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

In the Matter of:	Personnel Security Hearing	)	
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Filing Date:	July 29, 2024	)	Case No.: PSH-24-0163
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Issued: December 13, 2024

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

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

**I. Background**

The Individual is an applicant for employment with a DOE contractor, for a position that would require him to hold a security clearance. In connection with the Individual's request for access authorization, the DOE reviewed the Individual's responses to a February 2019 Questionnaire for National Security Positions (QNSP), a July 2023 QNSP, and an April 2024 Letter of Interrogatory (LOI), and the results of a background investigation conducted by the U.S. Office of Personnel Management (OPM). Exhibit (Ex.) 5; Ex. 6; Ex. 7.<sup>2</sup> Due to unresolved security concerns raised by the Individual's drug use, the Local Security Office (LSO) informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 7–9. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.* at 5–

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

<sup>2</sup> The exhibits submitted by the DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by the DOE.

6. The SSC also explained that the Individual was subject to the Bond Amendment, which may disqualify him from holding a security clearance. *Id.* at 5.

In July 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. 2. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from three witnesses: the Individual, the Individual's first-level supervisor, and the Individual's Programmatic Lead. *See* Transcript of Hearing, OHA Case No. PSH-24-0163 (Tr.). Counsel for the DOE submitted eight exhibits, marked as Exhibits 1 through 8. The Individual submitted ten exhibits, marked as Exhibits A through J.

## **II. The Summary of Security Concerns**

### **A. The Bond Amendment and Guideline H (Drug Involvement and Substance Misuse)**

The relevant provisions of the Bond Amendment provide that “the head of a [f]ederal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b). Under Guideline H of the Adjudicative Guidelines, 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 under Guideline H include “any substance misuse” and “any illegal drug use while granted access to classified information or holding a sensitive position.” *Id.* at ¶ 25(a), (f).

In invoking the Bond Amendment and Guideline H of the Adjudicative Guidelines, the LSO cited the Individual's admission, in his April 2024 LOI, that he first used marijuana in 2014 and used it “approximately 30 times with his last use occurring in the Fall of 2021.” Ex. 1 at 5–6. He also used marijuana while holding an interim security clearance. *Id.* The LSO also cited the Individual's admission, in his April 2024 LOI, that he used the drug psilocybin “in May 2021, and again in November 2023.” *Id.*<sup>3</sup>

### **B. Guideline E (Personal Conduct)**

Under Guideline E, “[c]onduct 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.” Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is “deliberately providing false or misleading information” to a security official “involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.” *Id.* at ¶ 16(b).

In citing Guideline E, the LSO noted that in his April 2024 LOI, when asked if he provided false or misleading information to an investigator regarding his illegal drug use, the Individual

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<sup>3</sup> In the SSC, the LSO indicated that the marijuana and psilocybin used by the Individual are “Schedule I” controlled substances. Ex. 1 at 5–6.

responded “unfortunately, I did.” Ex. 1 at 5. The LSO also noted that in his July 2023 QNSP, the Individual certified that in the last seven years “he had not illegally used any drugs or controlled substances.” *Id.* However, in his April 2024 LOI, the Individual admitted that “from 2014 to 2021 he used marijuana approximately 30 times and he used psilocybin in May of 2021.” *Id.* The LSO also noted that in his February 2019 QNSP, the Individual certified that he had not used any illegal drugs or controlled substances. However, in his April 2024 LOI, the Individual admitted that he used marijuana from 2014 to 2021. *Id.*

### **C. Guideline J (Criminal Conduct)**

Under Guideline J, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. Furthermore, it “calls into question a person’s ability or willingness to comply with laws, rules, or regulations.” *Id.* Conditions that can raise a security concern under Guideline J include “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.” *Id.* at ¶ 31(b). In citing Guideline J, the LSO noted the Individual’s admission in his April 2024 LOI, that he illegally used marijuana “from 2014 until the Fall of 2021” and used psilocybin “in May 2021, and again in November 2023.” Ex. 1 at 6.

Considering the conduct described above, I find the LSO’s invocation of the Bond Amendment, and Guidelines E, H, and J of the Adjudicative Guidelines to be justified.

### **III. Regulatory Standards**

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

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

### **IV. Findings of Fact and Hearing Testimony**

In February 2019, the Individual sought employment with a with a federal contractor and completed a QNSP as part of his application. Ex. 7. In Section 23 of the QNSP, titled “Illegal Use of Drugs or Drug Activity,” the Individual responded “No” when asked if, in the last seven years, he “illegally used any drugs or controlled substances.” *Id.* at 103. In 2019, the Individual was granted an interim security clearance in connection with his summer employment with that federal contractor.<sup>4</sup> Ex. 3 at 17; Ex. 4 at 20.

In July 2023, the Individual completed a second QNSP as part of an application for employment with a DOE contractor. Ex. 6. In his July 2023 QNSP, the Individual also responded “No” when asked if he had “illegally used any drugs or controlled substances” in the last seven years. *Id.* at 65. In March 2024, the LSO learned that during a previous background investigation, an OPM investigator discovered that the Individual “illegally used marijuana weekly to every other week,” from October 2018 to November 2018, and on one occasion in November 2019. Ex. 3 at 16–17. In April 2024, the LSO issued the Individual an LOI, which sought additional information related to the Individual’s drug use. Ex. 4. In his response to the LOI, the Individual admitted that he started using marijuana in 2014, while a sophomore in high school, and used marijuana “around 30 times” until “approximately Fall of 2021.” Ex. 5 at 27. The Individual also reported using psilocybin twice, once in May 2021 and again “on or about November 2023.” *Id.* at 29.

The Individual also reported in the LOI that when completing the February 2019 QNSP, he “was confused about marijuana being illegal under Federal law,” and that marijuana can be used legally in the state in which he resides. Ex. 5 at 30. He also reported that when he completed the July 2023 QNSP, he “did not understand how to correct [his] past mistake without it appearing as a discrepancy between the two applications.” *Id.* The LOI asked if the Individual provided “false or misleading information to the investigator,” to which the Individual responded “[u]nfortunately, I did, as I did not fully understand the best way to resolve my past errors from my 2019 QNSP.” *Id.* at 31. He also reported that he understood that he should have reported his substance use on the July 2023 QNSP and “provided [an] additional explanation regarding the reporting on the 2019 QNSP.” *Id.* at 30.

At the hearing, the Individual’s first-level supervisor testified that he has directly supervised the Individual since the Individual began his employment in April 2023. Tr. at 13, 23. He stated the Individual has good character and is a hard worker. *Id.* at 15–17. He stated that he understood the Individual was not truthful about his substance use issues in his application for a security clearance. *Id.* at 14. He stated that he did not know if the Individual made any attempts to correct the information in his QNSPs before he received the LOI. *Id.* at 23. He explained that after the Individual completed his LOI and it became clear the issue of his security clearance would proceed to a hearing, the Individual has been very forthcoming with him about his past drug use, and he believes the Individual has “learned from his past behavior.” *Id.* at 14–15, 17, 22–23. He also stated the Individual may have been naïve in his understanding of what it means to hold a security clearance and had challenges in his personal life that may have driven him to use marijuana. *Id.* at 18. The Individual’s Programmatic Lead testified that he has supervised the Individual for less than a year and communicates with him multiple times a day. *Id.* at 66–67. He stated that he believes the Individual is a person of strong moral character and has learned from his past behaviors. *Id.* at 68–69.

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<sup>4</sup> According to the exhibits submitted by the LSO, the adjudication was completed in December 2019, with a favorable outcome, and the Individual was enrolled in continuous evaluation in 2021. Ex. 3 at 17; Ex. 4 at 21.

The Individual testified that from approximately June 2019 to September 2019, he held an interim security clearance in connection with his employment with a federal contractor. Tr. at 30, 51–52. He acknowledged that he used illegal substances, from 2014 through the fall of 2021, but he believed his security clearance was “deactivated” when his employment with the federal contractor ended in September 2019.<sup>5</sup> *Id.* at 31–32, 52. As to his use of marijuana, he stated that most occasions on which he used marijuana occurred while he was in high school, and “almost all were in social settings.” *Id.* at 32–33. He first used marijuana in 2014, when he was a teenager, and continued to use the drug “roughly, 30 times . . . on and off,” while he was in high school and college. *Id.* at 32, 57. He stated he would use the drug to “fit in and to just relax with [his] friends.” *Id.* at 33. He believed marijuana was legalized in his state in 2016, but that it was legalized for use by adults only, and therefore, any of his use when he was a minor was illegal. *Id.* at 63. He recalled that before his last use, in the fall of 2021, he purchased marijuana legally from a dispensary in his state. *Id.* at 50–51. He stated that he keeps in contact with some of the friends with whom he used marijuana in high school, but none of them use marijuana anymore because they all have “grown out of that phase,” and he would not put himself in an environment where marijuana is being used again. *Id.* at 33.

As to his use of psilocybin, the Individual testified that in May of 2021, while he was with a friend, the friend offered him the drug, and he “took it experimentally.” Tr. at 35, 53. He stated that he used psilocybin again in November of 2023, after having been employed with a DOE contractor for six months, when it was offered to him by a friend. *Id.* at 35–39. He was “frustrated” waiting for the security clearance process to conclude, and thought, “who could find out, right?” *Id.* He stated he no longer associates with the two friends that offered him the psilocybin in 2021 and 2023. *Id.* at 35–36. He stated he had no physiological need to take the drug and he does not feel that he is addicted to the drug. *Id.* at 56–57. He stated he is ashamed of his use of psilocybin in November 2023 because, at that time, he was aware of the security clearance process and what was expected of him. *Id.* at 37. The Individual submitted two sworn statements,<sup>6</sup> one dated April 2024 and the other dated October 2024, indicating that he does not intend to “use or be involved with illegal drugs in the future,” and that he acknowledges that future involvement in illegal drug use “may be grounds for revocation or denial of national security eligibility.” *Id.*; Ex. A; Ex. I.

The Individual further testified that he answered, “unfortunately, I did,” in the April 2024 LOI, when asked if he provided misleading information to an investigator. Tr. at 39–40. He stated that he misled the OPM investigator because he thought he could get away with it, but he now knows that lying was the worst thing he could have done. *Id.* He explained that when he completed the February 2019 QNSP, he lied about his drug use because he did not want anything to jeopardize his ability to get the job with the federal contractor.<sup>7</sup> *Id.* at 41. During his interview with an OPM investigator, he did not admit to his prior drug use because he was afraid he would lose his job. *Id.* at 42. He also explained that when completing the July 2023 QNSP, the form automatically

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<sup>5</sup> The LSO alleges that the Individual used marijuana while holding a security clearance. Ex. 1 at 5. With this testimony, the Individual is claiming that he did not realize the clearance was continuing when he left his employment with the federal contractor. Tr. at 32.

<sup>6</sup> These statements are identical, submitted six months apart. Ex. A; Ex. I.

<sup>7</sup> The Individual also testified that he asked his parents what he should do about his drug use. Tr. at 41. He claimed that they told him he should omit the information because marijuana use was not illegal in his state and the question was intended to “catch” people who were dependent on the drug. *Id.*

populated responses he provided in his February 2019 QNSP, and the response to the question of whether he used any illegal drugs within the past seven years was set to “no.” *Id.* at 42–43. He knew that if he changed the response and truthfully reported his prior drug use, it would result in a discrepancy between the two QNSPs and he would lose the job. *Id.* at 43–44. He also stated that he has taken steps to change his behavior. *Id.* at 45. He submitted a Certificate of Completion for a “behavior modification course,” he completed on April 16, 2024. *Id.*; Ex. G. The Individual also submitted a Certificate of Completion for a “drug and alcohol awareness class” he completed on April 15, 2024. Tr. at 45; Ex. B. He testified that he took both courses on the recommendation of his attorney. Tr. at 59. The Individual also submitted the results of a hair follicle drug test he underwent on August 23, 2024, the results of which were negative for the presence of marijuana and other drugs. Ex. H.

## V. Analysis

### The Bond Amendment

The Bond Amendment provides that Federal agencies “may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b); *see also* DOE Order 472.2A, Personnel Security, Appendix C: Adjudicative Considerations Related to Statutory Requirements and Departmental Requirements (June 10, 2022). The DOE policy implementing the Bond Amendment defines “an unlawful user of a controlled substance” and an “addict” as follows:

- a. An unlawful user of a controlled substance is any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of the controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate the individual is actively engaged in such conduct.
- b. An addict of a controlled substance is as defined in 21 U.S.C § 802(1), which is any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare; or is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his or her addiction.

DOE Order 472.2A, Appendix C at ¶ 2 (citing the Bond Amendment).

The Individual is not an “unlawful user” or an “addict” of a controlled substance, as defined by the DOE’s Bond Amendment policy. The Individual admits that he used marijuana 30 times between 2014 and 2021, and that he used psilocybin once in May 2021 and again in November 2023. The Individual credibly testified that his use of marijuana occurred on and off over the course of seven years and was limited to social settings with friends. As to his use of psilocybin, the Individual credibly testified that he only used the drugs twice, to experiment with the drug with his friends. The Individual also testified that he used both drugs while he was aware of the security clearance process, and his uses of the drugs was not because he was unable to control his actions.

I afford little weight to the Individual's August 2024 drug test as evidence that he is not a current user of illegal drugs, given the isolated nature of the test relative to the history of the Individual's drug use and the fact that it did not test for traces of psilocybin or similar drugs. Nonetheless, I find the Individual's testimony to be persuasive evidence that he is not a "current user" or "actively engaged" in the use of either drug. Finally, there is no evidence the Individual's use of either marijuana or psilocybin endangered the health or safety of the public. The LSO did not allege, and there is no evidence to support a finding, that the Individual is addicted to either marijuana or psilocybin. Therefore, I find that the Bond Amendment does not bar the DOE from granting the Individual a security clearance.

## **The Adjudicative Guidelines**

### **A. Guideline H**

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline H include:

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

Adjudicative Guidelines at ¶ 26.<sup>8</sup>

As to factor (a), the Individual began using marijuana ten years ago and his last use of marijuana occurred in 2021, three years before the hearing. Similarly, the Individual's last use of psilocybin

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<sup>8</sup> The security concerns raised by the LSO do not involve an allegation the Individual abused prescription drugs, and the classes in which the Individual participated do not appear sufficiently lengthy or rigorous to constitute a drug treatment program. Even if the classes were drug treatment, the Individual has not submitted evidence of a favorable prognosis by a duly qualified medical professional. Therefore, the mitigating factors found at subparagraphs (c) and (d) are not applicable to this case.

occurred in 2023, which was one year before the hearing. Although there is no evidence that the Individual used either drug since 2023, his illegal drug use did not end so long ago to mitigate the security concerns. This is particularly true because his drug use lasted nine years from 2014 through 2023, quite a bit longer than his almost one year of abstinence. There is also an elevated concern due to his drug use while possessing a security clearance—the Individual’s marijuana use in 2019 through 2021—and while undergoing the administrative review process—his psilocybin use in November 2023. Moreover, the Individual’s use of both illegal drugs occurred while he was socializing with friends in a variety of settings at different periods in his life. As the Individual’s drug use occurred under routine social circumstances at different times and with different people, I cannot find that the Individual’s drug use occurred under unusual circumstances. Therefore, I am unable to conclude that the Individual’s use of illegal drugs was so long ago, so infrequent, or happened under such circumstances that it is unlikely to recur and does not continue to cast doubt on his current reliability, trustworthiness, or good judgment. Adjudicative Guidelines at ¶ 26(a).

As to factor (b), the Individual submitted evidence he completed a drug and alcohol awareness class and a behavior modification class.<sup>9</sup> However, he did not provide evidence as to the substance of these courses and whether they sufficiently addressed the issues that may have contributed to his drug involvement, such as his need to “fit in” with his friends, or experiment with a new drug. Moreover, like mentioned in the analysis under (a) above, his use of the illegal drugs occurred while socializing in a variety of settings at different times of his life. The Individual admitted that he is still in contact with the friends that he used marijuana with, although he claimed that they no longer use the drug. Because his use occurred while socializing with different groups of friends and occurred while holding a clearance and going through the administrative review process, the Individual’s sworn statements that he will not engage in illegal drug use are not persuasive. The Individual provided two QNSPs where he represented that he had not used illegal drugs, and swore that the statements were true, complete, and correct. Although the Individual’s use of illegal drugs began when he was a minor, his use continued as an adult while he had a security clearance, and it occurred, in part, because he became frustrated waiting for the security clearance process to complete. Further, he testified that he did not believe anyone would find out about his drug use. I do not have enough evidence to conclude that the Individual will not resume use of illegal drugs if he experiences a similar lack of patience in the future. Therefore, the Individual has not mitigated the security concerns under ¶ 26(b) of the Adjudicative Guidelines.

## **B. Guideline E**

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline E include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically

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<sup>9</sup> Both of these classes lasted only four hours each. Ex. B; Ex. G.



concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

As to factor (a), the Individual first provided false information about his illegal drug use in 2019, when he completed his first QNSP. He maintained that falsification in 2023, when he completed the second QNSP and was interviewed by the OPM investigator. He finally admitted to the drug use in the April 2024 LOI, only after being confronted by his drug use. As such, the Individual has not met mitigating factor (a).

The Individual did not claim that he was advised by a "legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes." As such, mitigating factor (b) is not applicable.

As to factor (c), I cannot say that the offense was so minor. The Individual falsified information on two QNSPs and during the interview with the OPM investigator. He signed the first QNSP knowing that he had deliberately falsified information and continued that falsification in the second QNSP and to the investigator, never expecting to be found lying. In light of the seriousness, recency, and repetition of the untruthfulness giving rise to the security concern, I cannot find that the Individual has met mitigating factor (c).

The Individual presented an exhibit which showed he attended a four-hour behavior modification class. He did not provide any information regarding the class. However, a four-hour class does not equate to counseling for a falsification which lasted for five years, from February 2019, when he completed the first QNSP, through April 2024, when he finally admitted to his falsification on the

LOI. I cannot find that the Individual has presented any evidence to mitigate the concern raised by his illegal drug use under factor (d).

As to the remaining factors, the LSO did not allege any vulnerability related to the Individual's falsifications or that the Individual was at risk of exploitation, manipulation, or duress. The Individual admitted he falsified the information after he was confronted with his drug use. Lastly, there is no allegation that the security concerns involve the Individual's association with persons involved in criminal activity. Therefore, mitigating factors (e), (f), and (g) are not applicable.

### **C. Guideline J**

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under 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.

I do not find any of the mitigating factors listed above have been met by the Individual. As to factor (a), his last illegal drug use was one year prior to the hearing and his drug use occurred over a period of nine years in total. Factor (b) does not apply. While the Individual represented that he felt social pressure to use illegal drugs, this influence was not sufficiently coercive or direct for the second mitigating condition to apply. The Individual admitted to the illegal drug use; therefore, factor (c) does not apply. Finally, as to factor (d) and as stated above, the Individual last used an illegal drug less than a year prior to the hearing and, given the recency and seriousness of his drug use while holding a security clearance, has not presented evidence that demonstrates his successful rehabilitation from his criminal activity, which occurred one year prior to the hearing, when he used the psilocybin during the administrative review process.

Based on the foregoing analysis, I cannot find that the Individual has mitigated the concerns raised by the LSO under the Guidelines E, H, and J of the Adjudicative Guidelines.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guidelines E, H, and J of the Adjudicative Guidelines. After considering all the evidence, both

favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Bond Amendment does not bar the DOE from granting the Individual a security clearance. However, I find that the Individual has not brought forth sufficient evidence to resolve the Guidelines E, H, and J concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual should not be granted access authorization. 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