

the derogatory information raised security concerns under Guidelines E, H, and J of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted seven exhibits (Ex. 1–7). The Individual submitted thirteen exhibits (Ex. A–M). The Individual testified on his own behalf and offered the testimony of seven additional witnesses, including two former classmates and five work colleagues. Hearing Transcript, OHA Case No. PSH-24-0130 (Tr.) at 3–4.

II. THE SECURITY CONCERNS

Guideline E relates to questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Especially concerning is the refusal to be truthful and honest during the administrative review process. Adjudicative Guidelines at ¶ 15. In citing Guideline E, the LSO relied upon the Individual’s failure to report his controlled substance use while holding a security clearance and also when he completed the QNSP. Ex. 1 at 5. The LSO also relied on the Individual’s report that he moved in with his girlfriend, who was an active drug user. *Id.*

Guideline H relates to the illegal use of controlled substances, including prescription and non-prescription drugs. Adjudicative Guidelines at ¶ 24. In this case, the LSO relied on the Individual’s January 29, 2024, report that he took Adderall and Ritalin, both prescription medications, even though he did not have a prescription. Ex. 1 at 6. The LSO also relied upon the Individual’s report that he used Marijuana, Cocaine, Ketamine, Methylenedioxymethamphetamine (MDMA or Molly), Psilocybin/Mushrooms, Lysergic Acid Diethylamide (LSD), N-Dimethyltryptamine (DMT), and Vyvanse. *Id.* His illegal use of the controlled substances occurred while he was holding an active security clearance. *Id.*

Guideline J relates to criminal activity, which calls into question the ability or willingness of an individual to comply with laws, rules, and regulations, and creates doubt about a person’s judgment, reliability, and trustworthiness. Adjudicative Guidelines at ¶ 30. The LSO relied on the Individual’s admitted use of prescription drugs without a prescription and his illegal use of controlled substances, including those drugs listed under Guideline H, above.

There is sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, H, and J of the Adjudicative Guidelines.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See*

Dep't 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

A. Hiring in a Position Requiring a Security Clearance

The Individual attended college from the 2014 to 2018. Tr. at 173. While in school, the Individual found post-college employment that required him to submit a QNSP in November 2017. Ex. 7 at 128. In his 2017 QNSP, the Individual certified that he had not engaged in illegal drug use in the last seven years. *Id.* at 122. During the hearing, the Individual testified that during his time in college he had not engaged in illegal drug use, despite being exposed to others using Marijuana. Tr. at 173. This was further corroborated by two witnesses who knew him during college: one classmate testifying that he was surprised to learn that the Individual later used drugs after college and another classmate testifying that the Individual was a “rule-abiding person” who “might have looked down on people . . . who would choose to” use drugs during their time together at school. *Id.* at 27, 55, 71. The Individual testified that he was granted a security clearance by June 2018. *Id.* at 153.

B. Relationship with his Ex-Wife, Drug Use While Holding a Security Clearance, and Failure to Report Drug Use

The Individual testified to first meeting his now ex-wife in February 2020. Tr. at 144; *see also* Ex. A at 3. They began dating sometime thereafter and moved in together in December 2020,³ less than a year after having known each other. Tr. at 144; Ex. A at 2. The Individual admitted to using drugs “some time” after they moved in together, around March 2021. Ex. 2 at 11; Ex. A at 3; Tr. at 145. The Individual was around 24 or 25 years old at the start of the relationship and drug use.

³ In a written reply to the SSC, the Individual indicated that he moved in with his now ex-wife in “December 2021” but used drugs “some time” thereafter in March 2021. Ex. 2 at 11. When originally reporting to the LSO, the Individual indicated that he met his ex-wife in February 2020 and that “later that year in December” they moved in together. Ex. A at 2; *see also* Tr. at 144 (testifying that he met his wife in February 2020 and that she moved in with him in December 2020). Accordingly, the December 2021 move-in date appears to be a typographical error.

Tr. at 164. The Individual's drug use continued until November 2022,⁴ during which time the two married in December 2021. Ex. 2 at 11; Ex. H at 32. Between March 2021 and November 2022, or throughout a year and eight months, the Individual would illegally use a variety of controlled substances, including Adderall and Ritalin without having a prescription, Marijuana, Cocaine, Ketamine, MDMA or Molly, Psilocybin/Mushrooms, LSD, DMT, and Vyvanse. Ex. 5 at 23. At the hearing, the Individual testified that he would use these drugs with varying regularity. Tr. at 146–47. In particular, the Individual used Ketamine every weekend and sometimes even on weeknights. *Id.* Once per month, he would use another drug, such as either LSD, MDMA or Psilocybin. *Id.* at 147 (testifying that “one month it would be MDMA, the next month it would [be] LSD, [and] the next month it would be mushrooms”). He testified to using these drugs less frequently to not “ruin” his brain. *Id.*

The Individual asserted that he was not “strong-willed enough to combat” his ex-wife's “systematic dismantlement of [his] personal values and boundaries.” Ex. 2 at 11. In his reply to the SSC, the Individual explained that because this was his first serious relationship with a woman, he “thought that [he] needed to do whatever she wanted to keep her happy and not lose the relationship.” *Id.* The Individual maintained that his ex-wife said to him, “I don't think we could have lasted together if you didn't do drugs, too.” *Id.* at 12; *see also* Tr. at 163 (testifying that his ex-wife told him “literally we would[] [not] be able to have a relationship if . . . you were[] [not] doing drugs with me”). The Individual testified that this was his “first relationship” and thus approached the relationship as a “storybook” which meant “continu[ing] the narrative . . . [n]o matter the consequences” or “boundaries [] pushed” Tr. at 163. Three witnesses corroborated that this was his first relationship. *Id.* at 39, 56, 97. One witness who knew the Individual prior to the Individual's relationship with his ex-wife testified that the Individual ignored “obvious” character defects or “red flags” and believed that “love goggles” affected the Individual's judgment. *Id.* at 20–21.

The Individual testified at the hearing that he knew that his drug use was illegal. Tr. at 168–70. He also understood that drug use was an issue for security clearance holders. *Id.* at 150, 167–68 (testifying that he “realized pretty immediately when [he] started doing [illegal drugs] that it could be an issue” and “knew” that “using the drugs with the agreement that [he] made with the [DOE] [] was bad”). The Individual at first testified that he “did not consider that [he] had an obligation to report” his drug use; however, he later acknowledged that he took security refresher training annually that reminded him of his obligation to report illegal drug use within three days. *Id.* at 155–56. Furthermore, during the period he was simultaneously engaged in drug use while holding a security clearance, the Individual underwent five drug tests. *Id.* at 150–51. While the Individual tested negative on all those drug tests, he acknowledged that at least some of the drug tests required him to also fill out a form asking if he had taken drugs prior to testing. *Id.* at 147, 151. The Individual testified that he answered “no” on those forms despite his drug use. *Id.* at 152.

⁴ When he first reported his drug use to the LSO, the January 2024 reporting form indicated his drug use ended in September 2022 rather than November 2022. Ex. 5 at 23; Ex. A at 3. When asked about the discrepancy, the Individual testified that he had originally forgotten one instance he had inhaled marijuana when he made his original report to the LSO but had subsequently corrected the record. Tr. at 143–44.

When asked for an explanation as to why he failed to report his drug use, the Individual testified to having “a faulty mindset” insofar as he believed that “this drug use [was] only affecting [him]” and “not affecting [his] work at all” since he did not “do drugs at work or before work.” *Id.* at 155. He attributed the development of this attitude to his ex-wife. *Id.* at 163, 68 (testifying that the ex-wife would tell the Individual that he was “not going to get found out”; that drug use does not “make you a bad person”; and that he was “led to believe . . . lots of people who are reputable experiment with drugs”). However, the Individual again “knew that all of this drug use was illegal” but “viewed [his] relationship to be more important than the law.” *Id.* at 171. The Individual also testified that, while the Individual was using drugs and still married to his ex-wife, he observed his ex-wife threatening to report on a past romantic partner who used drugs while holding a security clearance; according to the Individual, she followed through on that threat, which the Individual found concerning. *Id.* at 159–60.

The Individual stated that in April 2022, he began speaking with a therapist, who encouraged him to start “enforcing boundaries.” Ex. 2 at 12; Ex. E at 18–27. He claimed that after he started seeing the therapist and enforcing his boundaries, his ex-wife got “so upset with [him] that she demanded [he] leave the house and sleep in a hotel.” Ex. 2 at 12. According to his QNSP, they physically separated in October 2022. Ex. 6 at 51. One of the Individual’s colleagues testified that from around December 2022 to March 2023 the Individual moved in with him temporarily. Tr. at 87. The Individual asserted that his last instance of drug use in November 2022 resulted from one “last desperate attempt to try and find common ground and repair the relationship during a short visit after [he] had moved out.” Ex. 2 at 12.

C. End of Drug Use, Continued Failure to Report Prior Drug Use, and Eventual Reporting of Prior Drug Use

The Individual initiated protracted divorce discussions sometime in late 2022 or early 2023. Ex. 2 at 12. At around the same time, on February 28, 2023, the Individual submitted a second QNSP. Ex. 6 at 72. In the 2023 QNSP, he certified that he had not engaged in illegal drug use in the last seven years, despite having last engaged in illegal drug use only three months prior in November 2022 and despite having been illegally using drugs for approximately a year and eight months. *Id.* at 63. During the divorce discussions and process, the Individual’s ex-wife threatened to expose him for his drug use. *Id.*; *see also* Tr. at 157 (“[T]hroughout the whole entire divorce proceedings . . . I had a feeling . . . if I do[] [not] do what she says, she can report me for this.”). The Individual testified that the “last time” a threat occurred was in March 2023, shortly after he had submitted his 2023 QNSP and informed her that she might be interviewed. Tr. at 157. He finally formally filed for divorce in October 2023. Ex. 2 at 12.⁵

The Individual testified that in October 2023 he consulted with his manager and a “security professional” about reporting possible financial blackmail. Tr. at 158. He also claimed that “because of the holidays” the discussion was delayed until January 2024. *Id.* Finally, the Individual reported his drug use in January 2024. Ex. 1 at 5; Ex. 2 at 12; Ex. 5 at 23. In his reply to the SSC, the Individual stated he did not feel “actively [] threatened by the drug use being discovered” and that he made the report because he felt he needed to be “authentic” and “up front.” Ex. 2 at 12. However, in January 2024 when making his disclosure to the LSO, the Individual stated that one

⁵ The divorce was finalized on April 4, 2024. Ex. H at 32–33.

of the “reasons” he decided to report was because his “ex-wife was attempting to use [his illegal drug abuse] as leverage in the divorce process.” Ex. A at 1–2; *see also* Tr. at 159 (testifying that he finally reported in January 2024 because he “was being threatened” in addition to his “feeling[s] of guilt”). Furthermore, prior to reporting, the Individual divulged to his therapist that he felt “fear” not just “guilt”—which he attributed to having hid his drug use. Ex. 2 at 12.

In addition to reporting his drug use, the Individual enrolled in his employer’s Employee Assistance Program (EAP), which referred him to a 12-week substance abuse treatment program that included group meetings twice per week and a weekly individualized counseling component. Ex. 2 at 12; Ex. F at 29–30; Ex. G at 31; Ex. I at 34. He completed that program in May 2024. Ex. G at 31. According to the Individual, the substance abuse counselors did not consider his drug use to be indicative of “addiction”⁶ and they mostly worked with him to address “boundaries,” “negative influences,” and “coping mechanisms[.]” Tr. at 171–72. He also entered a continuous monitoring agreement with EAP and is subject to monthly random drug and alcohol testing for two years. Ex. 2 at 12; Ex. B at 5. The Individual’s monthly test results, from April 2024 to August 2024, have all been negative. Ex. D at 8–17. The Individual also attends individualized therapy. Ex. J at 35; Tr. at 183.

During the hearing, the Individual testified that he specifically worked on setting healthy boundaries through sessions with his therapist, counseling through his substance abuse treatment, and monthly counseling through his EAP, so that he would no longer feel “manipulated” into the behaviors that precipitated this proceeding. Tr. at 183. His therapist, who has treated the Individual since October 6, 2022,⁷ also reported that the Individual had “demonstrate[d] a commitment to sobriety” and that they also “spen[d] a great deal of sessions building up his self-confidence and ability to set firm boundaries moving forward.” Ex. J. at 35. A mental health counselor from his substance abuse treatment program similarly reported that the Individual “addressed his low self-esteem to be able to make better choices in his life and has followed through on this issue.” Ex. I at 34. The Individual’s future intent is to abstain from all illegal drug use, having affirmed to do so both in the hearing and in the EAP continuous monitoring agreement. Ex. B at 5; Tr. at 194–95; *see also* Ex. 5 at 23. The Individual also believes that, since attending therapy, he has set boundaries and prevented manipulation, exemplified by: (1) the act of reporting his drug use to prevent future blackmail; (2) refusing to take one of his former pets from his ex-wife upon her request because doing so would violate the terms of the divorce agreement and possibly subject him to further blackmail; and (3) refusing to purchase a nicotine vape for a woman under 21 years of age to whom he is attracted, although they have no relationship. Tr. at 172, 83, 85–86, 189–90. Last, the Individual testified that, as of October 2023, he maintains minimal contact with his ex-wife, only communicating with her via email regarding the logistics of their divorce, such as paying alimony, and having also blocked her cell phone number. *Id.* at 175.

⁶ Notably, his substance abuse treatment program only diagnosed the Individual with “Adjustment [D]isorder with [A]nxiety and [D]epressed [M]oods” and “Alcohol [U]se [D]isorder (Mild)” despite the fact that the Individual was referred to the program for his drug abuse. Ex. I at 34.

⁷ The Individual began therapy in April 2022. Ex. 2 at 12. He began seeing a new therapist in October 2022. Tr. at 187; Ex. J at 35. In October 2023, he “finally told [his therapist] about the actual drug use.” Tr. at 158.

D. Testimony Regarding the Individual's Character

The Individual presented several witnesses, including two college classmates and five colleagues. The consensus from the witnesses was that the Individual was a trustworthy person. Tr. at 59, 80, 117, 124–26, 130–34, 137–39. One witness noted that the Individual was “known for following the rules even to his own detriment.” *Id.* at 29. Similarly, one of his colleagues recalled a time that the Individual self-reported having “messed up” a procedure that thus required them to re-do work. *Id.* at 78–79. The colleague testified that “he could have not told anybody . . . since he was by himself, but he reported it” regardless. *Id.* at 79. Another colleague also recounted a separate incident where the Individual flagged an issue on a project “instead of letting things continue” so that the project group could “correct the issue . . .” *Id.* at 131. The same colleague noted that since his clearance had been suspended, the Individual continued to demonstrate personal responsibility by ensuring any potentially sensitive information is removed from his proximity in the workplace. *Id.* at 134–35.

Furthermore, several witnesses generally reported that they were surprised when the Individual disclosed to them his drug use and failure to report the drug use, as both behaviors were not aligned with their understanding of the Individual's honesty and personality. *See, e.g., id.* at 27, 29–31, 80, 91–92, 115. One witness described being “taken [a]back.” *Id.* at 80. Another witness exclaimed that he thought the Individual was “bullshitting” him and “pulling [his] leg.” *Id.* at 91–92.

The witnesses consistently indicated that they were told about the drug use and the failure to report relatively recently—sometime after the January 2024 report and before the hearing. *See, e.g., id.* at 18, 48, 90–91, 103. One of the colleagues testified that the Individual told him, “I did[] [not] tell you beforehand” and “did[] not make it known to you that these things had occurred, because I knew . . . you would be in a situation where you would have to report it . . .” *Id.* at 48. Another witness testified that the Individual appeared “embarrassed about the whole . . . thing.” *Id.* at 103. Many of the witnesses were also told by the Individual about how his ex-wife was a negative influence and that she had threatened to blackmail him. *See, e.g., id.* at 49, 103 (one witness testifying that the Individual reported his illegal drug use because of the ex-wife's threatened blackmail and another testifying that the Individual was being peer pressured by the ex-wife to do illegal drugs). Witnesses also testified that the Individual “learned from those lessons” and had done the “right thing” by eventually reporting the drug use. *Id.* at 38, 137. Another witness testified to believing that the Individual is “more mature and able to handle [his behavior] a lot better than . . . back then . . .” *Id.* at 94.

V. ANALYSIS

Based on the record before me, I am not convinced that the Individual has mitigated the LSO's security concerns. 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. Here, the SSC invoked the Individual's illegal use of drugs from March 2021 to November 2022.

To start, I credit the Individual's testimony that he engaged in illegal drug use from March 2021 to November 2022 and has not abused drugs since. In crediting his timeline of abuse and abstinence, I weigh several factors. I weigh heavily that the Individual self-reported extensive, incriminating information and that he is motivated to be completely forthcoming at this point, considering the risk of his ex-wife coming forward to provide contradictory information. Furthermore, during the hearing, the Individual provided information that was consistent with his earlier written explanation for his actions; freely provided specific details into his personal life and state of mind; and gave non-combative, direct answers when asked leading questions despite the answers reflecting poorly on him. While his behavior reflects past poor judgment on his part, his conduct—starting from when he finally reported his drug use in January 2024 and during the hearing—reflects that he is now being honest.

Regarding mitigating condition (a), I have credited his testimony that the circumstances leading to his drug abuse were his association with his ex-wife and the pressure he felt from their relationship. I have also credited that he has taken steps to eliminate those circumstances from his life by separating from his ex-wife in October 2022, only maintaining email contact with her regarding alimony. However, I weigh more heavily the frequency of his drug use, the length of time of the

drug abuse, and other circumstances surrounding his drug use that cast doubt as to both the likelihood of recurrence and his reliability, trustworthiness, and good judgment. The Individual used Ketamine from March 2021 to November 2022 weekly and regularly abused other drugs monthly. Given the regularity of the drug abuse, I cannot find the behavior was infrequent. Furthermore, while I have credited his testimony that he has not abused drugs since November 2022, I cannot find that this drug abuse was “so long ago.” Instead, the drug abuse occurred relatively recently given that the period of sobriety amounts to only a year and 10 months—a length of time about equal to the immediate year and 8 months of drug abuse. The frequency and relative recency of the drug abuse weigh against finding that the drug use is unlikely to recur or that the behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Furthermore, while I have credited the Individual’s steps taken to eliminate the circumstance that led to the recurring drug abuse, specifically his ex-wife’s influence, I also find that such influence was not so burdensome as to overcome his own decision-making capacity. Ultimately, the Individual testified to knowing that the drug use was illegal and in contravention of his obligations as a security clearance holder, to being reminded at multiple junctures that this drug use jeopardized his employment and ability to hold a security clearance, and to continuing his drug abuse regardless of those consequences. Those specific facts, combined with the relative recency and frequency of the drug abuse, prevent me from concluding that the drug abuse is unlikely to recur and does not continue to raise doubts regarding his trustworthiness. Mitigating condition (a) does not apply.

Regarding mitigating condition (b), the record is clear that he has acknowledged his drug abuse—having self-reported to the LSO and being open with his friends and colleagues about the drug abuse. As stated above, I have credited that the Individual has been abstinent from drug use for a year and 10 months, demonstrating a pattern of abstinence. In particular, I rely on (1) his self-reporting of the incriminating behavior and present motive to be truthful in consideration of the possibility of being contradicted by his ex-wife; (2) his consistency since self-reporting and during the hearing; and (3) the Individual’s explanation, corroborated by witness testimony, that he only engaged in the drug use because of his ex-wife. This pattern of abstinence has been further supported by: a letter from his therapist with whom he has been attending sessions since October 2022 and who noted that the Individual has demonstrated a commitment to sobriety; by the five months of random drug testing from April 2024 to August 2024; by his agreement with the EAP to remain abstinent at the risk of losing his employment; and by his dissociation with his ex-wife. Actions taken to overcome the problem include his (1) participation in the 12-week substance abuse treatment program; (2) individualized therapy; (3) agreement with his EAP to remain abstinent and to submit to monthly random drug testing; and (4) again, his disassociation with his ex-wife who was the catalyst for his drug use. Accordingly, I find that mitigating condition (b) applies.

Regarding mitigating condition (c), there exists no indication in the record that the misused prescription drugs were prescribed to the Individual. Accordingly, mitigating condition (c) lacks application to this case.

Regarding mitigating condition (d), the Individual completed a 12-week substance abuse treatment program that his EAP referred him to. It is unclear if there were any specific aftercare requirements,

but the Individual has testified and provided documentary evidence that he continues seeing his therapist. Furthermore, the therapist reported that the Individual was sober and committed to remaining sober, and a licensed mental health counselor from the substance abuse treatment program indicated that the Individual has addressed his issues and has followed through. The record, however, lacks a specific prognosis from a duly qualified medical professional. Thus, I cannot find that mitigating condition (d) applies.

Accordingly, I find that the Individual has satisfied mitigating condition (b) and that the Individual has resolved the security concerns asserted by the LSO 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. Here, the SSC invoked the same illegal use of drugs from March 2021 to November 2022 referenced above. Accordingly, the analysis of the criminal acts alleged in the SSC is inextricably intertwined with the analysis of the Individual's drug use.

Regarding mitigating condition (a), I again rely on (1) the fact that the Individual has only refrained from illegal drug use for one year and 10 months—a length of time not much longer than the period during which he abused drugs; (2) the frequency of the Individual's drug use, which was weekly for Ketamine and monthly for other drugs; (3) and the circumstances surrounding his drug use, which involved his association with his ex-wife. Again, while I credit that the Individual's ex-wife exerted influence on him, I do not find that the pressure was so great as to overcome his own decision-making capacity. I also consider other circumstances that weigh against mitigation, including his acknowledgment that he knew the drug use was illegal and in contravention of the terms of his employment and to his obligations as a security clearance holder. Accordingly, I cannot find that the criminal behavior does not cast doubt on the individual's reliability, trustworthiness, or judgment. I find mitigating condition (a) does not apply.

Regarding mitigating condition (b), there is testimony that the Individual felt coerced or manipulated by his ex-wife. However, the Individual ultimately abused drugs based on what has

been described as “love goggles” or “peer pressure”—a level of pressure or coercion that is not so burdensome as to overcome his autonomy. I consider heavily that the Individual was a security clearance holder, understood that the activity he engaged in was illegal and jeopardized his clearance, and testified to valuing his romantic relationship over the law. While he may have experienced influence from his ex-wife, the decision to abuse drugs ultimately rested with the Individual, and he exercised that discretion by engaging in illegal drug use. I cannot find that mitigating condition (b) applies.

Regarding mitigating condition (c), the Individual’s own testimony is that he engaged in the illegal activity. Accordingly, mitigating condition (c) lacks application.

Regarding mitigating condition (d), the Individual was not involved in any criminal proceedings. Accordingly, some examples of rehabilitation outlined in paragraph (d), such as restitution or adherence to the terms of parole or probation, lack application to this case. However, the Individual has put forth other evidence of rehabilitation, including his period of sobriety partially corroborated by his random drug tests, his completion of the 12-week substance abuse treatment program, and his continued individualized therapy. Other actions taken to demonstrate rehabilitation from criminal behavior include the fact that he has disassociated with his ex-wife, communicating with her only by email. Furthermore, he testified that he has already put into action the ability he gained through counseling to set more healthy boundaries with others. Specifically, he recounted an incident where a woman under 21, whom he was interested in romantically, asked him to buy a vape pen for her, and another incident where his ex-wife asked him to take a pet in contravention of a court-enforceable divorce agreement. In both situations, the Individual recognized that doing so could subject him to negative consequences, set a boundary, and refused to engage in the requested behavior. I thus find that mitigating condition (d) applies.

Accordingly, I find that the Individual has satisfied mitigating condition (d), and that the Individual has resolved the security concerns asserted by the LSO under Guideline J.

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. Here, the SSC cited three concerns: (1) his failure to report his illegal drug use throughout the period of drug use; (2) his failure to report his drug use in his 2023 QNSP; and (3) his association with his ex-wife, who was an active drug user.

In summary, I have grave concerns that the Individual concealed his drug use, which began in March 2021 while he was holding a security clearance, until January 2024. His failure to report the drug use occurred essentially over 2 years and 10 months. He understood that he was required to report his drug use as evinced by (1) him admitting to taking the annual security training; (2) him telling another clearance holder that he did not disclose his drug abuse earlier since the other clearance holder would have been required to report the Individual; and (3) the fact that he had undergone at least five drug tests. Furthermore, he testified that at least some of the drug tests included forms that asked about the subjects' illegal drug use. He was dishonest with his answers on those forms. Then, he completed a QNSP in February 2023 and falsely certified that he had not used drugs. Despite having many opportunities to be forthcoming, the Individual only came forward in January 2024 after continued threats of exposure from his ex-wife.

Regarding mitigating condition (a), the Individual came forward before being confronted with the facts. However, it cannot be said that he came forward promptly or entirely in good faith. As stated above, the Individual concealed his drug use over 2 years and 10 months and was given several opportunities throughout that time to come forward. Furthermore, the Individual testified to coming forward not only because he wanted to clear his conscience but also because of the fear of blackmail from his ex-wife. Accordingly, the Individual corrected his prolonged concealment, falsification, and omissions neither promptly nor entirely out of good faith. Mitigating condition (a) does not apply.

Regarding mitigating condition (b), the Individual's behavior cannot be attributed to the advice of legal counsel or a person with relevant professional responsibilities. Accordingly, mitigating condition (b) does not apply.

Regarding mitigating condition (c), I specifically find that the continued concealment of his drug use and continuing threat of blackmail pose a serious concern. The omission and falsifications cannot be described as minor given the seriousness of the following: (1) the drug abuse was serious—in terms of variety of substances abused, the frequency of the drug abuse, and the length of time the abuse occurred; (2) the concealment of the drug abuse took place over 2 years and 10 months and despite multiple opportunities to come forward; and (3) the concealment of the drug abuse led to him being subjected to threats and blackmail from his ex-wife. I also cannot find the behavior infrequent given that the concealment occurred essentially every day for 2 years and 10 months. To the extent that the Individual asserts that the behavior occurred under his ex-wife's influence—I also do not find this compelling. As stated before, the level of pressure that the Individual experienced is not so burdensome as to overcome his own decision-making ability. Mitigating condition (c) does not apply.

Regarding mitigating conditions (d) and (e), the behavior occurred because the Individual felt pressured by his ex-wife, and the Individual and several witnesses testified that he subsequently met with a therapist who worked with him on setting boundaries. Meeting with the therapist evinces counseling to eliminate the behavior and a positive step in eliminating the vulnerability. With this counseling, the Individual hopes to set boundaries that prevent him from engaging in criminal drug use and other compromising behaviors. The Individual and his witnesses also gave some examples of the Individual setting boundaries and reporting self-detrimental information—specifically that he refused to purchase a vape for an underage woman and that he reported himself for a breach in protocol on a project. Regardless, I cannot find that his concealment of incriminating information and his false reporting are unlikely to recur. While positive steps, these incidents of boundary setting and the therapy do not assuage the serious doubt cast by: (1) the continued failure to come forward that occurred every day over 2 years and 10 months; (2) the failure to report his drug use during random drug tests; (3) his failure to report his drug use on the 2023 QNSP; and (4) the recency of the January 2024 reporting of his drug use only after he received his ex-wife's threats. *See* 10 C.F.R. § 710.7(c) (requiring consideration of, among other things, “[t]he nature, extent, and seriousness of the conduct[, and] the frequency and recency of the conduct,” in applying the Adjudicative Guidelines). I cannot make a finding that the behavior is unlikely to recur given the above. Mitigating conditions (d) and (e) do not apply.

Regarding mitigating condition (f), there exists no dispute as to the reliability of the information because the Individual came forward. Mitigating condition (f) lacks application.

Regarding mitigating condition (g), it cannot be said that the Individual's association with his ex-wife was unwitting. However, the Individual has divorced her, blocked her number, and only communicates with her over email as necessary to carry out the logistics of their divorce. Accordingly, I can find that mitigating condition (g) applies to the concern raised in the SSC regarding his association with her. However, mitigating condition (g) otherwise lacks application to the Individual's long-term concealment of his own drug use.

Accordingly, I find that none of the mitigating conditions have been satisfied, except for mitigating condition (g) as to his association with his ex-wife, and that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, H, and J of the Adjudicative Guidelines. After considering all the relevant information, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual brought forth sufficient evidence to resolve the Guidelines H and J concerns. I also find, however, that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter related to the Guideline E concerns. Accordingly, I find the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals