

submitted 13 exhibits, marked as Exhibits 1 through 13 (hereinafter cited as “Ex.”). The Individual submitted 5 exhibits, marked as Exhibits A through E.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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

Guideline E states that:

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

Adjudicative Guidelines at ¶ 15. Conditions that could raise a security concern include:

- (a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;
- (c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;
- (d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person

assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

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

Id. at ¶ 16.

Guideline H provides that the illegal 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 security concern include:

- (a) any substance misuse;
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder;
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Id. at ¶ 25.

Guideline J states that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and that, by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
- (c) Individual is currently on parole or probation;
- (d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (e) Discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Id. at ¶ 31.

The LSO alleges under Guideline E:

1. On October 18, 2022, the Individual signed his Questionnaire for National Security Positions (QNSP) certifying that in the last seven years, he had not been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance. However, during the enhanced subject interview (ESI) conducted by the Defense, Counterintelligence, and Security Agency (DCSA) special investigator on December 1, 2022, he admitted that in 2021, he purchased marijuana from a dispensary. He failed to list this purchase of marijuana on the QNSP.

2. On October 18, 2022, the Individual signed the QNSP certifying that in the last seven years, he had not been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance. However, during the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted that between 2015 and July 2017, he purchased heroin from a dealer. He failed to list this purchase of heroin on the QNSP.
3. During the ESI conducted by the DCSA special investigator on December 1, 2022, the Individual stated he has not been involved with heroin since July 2017. However, in the letter of interrogatory (LOI) dated September 26, 2023, he admitted that he last used heroin in February 2019.
4. On October 18, 2022, the Individual signed the QNSP certifying that he had not been charged with any additional offenses involving drugs. However, in the LOI dated September 26, 2023, he admitted that on May 26, 2005, he was charged with Possession of Marijuana. He failed to list this additional drug related charge on the QNSP.

Ex. 1 at 1. The LSO alleges under Guideline H:

1. On December 7, 2023, the DOE Psychiatrist evaluated the Individual. In his report (Report) dated December 27, 2023, the DOE Psychiatrist concluded that Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* criteria for Severe Opiate Use Disorder on maintenance treatment, without adequate evidence of rehabilitation or reformation.
2. From March 2021 to April 2021, he used marijuana three times and in March 2021, he purchased Marijuana from a dispensary. From 2000 to 2010, he used marijuana weekly and purchased half an ounce of Marijuana every couple of weeks from a dealer and friends. In 1995, he used marijuana approximately five times.
3. In February 2019, he used heroin one time. From 2015 to 2017, he used heroin two to three times a day, and he purchased it from a dealer, two to three times a day. From 1999 to 2015, he used heroin a couple times per year.
4. On December 7, 2015, police arrested and charged him with 2nd Degree Armed Robbery, a Felony, and Criminal Trespass. During the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted that he was withdrawing and needed more heroin, therefore he robbed a store. He further admitted to taking money from the cash register and purchasing heroin from his dealer immediately after this incident.
5. On April 5, 2015, police arrested and charged him with two counts of Felony Possession of a Controlled Substance and Use or Possession of Drug Paraphernalia. Record information reflects a morphine pill, two syringes (used for heroin) with a black substance inside, a silver spoon, and black cotton balls that tested positive for heroin were found during this arrest.

6. On March 14, 2015, police arrested and charged him with Possession of Drug Paraphernalia and Unlawful Distribution of a Controlled Substance by Registrant. During the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted two bags of heroin were found on his person during this arrest.
7. During a psychological evaluation conducted on December 7, 2023, by the DOE Psychiatrist, he admitted to additional drug use, in 2009, he mixed cocaine with heroin at times, and prior to starting his heroin use, he used Percocet, Lortab, and Morphine Sulfate.
8. On May 26, 2005, police charged him with Possession of Marijuana. In the LOI dated October 29, 2023, he admitted having a marijuana joint on him during this arrest.

Id. at 2–3. The LSO alleges under Guideline J:

1. On March 3, 2023, police cited him for Speeding.
2. On March 3, 2023, police cited him for Speeding.²
3. On May 3, 2022, police cited him for Speeding and Reckless Driving.
4. From March 2021 to April 2021, he used marijuana three times and in March 2021, he purchased Marijuana from a dispensary. From 2000 to 2010, he used marijuana weekly and purchased half an ounce of marijuana every couple of weeks from a dealer and friends. In 1995, he used marijuana approximately five times.
5. On December 18, 2019, police cited him for Speeding.
6. In February 2019, he used heroin one time. From 2015 to 2017, he used heroin two to three times a day, and he purchased it from a dealer, two to three times a day. From 1999 to 2015, he used heroin a couple time a year.
7. On August 23, 2018, police cited him for Speeding.
8. On March 22, 2017, police charged him with Shoplifting (\$250 or less) and Trespassing. During the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted stealing two car batteries from a store so that he could use them to purchase drugs.
9. On March 3, 2017, police charged him with Failure to Appear when he failed to appear as ordered by the court for a charge on January 6, 2017, for Driving While License Suspended and Speeding.
10. On December 7, 2015, police arrested and charged him with 2nd Degree Armed Robbery, a Felony, and Criminal Trespass. Record information reflects he did steal an item of value from the store by use of threatened use of force or violence, while armed with a deadly

² The LSO cited to two separate Speeding incidents on March 3, 2023. Ex. 1 at 7.

weapon to wit: hypodermic syringe; and he did unlawfully enter or remain on the lands of another Family Dollar knowing that consent to enter or remain is denied or withdrawn by the owner. During the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted that he was withdrawing and needed more heroin, therefore he robbed a Family Dollar. He further admitted taking money from the cash register and purchasing Heroin from his dealer immediately after this incident.

11. On November 22, 2015, police arrested and charged him with three counts of Failure to Appear at time and place stated in citation. During the subject re-contact conducted by the DCSA special investigator on December 15, 2022, he admitted he failed to appear in court for a citation by police for Theft (date not provided) after he was caught stealing gloves from a store. He further admitted that he stole the gloves because he was doing drugs at the time and needed the money.
12. On April 5, 2015, police arrested and charged him with two counts of Felony Possession of a Controlled Substance, Use or Possession of Drug Paraphernalia, Resisting, Evading, Obstructing, Driver to be Licensed, and No Seatbelt. Record information reflects a morphine pill, two syringes (used for heroin) with a black substance inside, a silver spoon, and black cotton balls that tested positive for heroin were found during this arrest. In the LOI dated September 26, 2023, he admitted that he did not comply with the conditions of his release after this arrest due to being arrested for an additional incident on December 7, 2015.
13. On March 14, 2015, police arrested and charged him with Possession of Drug Paraphernalia, Unlawful Distribution of a Controlled Substance by Registrant, Larceny Theft/Non-Motor Vehicle/Shoplifting, Driving While License Suspended or Revoked, and Proof Financial Responsibility. During the ESI conducted by the DCSA special investigator on December 1, 2022, he admitted shoplifting makeup from a store and having two bags of heroin found on him during this arrest. In the LOI dated September 26, 2023, he admitted that he did not comply with the conditions of his release after this arrest due to being arrested for an additional incident on April 5, 2015.
14. On February 3, 2015, police charged him with Expired Driver's License, Expired Registration of a Motor Vehicle, and No Proof of Insurance.
15. On March 16, 2010, he was charged with Careless Driving.
16. On February 7, 2010, police arrested and charged him with Violation of Restraining Order/Prohibiting Domestic Violence, Felony Aggravated Battery of a Household Member (4th or subsequent offense) attempt, and Criminal Damage to Property.
17. During a psychological evaluation conducted on December 7, 2023, by the DOE Psychiatrist, he admitted to additional drug use, in 2009, he mixed cocaine with heroin at times, and prior to starting his heroin use, he used Percocet, Lortab, and Morphine Sulfate.

18. On May 26, 2005, he was cited and charged with Possession of Marijuana. In the LOI dated October 29, 2023, he admitted having a marijuana joint on him during this arrest.

19. On July 15, 2004, he was arrested and charged with Disorderly Conduct-Fighting.

Id. at 3–5. Accordingly, the LSO’s security concerns under Guidelines E, H, and J are justified.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

A. Pre-2010 Drug Use and Criminal Activity

During the hearing, the Individual and the Individual’s Brother both testified that the Individual, while growing up, received little parental guidance, resulting in him befriending a “bad crowd.” Tr. at 24–25, 139. In 1995, at around 10-years-old, the Individual smoked marijuana. Ex. 12 at 176. In 1999, at around 14- or 15-years-old, the Individual began abusing Percocet, Lortab, and morphine sulfate, obtained from his friends, before eventually abusing heroin. Tr. at 139; Ex. 10 at 85–86; Ex. 13 at 270. He also admitted to mixing heroin and cocaine in 2009 and to using heroin a couple times per year during this period. Ex. 10 at 85; Ex. 13 at 270. Additionally, he regularly

smoked marijuana, purchasing the drug from his dealer and friends from 2000 to 2010. Ex. 13 at 269–70.

In 2004, he was arrested and charged with Disorderly Conduct – Fighting. Ex. 13 at 337–38. With respect to the 2004 Disorderly Conduct charge, the Individual testified that he was defending himself from his roommates who attacked him over utility bills. Tr. at 116. In 2005, he was cited and charged with Possession of Marijuana. Ex. 8 at 57. Regarding these two arrests, the Individual testified that he was around 19- or 20-years of age at the time and attributed these incidents to his youth. Tr. at 115–16.

Then, in February 2010, he was arrested and charged for, among other things, violating a restraining order and for attempted aggravated battery on the mother of his son. Ex. 13 at 357–58. At the hearing, the Individual indicated that he had been in a domestic dispute with his son’s mother and that this was an isolated incident. Tr. at 116–17.

B. 2010 to 2015 Abstinence from Drug Use, Heroin Relapse, and Related Criminal Activity

Between 2010 to 2015, the Individual abstained from all illegal drug use. Ex. 10 at 86. The Individual’s Brother, at the hearing, explained that he had invited the Individual to move in with him to provide structure, to remove him from negative influences, and to work at his business. Tr. at 24–25. The Individual’s Brother confirmed that during that five-year period the Individual did not engage in criminal activity, including drug use. *Id.* at 26. He further testified that in 2015 the Individual left and began using drugs again. *Id.* at 26–27.

From 2015 to 2017, the Individual used heroin two to three times per day. Ex. 10 at 83. During this time, he was arrested and charged in five separate instances related to his drug addiction:

- (1) In March 2015, he was arrested and charged for shoplifting makeup and possession of heroin. Ex. 13 at 269, 313–14. He was shoplifting so he could sell or trade the items for drug money. *Id.* at 269.
- (2) In April 2015, he was arrested and charged for possession of heroin and drug paraphernalia. *Id.* at 267–68, 301.
- (3) In November 2015, he was arrested and charged for failing to appear for a theft citation; he explained that he stole from a store to obtain drug money. *Id.* at 275, 302.
- (4) In December 2015, the Individual was arrested and charged for robbing a store; the Individual was undergoing withdrawal when he robbed the store and immediately used the money to purchase heroin. *Id.* at 268, 275, 302; Ex. 8 at 52.
- (5) In March 2017, the Individual was arrested and charged for stealing two car batteries from a store so that he could use them to purchase drugs. Ex. 13 at 268, 305–06.

The Individual's Friend—who has known the Individual since childhood and who had periodically seen the Individual over the years but in recent years spoke with him multiple times per week—testified that the Individual was clearly “struggling” with his addiction in 2015 and 2016. Tr. at 13, 17. The Individual's Brother also testified that, because of the Individual's addiction and criminal activity during this time, he felt compelled to pursue legal action to assume the care of the Individual's sons for two years. *Id.* at 28. Regarding his pre-2017, drug-related crimes, the Individual testified that those crimes were committed “because of [his] drug use” and “to support that habit and sickness.” *Id.* at 118.

C. 2017 to Present Treatment and 2019 Heroin Use

According to the Individual's Brother and the Individual, the combination of losing custody of his children and their mother's poor health motivated the Individual to commit to his rehabilitation. Tr. at 25–27, 141–42. The Individual testified to voluntarily seeking out methadone treatment in July 2017. *Id.* at 143. In May 2019, the Individual was admitted to another treatment clinic. Ex. D at 121. The Individual testified that when he started methadone treatment in 2017, he was initially prescribed 80 mg, that his highest prescription was at 150 mg, and that by December 2022, his prescription was at 110 mg. Tr. at 145.

On December 7, 2023, the DOE Psychiatrist evaluated the Individual. Ex. 10 at 6. In his Report on the evaluation, the DOE Psychiatrist diagnosed the Individual as having met the criteria for Severe Opiate Use Disorder on maintenance treatment under the *DSM-5*. *Id.* at 8–9. He considered the following factors in making his diagnosis:

Prior to methadone maintenance treatment, he met the requirements for: Factor 1 (opiates taken in larger amounts over a longer period than intended), Factor 2 (persistent desire or unsuccessful attempts to cut down), Factor 3 (great deal of time spent in activities necessary to obtain opioids), Factor 4 (strong desire to use opioids), Factor 5 (recurrent opioid use with resulting file [sic] failure to fulfill major role obligations), Factor 8 (recurrent opioid use in physically hazardous situations), Factor 10 (tolerance), and Factor 11 (withdrawal risk).

Id. at 90. The DOE Psychiatrist further noted in the Report that the Individual was “demonstrating successful participation in” his methadone treatment. *Id.* Regardless, the Report continues that the Individual “ha[d] not demonstrated adequate evidence of rehabilitation as he is still receiving maintenance methadone treatment . . . to which he is physically addicted, but now productive with ongoing treatment.” *Id.* Furthermore, the DOE Psychiatrist opined that the Individual does not currently have an emotional, mental, or personality condition that could impair his judgment, stability, reliability, or trustworthiness—but that the Individual could experience impaired judgment if he were to stop his methadone treatment. *Id.* at 91. Accordingly, the DOE Psychiatrist recommended that the Individual demonstrate rehabilitation by completely weaning off methadone and remaining free from opiate use for two years. *Id.* at 90.

Even before reading the DOE Psychiatrist's recommendation in December 2023 that he needed to remain off methadone for two years without relapse to demonstrate rehabilitation, the Individual had begun reducing his methadone dosage under the supervision of his clinic. Tr. at 170–71. A

licensed mental health counselor from the clinic confirmed, via letter, that the Individual was at a 20 mg dose by the time of the hearing, that he had consistently met and fulfilled all the requirements of the clinic since his May 2019 admission, and that he had been approved to take home a month's worth of methadone. Ex. D at 121. The counselor from the clinic also indicated in the letter that to receive the month's prescription of methadone, the Individual is required to meet with the counselor from the clinic for one-on-one counseling and produce a monthly urine test. *Id.* at 120–21 (“He has earned monthly take home doses of the [m]ethadone [which] is a testament to his proven record of sobriety as it is reflected in the urine samples he produces monthly.”); Tr. at 152–53.³ The Individual's Therapist testified that 20 mg is a low amount of methadone and that the Individual had to earn the methadone clinic's trust to take home the medication. Tr. at 99–100. The Individual testified that the methadone has never affected him negatively. *Id.* at 172. Regarding his symptoms from lowering his methadone dosage, he described the physical symptoms as similar to those of allergies, namely an itchy nose and minor body aches. *Id.* at 169–70. However, he affirmed that there were no severe withdrawal symptoms experienced. *Id.* at 172.

The Individual testified that, for his March 2017 shoplifting arrest, the court referred the Individual to intensive case management, where he met his Former Case Manager. *Id.* at 143–44. The Former Case Manager explained that he assisted the Individual with “intensive case management [for] housing, food, utility assistance, transportation, and referral to therapeutic services for substance abuse.” Ex. D at 127. The Individual's Former Case Manager indicated that he also helped ensure that the Individual attended his court dates and probation meetings. Tr. at 73.⁴ The Former Case Manager testified that the Individual took his abstinence from illegal drug use seriously and that the Individual was doing well for himself. *Id.* at 75. The Former Case Manager further testified that while he is no longer employed with the intensive care program, he remains as a resource for the Individual and they still contact each other. *Id.* at 78–79. The Individual's Former Case Manager noted that, from his 21 years of experience, he typically expected to rehabilitate about one addict per year and that the Individual was the “one out of [his] 160[-person] case load” *Id.* at 75.

In 2018, the Former Case Manager referred the Individual to the Individual's Therapist. Tr. at 83. The Individual met with his therapist weekly from August 2018 to January 2020. *Id.* During the hearing, the Individual's Therapist remarked that the Individual participated in the sessions with “regularity and punctuality” and displayed that he was “valuing” and “invested” in the counseling sessions. *Id.* at 83–84. She testified to having diagnosed the Individual in 2019 with Posttraumatic Stress Disorder, moderate; Opioid Use Disorder, severe; and Parental-child Relational Problem. *Id.* at 85. At the hearing, she described that her treatment consisted of counseling, addressing triggers, and developing coping mechanisms. *Id.* at 87. She also confirmed that he was receiving concurrent treatment with a methadone clinic at the time. *Id.* at 85–86. In January 2020, the two stopped meeting regularly partially because of the COVID-19 pandemic. *Id.* at 90–91. In April

³ The Individual submitted monthly urine test results from May 2019 to June 2024 into the record. Ex. B at 24–88. The urine test reports were ordered from the methadone clinic, and each reflected a negative result for opiates, while showing a positive result for methadone and methadone metabolite. *Id.*

⁴ The Former Case Manager explained that the intensive case management program was a program that was supplemental to the probation and parole system. Tr. at 69–70.

2024, the Individual reached out to re-establish their relationship and regular meetings. *Id.* at 91, 93. The Individual's Therapist testified that she believed he had reached back out for "a second opinion" and to help "organize himself." *Id.* The Individual's Therapist was pleased to see how well the Individual had done in the intervening years and re-iterated that she was impressed with the Individual's commitment to caring for his three sons, financially and emotionally. *Id.* at 92–95. The Individual's Therapist indicated that she remains available to meet with the Individual as necessary. *Id.* at 97. The Individual's Therapist further testified that he has been compliant with his methadone treatment program, based on her observations of the Individual and the fact that he is trusted to take home methadone doses, and that his methadone clinic required continued drug monitoring and counseling with their clinicians. *Id.* at 98–99.⁵ The Individual's Therapist, as a treating clinician, noted that the Individual had many factors in his life, including his parenting and other responsibilities, and his spirituality, that would reduce his possibility of relapse while participating in the methadone program. *Id.* at 100–01.

The Individual's Therapist further testified that she has not seen any decline in his functioning due to the lower methadone dosages over the past few months, that she has had clients on methadone for longer periods of time than the Individual, and that there is often no exit plan for people on methadone. *Id.* at 103–04, 06. She also testified that she has never observed the Individual to be suffering any side effects or impairments while on methadone. *Id.* at 110.

The Individual used heroin once more in February 2019 prior to his admission to his second methadone clinic in May 2019. Ex. 7 at 42; Ex. D at 121; Tr. at 147. At the hearing, the Individual testified that "nothing that [he could] recall drove [him] . . . to do it." Tr. at 147. He further indicated that he "felt stupid for using it" and that because he had been on methadone, the heroin had no effect on him. Tr. at 147–48. He testified that he has since remained abstinent from illegal drug use for over five years and plans to remain abstinent.⁶ *Id.* at 148. The Individual further testified that when he relapsed in 2019, he did not have the support he does now through the recovery groups he attends. *Id.* at 157. He has a relapse prevention plan in place. *Id.* at 177. If he felt like using heroin, he would call his therapist and surround himself with family and friends who support his sobriety. *Id.* at 177–78.

The Individual reached out to his to his EAP Counselor sometime in March 2024. *Id.* at 44. The EAP Counselor testified that the Individual had heard about her through a coworker, and the Individual contacted her to discuss his security clearance issues and the DOE Psychiatrist's concern regarding his methadone treatment. *Id.* at 44–45. The EAP Counselor invited the Individual to attend a 12-week group class specifically to assist Individuals who had already made positive changes in their substance use and who were working on maintaining those changes. *Id.* at 45; Ex. A at 6. He began the class that same month and completed the class in July 2024. Tr. at 45; Ex. A at 6. During the hearing, the EAP Counselor explained that the class is an abstinence support group for both alcohol and drugs. Tr. at 46. She further testified that the Individual actively

⁵ The transcript of the proceeding briefly mislabels the name of the Individual's Therapist using the name of a previous witness. I take judicial notice that the previous witness did not return to the hearing and that the mislabeled testimony on page 99 of the transcript was given by the Individual's Therapist.

⁶ The Individual's Brother testified that "2019 was really the year of change" for the Individual in regard to his drug use. Tr. at 39.

participated in the group; she observed that while it appeared that the Individual felt initially ashamed since he had a drug issue rather than an alcohol issue, the Individual was able to share with the group and establish connections with others in their “common goal” of “long-term, lifelong” recovery. *Id.* at 47. The EAP Counselor shared that even after the program, the Individual kept in touch with two of the other program participants. *Id.* at 46–47. The EAP Counselor also testified that the Individual continued participating in the program, despite having already attended the minimum 12 weeks necessary to complete the program. *Id.* at 49. Aside from the group program, the EAP Counselor also indicated that the Individual saw her for individual counseling. *Id.* at 49–50. They discussed the Individual’s anxiety regarding the security clearance process, how he felt while titrating down from 150 mg to 20 mg of methadone, his past childhood trauma, and navigating being a single father to his three sons. *Id.* at 53. The EAP Counselor described the Individual as “an example of resilience and recovery and healing and posttraumatic growth.” *Id.*

The Individual also testified to attending another peer addiction support group through Self-Management and Recovery Training (SMART) beginning in April 2024. *Id.* at 155. He learned about the program through the EAP Counselor and attended the program without any direction. *Id.* at 156. The documentation provided demonstrates the Individual’s attendance at 16 SMART sessions between early May and late July 2024. Ex. A at 7–22. The Individual testified to having also attended sessions in August 2024 after the deadline to submit exhibits. Tr. at 155. When asked about his participation in these sessions, the Individual indicated that because he is “in the back end of recovery[,]” as opposed to being newly abstinent, one of the meetings facilitators had asked him if he would also consider being a facilitator. *Id.* at 155–56. The Individual indicated that he spoke openly with the group about his addiction and recovery experience, which he realized helped others in their own recovery. *Id.* at 156–57. He also testified that he learned that he was not alone as a recovering addict and that it has helped him not feel ashamed about his status as a former addict. *Id.* at 157, 59.

Regarding his future intentions, the Individual indicated that he would continue attending group sessions with the EAP group and one-on-one sessions with the EAP Counselor, individual counseling with his therapist, and group sessions through the SMART program. *Id.* at 160–61. The record reflects that it was both (1) the Individual’s original intent to wean off methadone and (2) the DOE Psychiatrist recommended that he be off of methadone to demonstrate rehabilitation. Ex. 13 at 90 (DOE Psychiatrist reporting that the Individual expressed his “inten[t] to slowly wean off methadone . . .” and recommending that the Individual remain off methadone for two years to demonstrate rehabilitation). The Individual testified that he continued to lower his dosage of methadone originally intending to be off methadone by the time of this hearing. Tr. at 170–71. However, he testified that he has not yet completely stopped taking methadone because he does not want to “rush” and would rather prioritize his sobriety from illegal drug use; he further testified that his prescriber through the methadone program has to approve of the reduction in his methadone dosage and that his prescriber approved of the Individual not rushing the lowering of his methadone dosage to maintain the Individual’s sobriety from heroin. *Id.* at 153, 170–71. He testified that he no longer associates with any of the individuals with whom he used to do drugs except for the mother of one of his sons. *Id.* at 159–60.⁷ On September 26, 2023, he also signed a statement of intent to abstain from all illegal drug involvement. *Id.* at 166–67; Ex. 8 at 48.

⁷ The Individual testified that his son’s mother became clean and that he encourages her to stay clean. Tr. at 159–60.

Regarding the Individual's period of addiction and criminal activity, the Individual's Brother indicated that while the Individual was still using drugs, he had not wanted "to associate with [the Individual] for the rest of his life" but "because of [the Individual's] life changes" they are "able to actually have a restored relationship" Tr. at 26–27. The Individual's Friend similarly testified that he has also "noticed a difference from when . . . [the Individual] was straight and when he was under the influence." *Id.* at 15. The Individual's Friend described the Individual's rehabilitation as a "night and day" change and testified that he "can see the difference tremendously." *Id.* at 16.

D. DOE Psychiatrist's Testimony

At the hearing, the DOE Psychiatrist re-iterated the historical factors he relied upon in diagnosing the Individual with Severe Opiate Use Disorder prior to his methadone maintenance treatment. Tr. at 185–89. The DOE Psychiatrist further explained that the Individual, while on methadone treatment, "does[] [not] demonstrate many symptoms of [S]evere [O]pioid [sic] [U]se [D]isorder" *Id.* at 190–91. He explained that the Individual "in combination with . . . psychosocial treatments . . . is able to[,] with the methadone[,] not have symptoms of heroin cravings and withdrawals," which "allows him to attend to . . . more important things like his family and his work." *Id.* at 191–92. The DOE Psychiatrist clarified that he did not consider the Individual "cured entirely" since he still receives "medication-assisted treatment" and "a person can still have a physical addiction to an opioid" while "they are managed on treatment." *Id.* at 192–93. The DOE Psychiatrist also opined that the Individual "is also coming down from the physical addiction to heroin" given that he is "managing well with great effort in the psychosocial treatments" and "is coming down on the dose [of methadone] without any symptoms of withdrawal." *Id.* at 193.

The DOE Psychiatrist later acknowledged that there are two views of rehabilitation: (1) an "older approach" that requires that a person be "completely off opioids and completely off methadone . . . for two to five years" and (2) a "medical approach to managing an opioid addiction . . . using medications and other treatments to stabilize the person . . . so they can function." *Id.* at 194. The DOE Psychiatrist acknowledged that the Individual has "done everything that's been asked of him" in the methadone program and that "his other participation with [the Individual's Therapist] and his family and [EAP Counselor], *et cetera*, all show stability" in addition to the "reporting . . . and urine drug screens" required of him as part of the methadone program. *Id.* at 196–97. The DOE Psychiatrist testified that the Individual no longer exhibits symptoms of his substance abuse disorder and has "regained himself." *Id.* at 192, 194. When asked if the Individual has demonstrated rehabilitation as of the hearing date, the DOE Psychiatrist stated the following:

In taking all the information together[,] in particular[] that he has decreased his dose of methadone from 150 to 20 milligrams per day and has not had any withdrawal symptoms, he [has] demonstrate[d][,] not just with the medication-assisted treatment only, . . . rehabilitation as I would require it from him.

Id. at 197. He opined that the Individual's "prognosis is good for the [the Individual] to remain rehabilitated" *Id.* at 201; *see also id.* at 203 (DOE Psychiatrist's testimony that "[h]e has a good prognosis if he remains in his current treatment, and [] he is rehabilitated").

E. 2021 Marijuana Usage

The Individual was issued a medical marijuana card in March 2021. Tr. at 127; Ex. 7 at 37. That same month, using the medical marijuana card, he purchased marijuana at a dispensary. Ex. 13 at 297. The Individual testified during the hearing that he purchased the marijuana to cope with his mother's death and because he did not believe that the purchase was illegal given the use of the state-issued card. Tr. at 125–26. He used marijuana thereafter three times from March 2021 to April 2021. Ex. 10 at 83. He self-surrendered the card in June 2022, has no intention of renewing the card, and has no intention to obtain a medical marijuana card in the future. Ex. 7 at 37. He further testified that he signed a statement of intention to abstain from all illegal drug involvement. Tr. at 166–67; Ex. 8 at 48.

F. Traffic Offenses

In March 2010, the Individual was arrested and charged with Careless Driving. Ex. 13 at 305. In February 2015, he was charged with an Expired Driver's License, Expired Registration of a Motor Vehicle, and No Proof of Insurance. *Id.* at 304–05. In March 2017, he was charged with Failure to Appear for failing to appear in court for a charge on January 6, 2017, for Driving While License Suspended and Speeding. *Id.* at 312–13. The Individual was cited twice more for speeding in August 2018 and December 2019. *Id.* at 307, 310–11. Then, he was cited in May 2022 for Speeding and Reckless Driving. *Id.* at 310. Most recently, the Individual was cited for speeding twice on March 3, 2023. *Id.* at 310–11.⁸

The Individual testified that the tickets resulted from his long commute to work. Tr. at 119. The Individual further testified that he had been leaving two hours earlier, sometimes earlier, for work to give him more time on commutes and to avoid speeding. Tr. at 118–19. He also testified that, as a father, he wanted to abide by the law and lead by example for his sons. *Id.* at 121. He also testified that to reduce the cost of car insurance he intended to install a device on his vehicle through his insurance agency to encourage better driving. *Id.* at 121–22.

G. Inconsistent Information Provided in the QNSP, ESI, and LOI Responses

The Individual signed the QNSP in 2022 certifying that in the last seven years, he had not been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance. Ex. 13 at 252. However, the Individual later admitted, during an ESI that same year, to (1) purchasing marijuana from a dispensary in 2021 with a medical marijuana card during an ESI and (2) purchasing heroin regularly from 2015 to 2017. *Id.* at 270, 297. During the hearing, the Individual explained that he believed his purchase of marijuana was legal given his medical marijuana card. Tr. at 127. Regarding his purchase of heroin from 2015 to 2017, the Individual testified during the hearing that he disclosed his heroin use but not his heroin purchase because he misunderstood the question. *Id.* at 128; *see also* Ex. 13 at 252 (affirming in the QNSP that he abused narcotics from 1999 to 2017).

⁸ The Individual testified that he does not recall being pulled over twice in the same day. Tr. at 120.

In the QNSP, the Individual further certified that he had not been charged with additional offenses involving drugs. Ex. 13 at 250–51. However, he later disclosed in an LOI that he had been charged with possession of marijuana in 2005. Ex. 8 at 57. Regarding this marijuana charge, the Individual testified during the hearing that he had no intent to hide this 2005 charge, noting (1) that he did not recall the incident at the time of filling out the QNSP, (2) that he had disclosed his other more serious criminal activity, and (3) that he had volunteered the information in an LOI, as opposed to having been confronted with the information. Tr. at 133–35.

During the ESI, the Individual stated he had not been involved with heroin since July 2017 but then later disclosed his February 2019 use of heroin in an LOI. *Compare* Ex. 8 at 47 *with* Ex. 13 at 270. The Individual explained at the hearing that he believed the investigator’s question to be “when’s the last time you used [heroin] two to three times per day” Tr. at 136. When he read the specific instruction on the LOI “to include the . . . last date[] of use” the Individual testified he then felt it necessary to disclose the single use in 2019. *Id.* at 137–38; Ex. 8 at 47. The Individual testified that he volunteered the 2019 heroin use upon understanding the information asked of him and that this information was not otherwise uncovered during the investigation. Tr. at 138.

The Individual’s Brother testified that the Individual is extremely forthcoming, oftentimes volunteering information others would not readily share. Tr. at 35. The Individual’s Brother expressed that if there were any inaccuracies in the QNSP, they might be attributed to the Individual’s faulty memory, specifically regarding details from the period he was using and starting to engage in rehabilitation. *Id.* at 38–39. The Individual’s Brother indicated that the Individual is better able to recollect events that occurred after 2019. *Id.* at 38–40.

V. ANALYSIS

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

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Based on the record before me, I am convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security. I address the issues raised in the SSC in the following order: (1) Guideline H; (2) Guideline J; and (3) Guideline E.

A. Guideline H

Conditions that could mitigate Guideline H security concerns include:

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

Adjudicative Guidelines at ¶ 26. In summary, the SSC cites to (1) the Individual's opiate use and drug-related criminal activity from 1999 to 2019; (2) the DOE Psychiatrist's diagnosis that the Individual has Severe Opiate Use Disorder on Maintenance Treatment without adequate evidence of rehabilitation; and (3) the Individual's history of marijuana use. Ex. 1 at 5–7. I first address the Individual's history of opiate use and the DOE Psychiatrist's diagnosis, then his marijuana use.

a. Opiate Use and Diagnosis of Severe Opiate Use Disorder

As a preliminary matter, mitigating condition (c) does not apply to the Individual's illegal use of opiates as there are no representations or evidence that the opiates illegally used were prescribed to him.

Regarding mitigation condition (d), the DOE Psychiatrist in his Report opined that the Individual had not demonstrated rehabilitation from his Severe Opiate Use Disorder; however, during the hearing, after taking into consideration the Individual's psychosocial treatment and lowered methadone dosage with minimal side effects in his methadone program, the DOE Psychiatrist opined that the Individual had sufficiently demonstrated that he was rehabilitated. The Individual is continuing to receive care through his individualized counselors, peer groups, and methadone clinic. As stated above, the DOE Psychiatrist considers the Individual's prognosis good if he

remains in treatment, and I have no reason to believe that the Individual will discontinue treatment. Accordingly, I find mitigating condition (d) to apply as to his opiate use.

Regarding mitigating condition (b), the Individual has been forthright about his opiate use disorder since at least 2017 and in the security clearance process. As stated before, he has been abstinent from opiates for five years, demonstrating a clear pattern of abstinence. Furthermore, he has also provided multiple sources of documentary evidence and witness testimony demonstrating actions taken to address his drug problem: his engagement with different peer groups and individualized counseling; his focus on his children and religion; his disassociation from those with whom he used to do drugs (with the exception of one of his son's mother who he encourages to stay clean); his methadone treatment for which he has produced regular negative urine analysis results; and a signed statement that he will no longer engage in illegal drug use. Regarding his methadone treatment, the Individual indicated that he had been titrating down his dosage under the supervision of his treatment providers through the clinic. Rather than "rush" to be fully off methadone, the Individual testified that he, in consultation with his treatment provider, decided to continue with a lower methadone dosage in order to prioritize his abstinence from opiates. The Individual's decision-making regarding his continued methadone treatment further demonstrates his commitment to opiate abstinence. Also, as stated above, the DOE Psychiatrist considers the totality of the Individual's circumstances to demonstrate that he has rehabilitated. Accordingly, I find that mitigating condition (b) applies.

b. Marijuana Use

The SSC cites marijuana use from 1995 when the Individual was around 10 years old. The SSC also cites to regular marijuana use from 2000 to 2010, from when the Individual was between the ages of 15 and 25. The remaining marijuana-related concern is the Individual's admission to using marijuana three times between March 2021 and April 2021, having purchased the marijuana from a dispensary with his state-issued medical marijuana card. I have no reason to doubt his testimony that he believed that the marijuana purchase was legal because of the state-issued card and that he has surrendered the card. Furthermore, the Individual has committed to no longer using marijuana, which I have no reason to doubt. I note that conditions (c) and (d) are not applicable because no prescription drugs were abused, no drug treatment was recommended, and no substance abuse disorder was diagnosed for marijuana.

Regarding mitigating factor (a)'s applicability to both the Individual's 1995 marijuana use and his regular use from 2000 to 2010, I consider his young age at the time and that the most recent of these incidents occurred 14 years ago. *See* 10 C.F.R. § 710.7(c) (requiring me to consider, among other factors, "the frequency and recency of the conduct" and "the age and maturity of the individual at the time of the conduct"). I conclude that these incidents do not cast doubt on the Individual's current reliability, trustworthiness, or judgment and therefore mitigating factor (a) applies. Furthermore, regarding mitigating factor (a)'s applicability to the marijuana purchase and abuse from 2021, I consider (1) that the incident occurred three years ago over a one-month period and (2) the circumstances surrounding the purchase—namely that he believed the purchase to be legal with the state-issued medical marijuana license and that he has now committed to abstaining from marijuana. There is no evidence that the Individual has tested positive for marijuana during his years of employment at the DOE site and he has signed a statement of intent to abstain from

all illegal drug use. I find credible his testimony that he has abstained from marijuana since 2021. Based on the time elapsed, circumstances surrounding use, and evidence of abstinence, I conclude that this incident does not cast doubt on the Individual's current reliability, trustworthiness, or judgment and therefore mitigating factor (a) applies.

For the foregoing reasons, I find that the Individual's drug use no longer affects his judgment, reliability, and trustworthiness. I further find that the Individual has demonstrated a willingness to comply with rules and regulations pertaining to drug use. Therefore, I find that the Individual has mitigated the concerns under Guideline H.

B. Guideline J

Conditions that may mitigate Guideline J include:

- (a) 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;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

As a preliminary matter, mitigating conditions (b) and (c) do not apply, as no evidence has been put forth that would demonstrate that the Individual was pressured or coerced into any of his criminal activities and reliable evidence of each criminal activity was developed during his security clearance investigation. In regard to the Individual's non-drug-related criminal activity from 2004 to 2010, factor (d) does not apply.

In summary, the SSC cites to (1) the Individual's drug use and drug-related criminal activity, (2) the Individual's traffic offenses, and (3) two other incidents that occurred in 2004 and 2010 unrelated to drugs and traffic offenses. I address the concerns in that order.

a. Drug Use and Drug-Related Criminal Activity

Many of the criminal acts alleged in the SSC are inextricably intertwined with the Individual's drug use, including his 2005 arrest for Possession of Marijuana, numerous crimes undertaken to support his heroin addiction from 2015 and 2017, his 2019 heroin use, and the 2021 purchase of marijuana with his state-issued medical marijuana card. Putting aside the 2021 purchase and use of marijuana from a dispensary, which the Individual believed to be legal, the Individual has not

committed any drug related offense since 2019 when he last used heroin, meaning that the Individual has remained abstinent from heroin for five years. I also credit the Individual's successful participation in the intensive case management program after one of his drug-related offenses. Because of the program, the Individual began to turn his life around, eventually gaining access to methadone treatment and referral to an individualized counselor. Since the intensive case management program, the Individual has continued to engage in treatment through individualized counseling, peer groups, and the methadone program, and has committed to his abstinence from illegal drug use for his sons' financial and emotional wellbeing. Furthermore, while the DOE Psychiatrist has diagnosed the Individual with Severe Opiate Use Disorder, he opined that the disorder is in remission and gave the Individual a good prognosis for remaining abstinent from opiates so long as he continues receiving treatment. Evidence of his drug rehabilitation tends to show rehabilitation from his criminal drug use and other drug-related crimes. Accordingly, due to his successful participation in the court's intensive case management program, the passage of time, and evidence of his rehabilitation from his opiate abuse, I find both mitigating factors (a) and (d) applicable as to his drug-related criminal activity from 2005 to 2019.

I consider separately the 2021 purchase and use of marijuana. As stated above, this incident took place three years ago over a one-month period and is unlikely to recur given the circumstances. Furthermore, given that the Individual believed the medical marijuana purchase to be legal, that he surrendered the card, and that he has committed to never using illicit drugs in the future, I do not believe that this incident currently casts doubt as to his reliability, trustworthiness, or good judgment. The passage of time from his marijuana use and his commitment to abstaining from all illegal drug use also evinces rehabilitation. I find mitigating factors (a) and (d) applicable to this 2021 purchase and use of marijuana.

b. Traffic Offenses

Many of the criminal acts in the SSC are traffic related, with incidents occurring in 2010, 2015, 2017, 2018, 2019, 2022, and perhaps twice in 2023. I first consider the four oldest of the traffic offenses from 2010 to 2019. I then consider the four more recent charges from 2022 to 2023. In resolving the traffic concerns from 2010 to 2019, I consider the (1) recency and seriousness of each incident and (2) the age and maturity of the Individual at the time of the 2010 traffic offense. 10 C.F.R. § 710.7(c). The 2010 traffic offense occurred over fourteen years ago when the Individual was 25 years old. The 2015 traffic offense occurred nine years ago. The 2017 traffic offense occurred seven years ago. The 2018 traffic offense occurred over six years ago. The 2019 traffic offense occurred almost five years ago. I find that these incidents happened so long ago that they are unhelpful in deciding the Individual's current reliability, trustworthiness, or good judgment. Accordingly, I find these offenses mitigated through mitigating factor (a).

For the more recent traffic offenses of speeding in 2022 and 2023, the circumstances surrounding his commute led to the Individual's speeding; however, the Individual has represented that he now leaves at least two hours earlier for work and that he has committed to setting an example for his sons as a law-abiding citizen. He also voluntarily installed a device in his vehicle that monitors, among other things, his speed and sends the information to his car insurance company, providing an external source of accountability. Based on his proactive choices and motivation, I find that it is unlikely that the Individual will continue speeding in the future. Accordingly, I find that the

traffic offences do not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. I find mitigating factor (a) applies.

c. 2004 and 2010 Criminal Activity

In 2004, at around 19 or 20 years of age, the Individual was charged with Disorderly Conduct-Fighting. The Individual testified he and his roommates were in a physical altercation regarding utilities. The Individual attributed the fight, at least in part, to his youthfulness. I consider both (1) the frequency and recency of the conduct and (2) his age and maturity at the time of the conduct in resolving this concern. 10 C.F.R. § 710.7(c). Given the fact that this incident occurred 20 years ago and his age at the time, this incident does not seem recurrent and does not cast doubt on his current reliability, trustworthiness, or judgment. Mitigating factor (a) applies to this 2004 charge.

In 2010, the Individual was charged with Violation of Restraining Order/Prohibiting Domestic Violence, Felony Aggravated Battery of a Household Member (4th or subsequent offense) attempt, and Criminal Damage to Property. The Individual testified that he was in a domestic dispute with his son's mother. Given that this incident took place over 14 years ago and the lack of similar charges in the intervening years, this incident does not seem recurrent and does not cast doubt as to his current reliability, trustworthiness or judgment. Mitigating factor (a) applies to this 2010 charge.

C. Guideline E

Guideline E concerns may be mitigated if:

- (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. The SSC alleges that the Individual had not been forthcoming regarding his drug use, in particular by omitting (1) his 2021 marijuana purchase in his QNSP; (2) the purchase of heroin from 2015 to 2017 in his QNSP; (3) his use of heroin in 2019 during an ESI; and (4) his 2005 charge for Possession of Marijuana in his QNSP. I consider each in turn. As a preliminary matter, mitigating conditions (b), (d), (f), and (g) are inapplicable. The inconsistent information given throughout the security clearance investigation was not attributed to the advice of legal counsel or one with professional responsibilities. Counseling has not been obtained and would not address the underlying security concerns. The information has been substantiated. Last, the conduct underlying the security concerns was not the result of association with persons involved in criminal activities.

Regarding mitigating factor (a), I find that the record is unclear as to whether the Individual disclosed the 2021 marijuana purchase or whether he was confronted with the information. However, the Individual admitted in his QNSP that he was abusing heroin from 2015 to 2017, which tends to show that he was not trying to conceal his most serious drug purchases. Furthermore, the Individual volunteered his 2019 heroin use in an LOI. The Individual testified that he did not disclose the information during an earlier ESI because he before thought he was being asked when he last abused heroin two to three times per day. Upon reading a more specific question in the LOI, the Individual, in good faith, corrected the information. Last, the Individual volunteered in an LOI a 2005 Drug Possession charge. Accordingly, I find that mitigating factor (a) applies to his failure to disclose his 2015 to 2017 heroin purchase, his 2019 heroin use, and his 2005 Drug Possession charge, as the Individual made good-faith efforts to correct the information provided in the investigation before being confronted with the facts.

Regarding mitigating factor (c), I find that the 2021 marijuana purchase, the 2015 to 2017 heroin purchases, and the 2005 Drug Possession charge for marijuana were minor omissions. The Individual in his QNSP was forthcoming about information that was far more compromising in terms of addiction and legal exposure, namely his heroin use and several more serious drug-related crimes from 2015 to 2017. Furthermore, the Individual believed the 2021 marijuana purchase and use to be legal at the time, indicating that he did not intend to conceal illegal drug use or mislead investigators. Last, I credit the Individual's explanation that he originally forgot the 2005 Drug Possession charge from over 19 years ago when completing the QNSP. The evidence demonstrates that these omissions from the QNSP were inadvertent and minor because he shared more serious information from the outset. Accordingly, these omissions do not currently cast doubt on the Individual's reliability, trustworthiness, and judgment. Regarding mitigating factor (c) and the 2019 heroin use, the Individual testified to misunderstanding the question during the ESI and voluntarily correcting the information in the subsequent LOI. Accordingly, the circumstances

surrounding the omission of the 2019 heroin use from the ESI and subsequent correction do not cast doubt on the Individual's reliability, trustworthiness, or judgment.

Regarding mitigating factor (e), the Individual, as discussed above, is receiving treatment for his Severe Opiate Use Disorder and is abstaining from all illegal drug use. His peer group, individual counselors, methadone program with regular testing, and family hold him accountable. Accordingly, the Individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, and duress. Mitigating factor (e) applies generally.

VI. CONCLUSION

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

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals