* at 28–29, 35–36. The Individual went into the inactive reserves in August 2020, and his obligation concludes around February 2024.³ *Id.* at 35–36. His occupation with the military exposed him to confidential information. *Id.* at 32–33. The Individual recounted that he “had one argument with one of his superiors” while he was on active duty in the military. *Id.* at 34. Responding to the allegation that he failed to appear at his place of duty, the Individual denied that

³ In the 2023 LOI clarification, the Individual noted that he was on active military duty from August 2016 through August 2020, and that he would be in the inactive reserves until August 2024. Ex. 7.

he failed to appear at his appointed place of duty. *Id.* at 35. He testified that the night watch schedule had been altered, and when he reported that day to perform his duty, he was informed that he was scheduled to complete his shift that night, which resulted in the aforementioned argument with his superior. *Id.* at 34–35. He felt that his superior was “egregiously using [him] and belittling [him] in front of his” colleagues “to the point that [the Individual] was the only one doing work[.]” *Id.* As a result, his superior issued him a written reprimand. *Id.*

Regarding the answer that he provided in the 2016 QNSP, stating that he used marijuana approximately 47 times from 2013 through 2015, the Individual indicated that he had informed the military recruiter that he “had smoked occasionally at parties and stuff like that,” but the military recruiter demanded an exact number. *Id.* at 37. The Individual also confirmed that he had stated in his 2016 QNSP and told the investigator during the subsequent ESI that he had no intention of using marijuana in the future. *Id.* at 37–38. He testified that when he was using marijuana in the period prior to the 2016 QNSP, he watched the people around him who also used marijuana fall into a cycle of “getting in trouble or staying in trouble[.]” *Id.* at 38–39. He acknowledged that he had been arrested and questioned by law enforcement after he purchased marijuana at a party, which caused him to realize that he did not desire this lifestyle for himself. *Id.* at 39–40. He stated that he had failed to disclose the drug-related charges in the 2016 QNSP, because he “[was not] sure how [he] should answer” the question, so he “called and talked to someone and asked her a question about it[.]” *Id.* at 40. This person “told [him] to [mark] no” on the QNSP, and he intended to explain the matter during the ESI.⁴ *Id.* In later testimony, he indicated that when he was confronted with the drug-related charge by the investigator, he stated that he had omitted this information from the 2016 QNSP due to an oversight, because although he was placed in handcuffs, he “[was not] technically arrested” and he was subsequently released. *Id.* at 41–42. He stated that he “[did not] think it was an actual drug charge, so [he did not] list it.” *Id.* at 42. The Individual indicated his attorney had informed him that his “charge was frequenting to begin with and that [the] charge had” been reduced to “disturbing the peace or something similar.”⁵ *Id.* at 43. He confirmed that he had told a law enforcement officer that he had purchased the marijuana, but that he only had one bag of marijuana and a pipe. *Id.* at 43–44. The Individual admitted at the hearing that he should have marked “yes” when asked on the 2016 QNSP whether he had had any drug involvement but indicated that he marked “no because of the way the situation was.” *Id.* at 46–47. He went on to admit that he should have marked “yes” on his 2023 QNSP when he was asked whether he had “ever been charged with an offense involving alcohol or drugs[.]” *Id.* at 47. However, he stated that he answered “no” to the questions because he “thought that would be the right thing to do,” as he intended to explain later the situation and circumstances. *Id.* at 47–48. Further, he wanted the responses he provided to remain consistent between the two QNSPs. *Id.* at 48. He also confirmed that he told the investigator during the first 2023 ESI that he had not been arrested or charged with drug-related offenses, because he believes that he “was never placed under arrest.” *Id.* at 48–49. He also stated that because the charges had been reduced, he was under the impression that he “was never formally charged with a drug charge.” *Id.* at 49. He denied telling the investigator during the 2023 ESI that he had forgotten to list the drug-related offense on his

⁴ The Individual could not remember the name of the person who assisted him or this person’s job title but stated that this person was “the initial lady that was helping [him] through the process of the QNSP.” *Id.* at 78–79.

⁵ The Individual testified that his lawyer explained that “frequenting” meant that the Individual was in “a place where drugs are being used and/or distributed,” and in later testimony, he conceded that this was a drug-related offense. *Id.* at 45–46.

2023 QNSP, and he stated that he told the investigator that he believed that he had been charged with a lesser offense that was not a drug-related offense. *Id.* at 50–51.

The Individual testified that he first began using marijuana as a teenager, and that he stopped using “before [he] enlisted.” *Id.* at 51. His use as a teenager was mainly social, and he used the substance as a way “to spend time with [his] friends.” *Id.* at 51–52. He testified that he believes he stopped using around the Fourth of July in 2015. *Id.* at 52. When asked why he had indicated in the 2023 LOI that he had stopped using marijuana in March 2016, the Individual stated that he “definitely did it one or two more times” prior to enlisting in the military. *Id.* at 53. He went on to indicate that he did not start using marijuana again until he was discharged from the military in August 2020, even though his LOI indicates that he began using again in July 2020, and he admitted that he was using marijuana while in the inactive reserves. *Id.* at 53–55. He continued to hold an access authorization while he was in the inactive reserves, and he would not have used marijuana had he known it would have brought his eligibility to hold an access authorization into question. *Id.* at 56. He began using marijuana more frequently due to stressors in his personal life and to help him sleep. *Id.* at 54–55, 86. He testified that he was using marijuana in a state where it was legal, and accordingly, he marked “no” to the question asking about drug use in the 2023 QNSP. *Id.* at 56–57. He later admitted that he knew that marijuana was “on the federal controlled substance list[.]” but testified that he had asked his cousin whether he should disclose his use, and his cousin stated that “he [did not] think it would be an issue” because the substance was legal in the state in which the Individual resided. *Id.* at 57–60.

Regarding his termination from the gym, the Individual denied that he was terminated for mishandling gym equipment and insisted that he had been terminated after he called his supervisor to tell her that he “was not going to be able to make it” following the passing of a friend. *Id.* at 62, 81–83. He testified that his gym membership was revoked because he was using equipment in a “loud” manner, which occurred after his termination. *Id.* at 62–63. He admitted that he failed to disclose his termination from the gym on the 2023 QNSP. *Id.* at 63. He said that he failed to disclose his employment with the gym, his subsequent termination, and his employment with the sandwich shop because he “completely spaced[.]” *Id.* He also stated that he “rushed through” the QNSP, resulting in some mistakes. *Id.*

Regarding his employment the marijuana distributor, he stated that he felt “some illegal things” were taking place on the farm, and that the owners were “very self-righteous, very money driven[.]” *Id.* at 64–65. He testified that the robbery “was not all [his] fault[.]” and that he complied with the robbers request for money from the register, as the lives of the individuals in the store “were not worth any amount of money that he could have given” the robbers. *Id.* at 66. When asked why the source alleged that the robbery resulted from the Individual’s failure to follow proper store closing procedure, which resulted in the robbery, the Individual denied this allegation, stating that robbery occurred before closing. *Id.* at 69–70. Regarding the source’s allegation that the Individual “did not appear to be the type of person who could keep [his] mouth shut[.]” the Individual expressed that he understands how “important it is to not be discussing [his] work and what” he does. *Id.* at 67–69. The Individual denied being terminated from his employment with the distributor and stated that he left the job. *Id.* at 70–71. He believes the source made those statements in retaliation for his resignation. *Id.* at 84.

The Individual testified that although he attended some counseling sessions in 2021, 2022, and 2023 to address past traumas, he has not discussed drug use during the sessions. *Id.* at 72–74.

E. Individual’s Exhibits

The Individual submitted several written character references from individuals with whom he served in the military. One person described the Individual as “a model example” and indicated that the Individual “is exceptionally qualified and enthusiastically recommended to assume a position” with the contractor. Ex. A. A leader in the Individual’s unit stated that the Individual “showed nothing but dedication and professionalism.” Ex. B. He also described the Individual as a “driven, intelligent, and respectful young man[.]” *Id.* The Individual’s cousin, a former military serviceman who also testified, stated in his letter that the Individual’s “duty to do his best, and his loyalty to the United States will make him an asset to any organization.” Ex. C. He also stated that had the Individual known that his marijuana use “may have brought his loyalty to the United States Government into question[.]” he would not have used the substance. *Id.* Another former servicemember described the Individual as “an exceptional young man who is fiercely loyal with great integrity[.]” and has “consistently demonstrated a commitment to trust and reliability.” Ex. D. A serviceman who supervised the Individual during his military service described the Individual as a “competent and intelligent” person who completed tasks in a manner that would exceed expectations. Ex. F.

A friend of the Individual wrote that the Individual has “always displayed a high moral character[.]” and described the Individual as trustworthy. Ex. L. Another friend, who has known the Individual for sixteen years, stated that the Individual feels like “a member of [her] family due to his level of integrity,” and that the Individual has “proved himself to be a very reliable and dependable house guest.” Ex. K. A former coworker at the marijuana dispensary wrote that the Individual was “the main reason why [they] were able to get out of the robbery alive.” Ex. E at 2. She indicated that as there were customers shopping in the store, the Individual was not able to lock the doors prior to the robbery. *Id.* She said that the Individual “led three out of the five robbers away from customers, [while] pressing silent alarms[.]” *Id.* Two friends recommended the Individual as a person of integrity, and one specifically described the Individual as someone who has gained the trust of the people in his community. Ex. G; Ex. I. A gentleman who has known the Individual for two years wrote that the Individual “is . . . someone who is credible” and “is truthful in his communication[.]” Ex. H. A former coworker stated in his letter that the Individual “tr[ies] his best to go above and beyond.” Ex. J.

V. Analysis

A. 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, the Individual's explanations for his failure to disclose specific information on the QNSPs varied from the ESIs to the hearing. Further, some of the information the Individual provided in the LOI was inconsistent with the information he provided in his testimony. For example, the Individual informed the investigator during a 2023 ESI that he failed to list any drug-related charges on the 2023 QNSP because "he had forgotten about the incident because it was so long ago." Ex. 4 at 57. However, at the hearing, the Individual indicated that he made contact with a woman who was initially guiding him through the 2016 clearance process to determine whether he should disclose the March 2015 incident on his 2016 QNSP, and that she suggested that he omit the information. He testified that after receiving her guidance, he intended to explain the matter if and when it was addressed. He then omitted the same incident from his 2023 QNSP so his responses would remain consistent. In his LOI, he simply stated that he was told the resulting charges were "reduced" and because he "[did not] have to worry about it throughout [his] military career[,]" he believed that it was acceptable "to explain" the matter when it was addressed in the context of the investigation. Ex. 6 at 1. The Individual's explanations for this significant omission vary in important ways. Accordingly, I have some concerns regarding the Individual's credibility. 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). The Individual failed to take the proper care while completing both QNSPs.

I have no information before me indicating that the Individual made prompt, good-faith efforts to correct any of the omissions, concealments, or falsifications prior to being confronted. Accordingly, mitigating factor (a) does not apply. *Id.* at ¶ 17(a).

Regarding the omission of his drug-related charges from the 2016 QNSP, the Individual indicated that he reached out the person who was initially guiding him through the clearance process to ask whether he should disclose the information. The Individual later explained that one of the reasons why he omitted the drug-related charges from the 2023 QNSP, was so that the information in both QNSPs would be consistent. I have no evidence before me that corroborates the Individual’s testimony that he sought guidance from a person with professional responsibilities for advising or instructing the Individual during the security process. Additionally, the fact that the Individual failed to notify an investigator of the existence of this person and the help she offered during the process leads me to doubt his testimony, especially in light of the fact that he had initially told the investigator in 2016 that he had omitted the information due to an oversight. As I am not wholly convinced that the Individual sought advice from a person with professional responsibilities for advising or instructing the individual specifically concerning security processes, I cannot conclude that the Individual has mitigated the stated concern pursuant to mitigating factor (b). *Id.* at ¶ 17(b).

I also cannot conclude that the omissions or falsifications were minor, that enough time has passed, that the behavior was infrequent, or that the circumstances were unique, as the Individual omitted important facts from two QNSPs and provided inconsistent information during the clearance process. As the QNSP and LOI are used to determine eligibility for an access authorization, such omissions are not minor, and as the most recent QNSP and the LOI were completed in 2023, this behavior did not occur so long ago. Accordingly, the Individual has failed to mitigate the stated concerns pursuant to mitigating factor (c). *Id.* at ¶ 17(c).

I have no information before me that the Individual acknowledged the behavior and sought counseling or took other measures to change his behavior. Also, the LSO did not allege that the Individual is vulnerable to duress and the like or that he was involved in criminal activity. Therefore, the mitigating factors at (d), (e), and (g) are not applicable. *Id.* at ¶ 17(d), (e), (g).

Regarding the allegations made by a source suggesting that the Individual was rude, that he failed to follow proper store closing procedures, resulting in a robbery, and that he is not the sort of person to “keep his mouth shut for any reason,” the Individual asserted at the hearing that these allegations were retaliatory in nature. I do have before me a letter from the Individual’s former coworker who was present when the robbery occurred, and the letter she authored asserts that the Individual was not able to lock the doors, as customers were still browsing. I have some concerns that the LSO relied on statements made by an individual who was not identified, and therefore unable to be cross-examined, and further, the allegation that the Individual is “rude” and “egotistical” is not especially relevant when it comes to the question of the Individual’s eligibility

for an access authorization. The allegation that the Individual is “rude” and “egotistical” strongly suggests that the source simply had a personal dislike for the Individual. Accordingly, I find that the Individual has mitigated this specific concern pursuant to mitigating factor (f). *Id.* at ¶ 17(f). The remaining Guideline E concerns, however, remain unmitigated.

B. 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; and
 - (3) Providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;
- (c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) Satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Id. at ¶ 26.

Although the Individual testified and indicated in the LOI that he was abstinent from illicit drug while he was in the military, he did resume marijuana use in late 2020, and testified that he last used the substance in 2022. I cannot conclude that the Individual’s use occurred so long ago, as the last instance of drug use took place only a couple of years ago. I also cannot conclude that it occurred under such circumstances that it is unlikely to recur or does not cast doubt on the Individual’s current reliability, trustworthiness, or good judgment, as his use occurred in the context of personal struggles. Additionally, the Individual has been using marijuana since high school, and despite the period of abstinence during his active military service, his use does seem to be long-standing. I also cannot conclude that the Individual’s use was infrequent, as he stated in the LOI that after completing active service in the military, he was using marijuana “maybe [one

to three] times a week to help [him] sleep[.]” Ex. 6 at 1. The Individual has not mitigated the stated concerns pursuant to mitigating factor (a). *Id.* at ¶ 26(a).

While the Individual acknowledged his past drug involvement, I have no information pertaining to any actions that he has taken to overcome the problem. Furthermore, there is no evidence in the record, like drug test results, to corroborate the Individual’s testimony that he is abstinent. I do not have any testimony from the Individual indicating that he is avoiding the sorts of environments where he previously used marijuana, and the Individual did not submit a statement of intent to abstain from all drug involvement and substance misuse. I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (b). *Id.* at ¶ 26(b).

I have no information before me that indicates the Individual abused prescription drugs following a severe and prolonged illness, and I have no indication that the Individual participated in a prescribed drug treatment program. Accordingly, mitigating factors (c) and (d) are not applicable in this matter. *Id.* at ¶ 26(c), (d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and H 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 he has not brought forth sufficient evidence to resolve the 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