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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: March 7, 2024) Case No.: PSH-24-0079
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Issued: June 21, 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

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the application adjudication process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in July 2023. Exhibit (Ex.) 6. When asked whether he has "illegally used any drugs or controlled substances" in the last seven years, the Individual marked "no." *Id.* at 95.

The Individual underwent an Enhanced Subject Interview (ESI) with an investigator in July 2023. Ex. 7 at 154. The Individual was asked questions about his drug use. *Id.* at 155. At the behest of the Local Security Office (LSO), the Individual completed and submitted a Letter of Interrogatory (LOI) in November 2023. Ex. 5.

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

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.

information raised security concerns under Guideline E (Personal Conduct) 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-24-0079 (hereinafter cited as "Tr."). The Individual also submitted seven exhibits, marked Exhibits A through G. The DOE Counsel submitted seven exhibits marked as Exhibits 1 through 7.

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 personnel security questionnaire, personal history statement, or similar form used to conduct investigations[.]" *Id.* at ¶ 16(a).

Under Guideline E, the LSO alleged that the Individual denied any illicit substance use in the past seven years in the QNSP but indicated during the ESI that he used marijuana from 2016 to 2021. Ex. 1 at 5. The Individual also admitted during the ESI that he "deliberately concealed his marijuana use in his QNSP[.]" as he knew "he could easily pass a drug screening." *Id.*

III. Regulatory Standard

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

The investigator's notes indicate that the Individual stated that he used marijuana two to three "times a month from 2009 [to] 2013" and one to two times per year from 2014 to 2017. Ex. 7 at 155. The notes also indicate that the Individual used marijuana once between the years 2018 and 2020. *Id.* However, more recently, in 2021, he used marijuana approximately four to five times, and his last admitted use was in December 2021. *Id.* The investigator's notes indicate that the Individual described his use as "occasional and recreational[.]" and "[h]e did not list it on the [QNSP] as he considered his usage infrequent and light[.]" *Id.* The Individual stated his intention to never use marijuana again. *Id.*

In his LOI response, the Individual indicated that he was aware that "any illegal use of a drug or controlled substance within the last seven years was required to be listed" on the QNSP, but he failed to disclose the information "because [he] had not used illegal drugs in over a year, [and] could easily pass a drug screening."² Ex. 5 at 60–61. He also stated that he believed that his "use was so infrequent and light[,] that it could be considered negligible." *Id.* He stated that he realized that he should have listed "any use" in the QNSP after "the question was asked in depth by the investigator[.]" and that because he was placed under oath, he "could not lie." *Id.* 60–61. He provided assurances that he would disclose such information in "future QNSPs." *Id.* at 62.

The Individual testified that this was his first time completing a QNSP, and he was "unfamiliar with the gravity of the situation." Tr. at 18–21. He stated that he believes that he read the instructions accompanying the QNSP prior to completing it and acknowledged that the instructions were readily available for him to reference as he worked through the document.³ *Id.* at 39. However, he marked "no" to the question about illicit drug use, because "at the time, [he] could only recall" one incident of substance abuse, which he described as "miniscule or negligible."⁴ Tr. at 18–19, 22. As a result, he "lessened the gravity of" the use and "answered [the] question and moved on with the rest of the QNSP." *Id.* at 19. He described it as an "oversight." *Id.* He also stated that he does not believe that he is a drug user, and because he can "pass a drug test at any given moment[,] he marked 'no.'" *Id.* at 19–20, 22. In later testimony, the Individual admitted that he was concerned that if he disclosed his prior drug use on the QNSP, he would lose his employment with the DOE contractor. *Id.* at 27–28. He indicated that this fear may have played some part in the fact that he "read an exception into the question." *Id.* at 28.

² After confirming the fact that he knew he was supposed to list illicit drug use within the past seven years on his QNSP, the Individual said that he "misinterpreted the question" and failed to elaborate in his LOI response. Tr. at 25–26. He clarified that although he did believe his use to be infrequent, causing him to mark "no" on the QNSP, he also answered the question in the LOI by using "the words from the question in [his] answer[.]" *Id.* at 27. He understood how his response could cause confusion. *Id.*

³ The instructions to the QNSP indicate, among other things, that "[a]ll questions . . . must be answered completely and truthfully in order that the Government may made the determinations . . . on a complete record." Ex. 6 at 67.

⁴ He indicated that the last time he used marijuana, he took "one puff before bed." Tr. at 38.

Once he understood the importance of providing honest answers on the QNSP, the Individual “wanted to correct” the falsification “to stay true to [himself.]” *Id.* at 20–21. Now, if “presented with a sensitive question again,” he would answer the question “to the best of [his] ability,” as he is remorseful. *Id.* at 21, 24, 26, 34.

He testified that although he knew that he would be interviewed by an investigator, he did not know what to expect in terms of questioning. *Id.* at 28. He stated that he had not been confronted with his past drug use by the investigator or the DOE prior to disclosing his use, and that he had decided that he was going to be truthful prior to being interviewed. *Id.* at 20, 29–30. The Individual indicated that one person he listed as a reference knew of his drug use in high school, but he was not concerned that the reference would reveal such information to the investigator. *Id.* at 30–32. When asked whether he was concerned that his listed cohabitant would reveal his drug use to the investigator, the Individual said, “[p]ossibly[,]” but that “he [did not] concern [himself] with anybody’s response.” *Id.* at 32. When asked if his cohabitant had “personal knowledge” regarding the Individual’s marijuana use, the Individual confirmed that she had personal knowledge of his most recent use. *Id.*

The Individual submitted five negative drug tests from February, March, April, and May 2024. Ex. A; Ex. B; Ex. C; Ex. G; Ex. 2 at 50. In February 2024, the Individual signed and submitted a statement of intent expressing that he will not use or consume illicit substances in the future or consume prescribed drugs “in a manner inconsistent with their intended purpose.” Ex. 2 at 43–44.

The Individual submitted several character letters into the record. One person stated in her letter that she knows the Individual “to be an honorable man” and “morally correct.” *Id.* at 46. Another person indicated that the Individual has gained respect through his “thoughtfulness to others” and “trustworthiness[,]” and that the Individual is “willing to speak the truth to others when he sees that someone else is not being forthright.” *Id.* at 48. A former coworker indicated that the Individual’s “integrity and dedication proved invaluable[,]” and that the Individual “embodied the essence of reliability and consistency[,]” *Id.* at 52. Another associate of eight years described the Individual as “honest and trustworthy[,]” indicating that he “can always rely on [the Individual.]” Ex. D.

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.

While I appreciate the fact that the Individual submitted multiple negative drug tests and has stated his intention to refrain from future drug use, the question before me concerns his failure to disclose his drug use on the QNSP, as he was required to do. 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). In an effort to explain his behavior, the Individual testified that the importance of the QNSP was not clear to him until after he signed and submitted the document. However, the instructions to the QNSP clearly state that that “[a]ll questions . . . must be answered completely and truthfully in order that the Government may made the determinations . . . on a complete record.” Ex. 6 at 67. Further, when the Individual signed the QNSP, he certified that his responses were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” *Id.* at 100. Not only do the attached instructions and certification convey the importance of truthful responses to applicants, but they should have been read and heeded. Perhaps more importantly, the Individual admitted that he knew he was supposed to disclose any drug use in the past seven years, and he failed to do so. Further, as an individual seeking an access authorization, disclosing possible concerns in a truthful and timely manner is a continuing obligation, one that I now doubt the Individual will be able to discharge based on his testimony that he prioritized his self-interest in maintaining his employment over meeting his obligations to honestly disclose derogatory information. Accordingly, I cannot conclude that the Individual mitigated the stated concerns pursuant to mitigating factor (c).

While the Individual testified that he revealed his past drug use to the investigator prior to being confronted with the same, I cannot ignore the fact that the Individual understood that at least two associates who had knowledge of his drug use were going to be interviewed by the investigator. The Individual knew that his cohabitant had knowledge of his most recent marijuana use and acknowledged that the investigator might have learned of his illegal drug use from the cohabitant if he did not come forward with the information himself. Tr. at 32. Further, the Individual admitted that he felt that disclosing his drug use on the QNSP would have placed his employment in jeopardy. It was only when he realized that it would be better to tell the truth that he disclosed the previously requested information. As stated above, the Individual acted in his self-interest, despite his obligation to tell the truth, when he failed to disclose his drug use on the QNSP. While he stated that he did not concern himself with the information others would be called upon to provide the investigator, his motives for withholding his drug use were clear, and I can only surmise that his motives for revealing the information that would likely have been obtained anyway were the same. Specifically, when the Individual realized that his failure to disclose information could also result in an undesirable outcome, as he later understood the “gravity” of the situation, he came forward with the truth. For the foregoing reasons, I cannot conclude that the Individual’s disclosure was in good faith and that he mitigated the stated concerns pursuant to mitigating factor (a).

The record does not indicate, and the Individual did not allege, that he omitted information from the QNSP based on advice from an attorney or someone with professional responsibilities that entail advising others during the clearance process. Mitigating factor (b) is not applicable. I have no information before me that the Individual has obtained any counseling, and the SSC did not allege any vulnerability to exploitation or duress. Mitigating factors (d) and (e) are not applicable. The Individual did not allege that the information was unsubstantiated or came from a source of questionable reliability, and the SSC did not allege any association with persons involved in criminal activities. Mitigating factors (f) and (g) are not applicable.

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 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