



his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline H (Drug Involvement and Substance Abuse), Guideline J (Criminal Conduct), and Guideline F (Financial Consideration) of the Adjudicative Guidelines. Ex. 2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted seven numbered exhibits (Ex. 1–7) into the record and presented the testimony of the DOE Psychiatrist. The Individual did not submit any exhibits but testified on his own behalf. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. 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 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.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guidelines E, H, J, and F of the Adjudicative Guidelines. Ex. 2.

Guideline E addresses conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Such conduct “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.” *Id.*

Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. *Id.* at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.*

Guideline H relates to security risks arising from drug involvement and substance misuse. *Id.* at ¶ 24. “The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs . . . can raise questions about an individual’s reliability and trustworthiness[.]” *Id.* This is “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.” *Id.*

Guideline F relates to security risks arising from financial distress. It provides that a “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or [an] unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern under this guideline include the failure to file annual state income tax returns. *Id.* at ¶ 19(f).

In citing these guidelines, the LSO relied on the following information:

- Through the access authorization investigative process, the Individual disclosed that:
  - In March 2022, he was terminated by a previous employer for timekeeping and labor recording violations. (Guideline E)
  - He illegally used his wife’s prescription marijuana a few times per week from approximately August 2021 through December 2022. (Guideline E, Guideline H, Guideline J)
  - In June 2021, he was arrested and later charged with Driving Under the Influence (DUI). (Guideline E, Guideline J)
  - In the four months prior to his DUI arrest, he drove a vehicle under the influence of alcohol one or two times. (Guideline E, Guideline J)
  - From approximately November 2010 to May 2011, and again from approximately October 2014 to September 2016, he worked “under the table” and did not pay income taxes. He was also not authorized to work in the United States. (Guideline E, Guideline J, Guideline F)
  - In 2006, he used marijuana fewer than five times. (Guideline E, Guideline H)

- In 2002, he purchased and used marijuana over a four-to-six-month period. (Guideline E, Guideline H)
- In 2002, he purchased and used heroin over a four-to-six-month period. He snorted heroin for a period of two months, progressing to daily use, and attended a month-long detoxification program. (Guideline E, Guideline H, Guideline J)

Ex. 2. The LSO also invoked Guideline E in citing the DOE Psychiatrist's opinion that the Individual "appeared to typically guess at data relating to his alcohol history and specific dates of events in his life, and changed his answers when repeatedly questioned." *Id.* at 3. The LSO additionally cited under Guideline E the DOE Psychiatrist's opinion that the Individual's "lack of precise memory for even obvious and simple issues raises questions about his credibility generally." *Id.*

#### **IV. Findings of Fact**

##### **a. Drug Use**

On the QNSP the Individual reported that he used his "wife's weed" a "few times a week" from approximately August 2021 through December 2022 as he was having trouble sleeping. Ex. 4 at 50. On the LOI, he noted that he "th[ought] she was aware" as he asked her if he could try it. Ex. 6 at 31. During the clinical interview (CI) with the DOE Psychiatrist, he explained that his wife maintained a prescription for marijuana, and he reiterated that he asked her permission to use it. Ex. 5 at 7. In the LOI, the Individual self-disclosed that he purchased and used marijuana and heroin "on alternate days" during 2002 for a four-to-six-month period. Ex. 6 at 5. However, during the CI, he disclosed that he snorted heroin over an approximately two-month period in 2003 or 2004. Ex. 5 at 6. He recalled that he used it once a day, at a frequency of every other day, progressing to daily use. *Id.* The Individual stated that his father "sent him [away] for detoxification." *Id.* at 7. He also disclosed that he used marijuana fewer than five times during 2006. *Id.*

##### **b. DUI**

On the QNSP, the Individual reported that in approximately April 2021, he was arrested for DUI. Ex. 4 at 34; Ex. 6 at 8. During the ESI, the Individual recognized that he incorrectly reported the date of the DUI, acknowledging that it occurred in June 2021. Ex. 4 at 67. In the LOI, he noted that he had driven under the influence of alcohol "about one or two times in four months," with the last occurrence being April 2021, again misreporting the date of the DUI. Ex. 6 at 9.

##### **c. Work History and Taxes**

The Individual reported that from November 2010 to May 2011 and again from October 2014 to March 2016, he “[w]orked under the table.”<sup>2</sup> Ex. 4 at 30, 32; Ex. 6 at 14. He noted that for the 2010 through 2011 period, he was not authorized to work in the United States. Ex. 4 at 31. On the LOI, he reported that he was paid in cash and did not file income taxes on these earnings. Ex. 6 at 14.

Additionally, on the QNSP, the Individual disclosed that, in March 2022, he was issued a written warning and terminated by a previous employer due to a violation of “Mischarging/Charging Practices” and “Timekeeping and Labor Recording.” Ex. 4 at 26–27. In the LOI, he explained that he thought “the details were related to submitting the number of hours worked on a timesheet, because of not getting good night sleep and falling asleep at work.” Ex. 6 at 12.

Although the DOE Psychiatrist did not diagnose the Individual with any current or active psychological condition that would impair his judgment, reliability, or trustworthiness, the DOE Psychiatrist expressed concerns regarding the Individual’s credibility as he “appeared to typically guess at data relating to his alcohol history and specific dates of events in his life; he changed his answers when repeatedly questioned about these items.” Ex. 5 at 11. Ultimately, the DOE Psychiatrist opined that the Individual’s “lack of precise memory for even obvious and simple issues . . . raises questions about his credibility generally.” *Id.* at 12.

## V. Hearing Testimony

At the hearing, the Individual testified on his own behalf. The Individual affirmed that he was terminated from his previous employer in March of 2022 for “timekeeping violations or timekeeping reporting[.]” Tr. at 13. The Individual acknowledged that he falsely reported working 32 hours that he did not work as he had fallen asleep while working. *Id.* He explained that he was falling asleep because, starting during the COVID pandemic, he was struggling with marital issues and insomnia, and he attempted to cope and get more sleep through alcohol use, which ultimately led to the June 2021 DUI and driving while under the influence of alcohol “once or twice” in the four months prior to the DUI.<sup>3</sup> *Id.* at 15–17, 29.

The Individual also stated that he attempted to cope with his insomnia and marital issues by “sneak[ing]” his wife’s prescription marijuana without her knowledge.<sup>4</sup> *Id.* at 20–21, 56–57. Contrary to his original report, the Individual stated that he only used the marijuana during a “stressful week, but not the whole entire month or year.” *Id.* at 20–21. However, the Individual

---

<sup>2</sup> On the QNSP, the Individual reported that he “worked under the table” from November 2010 to May 2011 and again from October 2014 through September 2016; however, on the LOI, the Individual reported that the time frames were from November 2010 to May 2011 and again from October 2014 through March 2016. Ex. 4 at 32; Ex. 6 at 14.

<sup>3</sup> During the CI, the Individual stated that he was intoxicated during the workday, but during the hearing, the Individual testified that he was not intoxicated during the day but was perhaps hungover. Ex. 5 at 4; Tr. at 56. He also told the DOE Psychiatrist that the DUI had been expunged; however, at the hearing, the Individual testified that he had not filed the paperwork to have the DUI expunged. Ex. 5 at 8; Tr. at 48–49.

<sup>4</sup> On the LOI and in the CI, the Individual stated that his wife knew that he was using her prescription marijuana as he asked to use it. Ex. 5 at 7; Ex. 6 at 31.

then stated that he used marijuana “10, 15 times” during the period of August 2021 through December 2022. *Id.* at 21. He later stated that either prior to or after the DUI, he ceased using marijuana completely. *Id.* at 26. Specifically, he stated, “[s]o at the DUI on June 29, 2021, I stopped using marijuana and . . . I stopped even before that.” *Id.* The Individual clarified that any statement he gave that he was using marijuana after the DUI, including his prior testimony, was not accurate. *Id.* at 27–28. The Individual testified that he no longer struggles with insomnia because he is doing “physical work” and has better nutrition practices. *Id.* at 19.

The Individual testified that, following the DUI, he was court ordered to attend alcohol safety classes and Alcoholics Anonymous (AA) meetings. *Id.* at 50. He testified that he completed the alcohol safety classes and attended “a few Alcoholics Anonymous meetings.” *Id.* He also stated that he attended an approximately month-long treatment program that helped him “through – coping with alcohol and marijuana use.” *Id.* at 32, 58. He explained that he underwent “talking sessions, about how to cope with different situations, not to do drugs . . . and they introduced balanced knowledges, such as balanced diet, taking multivitamins, and trying out recreational activities.” *Id.* As such, he stated that he does not feel that he is at risk of using drugs again. *Id.* at 53.

Regarding his work history, the Individual testified that from approximately June 2011 through July 2013 and again from October 2014 through September 2016, he worked “under the table,” and he did not have authorization to work in the United States.<sup>5</sup> *Id.* at 37–39. The Individual stated that he was paid in cash and did not pay income taxes despite knowing that he was required to do so. *Id.* at 34, 38–39. The Individual testified that he did not know the process for paying taxes at the time, and he has not since paid the taxes because he had not “thought about that.” *Id.* at 38–39, 60. He stated that he will go through the process to pay the taxes. *Id.* at 60.

Turning to his history of drug use, the Individual testified that in 2002, he used marijuana and “snorted heroin for a period of a couple of months, progressing to daily use.” *Id.* at 43. He stated that he ceased using drugs in 2003 when his father discovered his drug use and “sent [him away] where there were no drugs available.” *Id.* at 44. Regarding his 2006 reported marijuana use, the Individual could not accurately recall how often he used marijuana during 2006. *Id.* at 42. He stated that he did not know if it was fewer than five times, like he originally reported, and thought that it was “just a couple puffs . . . here and there.” *Id.*

When asked about his apparent inability to provide consistent and accurate answers throughout this clearance adjudication process, the Individual explained:

It is because some family members say that I was born in [year] but my passport says I’m born in [a different year]. [My] father . . . basically, he does math all the time. So that, and having a stepmother and not probably paying attention to the dates throughout my – as of today, since it is evident, might have some reasons for that. That’s all I have to say about that.

---

<sup>5</sup> The Individual noted that there was a period, during which he “worked under the table,” “from 2000 somewhere – probably 2011, August to September” that he failed to list on this QNSP. Tr. at 34.

*Id.* at 45–46. The Individual asserted that he was not deliberately providing misleading information, but merely struggles to recall dates and circumstances throughout his life. *Id.* at 46. When asked if his inability to provide accurate information regarding his history causes him concern regarding his ability to safely handle classified information, he answered: “[e]vidently, I would say yes.” *Id.* at 47.

The DOE Psychiatrist testified after hearing the Individual’s testimony. The DOE Psychiatrist noted that the Individual’s description of his “history seems to change with every recounting of it, at least in terms of the details.” *Id.* at 70. He pointed out that the Individual was “always somewhat vague about particular dates, and when we questioned him, the dates sometimes changed.” *Id.* at 73. The DOE Psychiatrist elaborated, “[s]o I thought that at times he was guessing, but it’s difficult to tell if people are guessing or lying, lying to me or lying to themselves, or a combination of all of those.” *Id.* at 73–74. The DOE Psychiatrist noted that the Individual is an educated and intelligent man, and as such, “you would expect his memory to be thereby to be relatively superior.” *Id.* at 88.

## **VI. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not mitigated the security concerns cited by the LSO under Guideline E, H, J, and F of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should not be granted. The specific findings that I make in support of this decision are discussed below.

At the outset, I note that the Individual’s lack of credibility and reliability in this case poses a significant concern. As recognized by the DOE Psychiatrist, the Individual’s answers regarding his history of drug and alcohol use seemed to have varied at every stage of the administrative review process, and this observation holds true with regard to the Individual’s work history and the status of his DUI. The Individual has been unable to provide consistent and reliable answers regarding any one of these topics, which causes considerable concern as to whether any of his statements, including his statements given under oath at the hearing, which themselves were often inconsistent, have been candid. Furthermore, aside from his inconsistent testimony, the Individual has not presented any evidence to demonstrate mitigation of any of the security concerns.

Although an individual may be able to mitigate security concerns raised pursuant to Guidelines E, H, J, and F by satisfying various conditions prescribed by each guideline, the Individual has not done so in this case. *See* Adjudicative Guidelines ¶¶ 17, 20, 26, 32. Guideline H and Guideline J remain concerns as the Individual has been unable to provide consistent and reliable information about the history, frequency, and details of his drug use and the status of his DUI charge. Notwithstanding his inability to provide accurate information, an examination of the record demonstrates that he has not mitigated the Guideline H or Guideline J security concerns. The Individual’s history of illegal drug use spans decades, and even if I accept as true that the Individual has not used illegal drugs since the June 2021 DUI, the behavior has endured for such a lengthy

period of time in various stages of the Individual's life that I cannot conclude that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur and does not cast doubt on the Individual's current reliability or trustworthiness." *Id.* at ¶ 26(a); *see id.* at ¶ 32(a) (noting that an individual may be able to mitigate a Guideline J security concern if "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"). Furthermore, although the Individual claims to have complied with the court orders following his DUI and underwent a treatment program following his DUI, I have nothing in the record to support this testimony, and given my concerns with the Individual's credibility, I am not convinced that the Individual has successfully rehabilitated following the criminal conduct. *Id.* at ¶ 32(d) (stating that an individual may be able to mitigate a Guideline J security concern if there is evidence of successful rehabilitation). For the foregoing reasons, I find that the Individual has not mitigated the Guideline H security concerns or the Guideline J security concerns with regard to the illegal drug use and DUI.

Regarding his choice to "work under the table," I recognize that this occurred a number of years ago, perhaps indicating the Guideline J concern no longer exists as to this behavior. *See id.* at ¶ 32(a) (indicating that an individual may be able to mitigate a Guideline J concern if "so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment"). The Guideline F concern presented by this conduct, however, still very much exists. The Individual testified that he has not yet paid the income taxes that he owes as a result of the wages he earned during these periods of undocumented employment. Therefore, he has failed to mitigate the Guideline F concern. *See id.* at ¶ 20(g) (indicating that an individual may be able to mitigate a Guideline F concern if he "has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements").

The Guideline E concerns cited in the SSC include a list of the Individual's conduct in which he was dishonest or failed to abide by rules or regulations. This conduct spans back to 2002, with the Individual's heroin use, and continued until as recently as 2022, when he committed timekeeping violations while working for his previous employer. Due to the serious nature of the drug use, DUI, timecard fraud, and failure to pay taxes, I cannot find that any of the cited conduct was minor, and given that this conduct has persisted for two decades throughout various circumstances in the Individual's life, I cannot find that it was "so infrequent" or occurred "under such unique circumstances that it is unlikely to recur and does not cast doubt on the [I]ndividual's reliability, untrustworthiness, or good judgment." *Id.* at ¶ 17(c). Although the Individual acknowledges his conduct, and he appears to have taken some efforts to facilitate change through his court ordered treatment program and his nutritional changes, as stated previously, given my concerns about the Individual's credibility and due to the lack of any corroborating evidence, I cannot find that his efforts are sufficient to convince me that the behavior is unlikely to recur. *Id.* at ¶ 17(d) (noting that an individual may be able to mitigate Guideline E security concerns if the individual has acknowledged the behavior and taken "positive steps to alleviate the stressors, circumstances, or factors that contributed to the untrustworthy, unreliable, or other inappropriate behaviors, and such behavior is unlikely to recur"). As such, I cannot find that the Individual has mitigated the Guideline E security concerns.



For the foregoing reasons, I find that the Individual has failed to mitigate the Guideline E, F, H, and J security concerns.

## **VII. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline E, F, H, and J. Accordingly, I have determined that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals